
Appeal Decisions

Hearing Held on 11 July 2017

Site visit made on 11 July 2017.

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 August 2017

Appeal A: ref. APP/J1860/C/16/3164136 & 3167522

Land at Strensham Road, Naunton, Upton-upon-Severn WR8 0QA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are by Mr Andrew Openshaw (3164136) and Mrs Karen Openshaw (3167522) against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice, ref. E/16/00144/PHY3, was issued on 9 November 2016.
 - The breach of planning control alleged in the notice is, the unauthorised change of use of the Land for the stationing and residential occupation of a static caravan, together with the unauthorised provision of hardstanding on the Land and the erection of a structure on the Land comprising fixed lighting and a pole.
 - The requirements of the notice are to:
 - i. Permanently remove the static caravan from the Land;
 - ii. Cease the use of the Land for residential occupation and domestic purposes, including the removal from the Land of any structures and paraphernalia associated with residential occupation or domestic use of the Land;
 - iii. Permanently remove from the Land the hardstanding and the structure comprising fixed lighting and a pole;
 - iv. Restore the Land to its condition before the breach took place.
 - The period for compliance with the requirements is one calendar month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeals are exempt from the prescribed fees, and the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
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Appeal B: ref. APP/J1860/W/16/3162057

Tweenhill Lodge, Strensham Road, Naunton, Upton-upon-Severn WR8 0QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is by Mr and Mrs Openshaw against the decision of Malvern Hills District Council.
 - The application ref.16/00895/FUL, dated 2 June 2016, was refused by notice dated 23 September 2016.
 - The development proposed is the siting of a temporary workers dwelling, and erection of two agricultural buildings.
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Decisions

Appeal A: ref. APP/J1860/C/16/3164136 & 3167522

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the Land for the stationing and residential occupation of a static caravan, together with the provision of hardstanding on the Land and the erection of a structure on the Land comprising fixed lighting and a pole, as shown on the plan attached to the notice, subject to the following conditions:
 - i) The use hereby permitted shall be for a limited period, being the period of 3 years from the date of this decision. The static caravan, the hardstanding and the structure comprising fixed lighting and a pole hereby permitted shall be removed, and the use hereby permitted shall be discontinued and the land restored to its former condition in accordance with a scheme of works, and a programme setting out a completion date for the works, that shall first have been submitted to and approved in writing by the Local Planning Authority.
 - ii) The occupation of the static caravan shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

Appeal B: ref. APP/J1860/W/16/3162057

2. The appeal is dismissed.

Application for costs

3. At the Hearing an application for an award of costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Preliminary matters

4. The addresses given for the appeal site are different for the enforcement case and the planning case. However, it is clear that they are one and the same piece of land, and that is the basis on which I have made my determination.
5. Although the principal arguments put forward by both sides in both appeals are similar, the permission sought in the s.78 planning appeal is for a significantly different development from that enforced against. I have therefore treated the ground (a) enforcement appeal and deemed planning application separately from the planning appeal.
6. Following the submission of further information by the appellant in March 2017 concerning an updated business plan/assessment, and supplemented by an e-mail from the appellant's agricultural consultant dated 12 May 2017, the Council agree that the tests necessary to justify the provision of a temporary agricultural dwelling are now satisfied. The notable points being that the appellant has the intention and ability to develop the enterprise; that there is a functional need for an on-site presence; there is a sound financial basis for the business, and that there is no other suitable and available residential accommodation on or near the appeal site.

7. However, the Council have made clear that in the enforcement appeal their concerns remain about the impact upon the character and appearance of the area of the caravan, hardstanding, and lighting pole, and in the planning appeal the impact of the temporary rural worker's dwelling, the stock handling and storage buildings, the yard, and the fencing.
8. There is no dispute that the Council can demonstrate that the objectively assessed need for housing has been met, and that there is a 5-year supply of deliverable housing sites for the District, including the requisite buffer.

Background

9. The appeal site is of about 2.5 hectares, an open field bounded mainly by hedges, lying on the western side of Strensham Road. There are houses in the small village of Naunton immediately adjacent to the south of the appeal site, a group of three dwellings about 60 metres from the northern boundary, and a cluster of dwellings and agricultural buildings around Green Street Farm about 100 metres to the north of those. The site lies outside any development boundaries, and is regarded as being in the open countryside.
10. The appellants' overall proposal is to develop an agricultural holding with alpacas, poultry and pigs, with free-range eggs and pork being sold locally. It also includes breeding of miniature Mediterranean donkeys for sale as pets. This latter element has not been included in projected budgets, since it may well not be recognised as an agricultural activity.
11. The mobile home subject of the enforcement notice stands some 23 metres back from the road boundary, set behind an area of hardstanding. It is a two-bedroom unit having overall dimensions of about 12 metres long by 3.8 metres wide. At the time of my visit the mobile home was unoccupied – the appellants at present live in the village of Twynning, about 5 or 6 kilometres away. Furthermore they manage a herd of alpacas on a rented field of about 4 hectares on the edge of that village.
12. Close to the mobile home and the road boundary is a hardstanding of compacted road planings, bounded by post and rail fencing. The pole and fixed lighting also stand close to the mobile home. The open field beyond has been sub-divided into a number of separate paddocks and a yard with post and rail fencing. I note that this fencing does not come within the terms of the enforcement notice.
13. The proposal in the planning appeal is to provide a temporary dwelling – in the form of a pre-fabricated timber cabin – to replace the caravan, and in approximately the same position. The timber cabin would be single storey, about 19.5 metres long by 6 metres wide, giving an overall footprint of about 114 square metres, with the additional area of a veranda to the front about 2.5 metres deep. The cabin would have 3 bedrooms, two bathrooms, a utility room and wet room, a kitchen/dining room, and a living area. The construction would be of timber, clad in dark stained boarding, with a mineral felt roof. I note that the veranda would not be roofed, and is more akin to a timber deck.
14. Close behind the timber cabin would be a stock handling building, and in the south-western corner of the site, about 100 metres from the dwelling, a hay barn/equipment shed. These would be utilitarian agricultural buildings with corrugated fibre-cement sheet roofs, and boarded walls (for the animal

handling building), or profiled sheet steel walls (for the hay barn/equipment building), above concrete block plinths. The stock handling building would have a footprint of about 17.5 metres by 6 metres, and a ridge height of about 5.7 metres. The hay barn and equipment shed would have a footprint of about 17.5 metres by 9 metres, and a ridge height of about 5.7 metres.

The enforcement appeal on ground (a) and the deemed planning application

15. Ground (a) is that planning permission should be granted for the matters alleged in the enforcement notice.
16. Policy SWDP 2 of the South Worcestershire Development Plan (SWDP) of 2016 relates to dwellings for rural workers. It sets out that the open countryside is defined as land beyond any development boundary, and that in the open countryside, development will be strictly controlled, and limited to dwellings for rural workers. In the case of a new agricultural enterprise, a time-limited permission may be granted for a temporary dwelling - such as a mobile home or a caravan - provided the economic viability of the enterprise is established. This is on the basis that applications for such dwellings must meet the functional and economic tests contained in Annex G to the SWDP.
17. Annex G requires evidence to be provided that there is a functional need for the dwelling for such reasons as animal welfare, or security of animal stock, and that there are no other dwellings available within or adjacent to the site. Evidence is also required to establish that, for a temporary dwelling, the proposed enterprise has been planned on a sound financial basis, and that the size of the dwelling is commensurate with the established functional requirement of the enterprise.
18. Paragraph 55 of the National Planning Policy Framework (NPPF) includes the advice that new isolated homes in the countryside should be avoided unless there are special circumstances. One such circumstance - set out in the first bullet point to the paragraph - is the essential need for a rural worker to live permanently at or near their place of work in the countryside.
19. Regarding the functional need, the appraisal submitted for the appellant in April 2016 explains that the mating of alpacas is an intricate managed process requiring careful planning and possible intervention over several days; that potential abortions and still-births can be avoided by a presence on site to identify problems and reduce stress on the animals; the timing of births is unpredictable; artificial feeding of cria (alpaca calves) may be required day and night for the first two to eight weeks after birth, and close vigilance of the animals is required to spot subtle changes in behaviour and possible symptoms of illness. I accept that all these factors support the claim that a permanent on site presence is necessary. This is reinforced by the possibility of stock theft if there were no permanent on-site presence.
20. Regarding the financial basis of the enterprise, the more recent appraisal of March 2017, which predicts figures over 4 years, is that the business should be generating sufficient taxable profit to provide a reasonable return on land, labour, and capital employed - including the price of the mobile home - by year 2 and beyond.

21. Nevertheless, the income from the alpaca element of the business by year 4 would amount to slightly less than 60% of the total income. There was discussion about whether the need for a temporary worker's dwelling should be assessed in the light of the financial viability of alpaca element on its own, or whether the other elements of the business – which did not justify the need for a dwelling – should also be taken into account.
22. Looking at the criterion in NPPF paragraph 55, there is a requirement solely that there should be an essential need for a worker to live permanently at or near their place of work in the countryside. Annex G to the SWDP then has a criterion that the enterprise should be planned on a sound financial basis. However, I take this to mean the enterprise as whole. Nevertheless, it is readily possible to imagine a situation where the element requiring a full time presence was so small that it contributed a negligible amount of income to an enterprise, but might be used as a pretext to justify a dwelling.
23. I saw the appellants' existing herd of some 24 alpacas – both adult and cria – on their rented field on the edge of Twyning. The herd has been developed over 2 or 3 years, and it is clear that the appellants already have considerable experience of keeping these animals. It is apparent that this is much more than a speculative project, and shows a firm intention to develop the enterprise. Furthermore, given the significant proportion of income predicted for the alpaca element, I consider that, as a matter of fact and degree, it is reasonable to take account of the entire enterprise.
24. It was queried as to whether the appellants had taken advantage of subsidies available for their land. It was confirmed that, given the relatively small amount involved, the subsidy had not been taken up.
25. Overall, I am satisfied that there is a clear functional need for a temporary worker's dwelling, and that the enterprise has been planned on a sound financial basis.
26. Given the foregoing, and the Council's agreement that the functional and financial tests set out in the SWDP have been met, I consider the main issue in this appeal to be the effect of the development on the character and appearance of the appeal site and the area in the vicinity.
27. The Council argue that the caravan, together with related domestic paraphernalia, the hardstanding, and the fixed lighting on a pole occupy a prominent position within the open countryside, and are clearly visible from various points on Strensham Road, and from the public footpath to the west. As a result, development has become consolidated between the northern edge of Naunton, and the cluster of dwellings and farm buildings around Green Street Farm to the north, on a site that had previously been an open agricultural field.
28. However, I saw that the caravan, hardstanding and lighting pole are relatively inconspicuous from nearby on Strensham Road, mainly as a result of the somewhat untidy but relatively high hedge along the road boundary. The development can clearly be seen from the field entrance, but in little more than glimpses when passing by. I also saw that from the Horse Bridge to the east, and from the public footpath to the south and west, the roof of the caravan can just be seen, but is barely identifiable above the intervening trees and

hedgerows, while the hardstanding cannot be seen, and the lighting pole cannot be clearly distinguished from nearby electricity poles.

29. The Worcestershire Landscape Character Assessment (LCA) categorises this area as 'Settled Farmlands on River Terraces'. The settlement pattern is described as being represented by scattered farms and clusters of wayside dwellings, linked by a matrix of winding lanes. This very much accords with what I saw of the surroundings of Naunton, where there are several dwellings that are, or have been, associated with farming enterprises, as well as farm buildings such as barns and animal sheds. In my view the presence of dwellings and agricultural buildings is an integral part of the working agricultural landscape in this area. The LCA is not an adopted document, but it clearly reflects the Council's assessment of the landscape, and how it should be considered. Furthermore the appellants accepted it as providing a proper description of the local landscape.
30. Although there is a small degree of consolidation arising from the siting of the caravan and associated development, this is a very modest effect, and I concur with the appellant's view that the development – as temporary accommodation for a rural worker – should be seen as a normal part of the agricultural scene in this area.
31. Nevertheless, the principle for allowing development of this nature in the countryside arises from the claimed functional need, and the desirability of there being a trial period to demonstrate whether the enterprise is viable. If the notice were to be quashed I consider it would therefore be necessary – by means of planning conditions - to limit the period for any permission, to tie the use to *bona fide* agricultural workers, and to ensure the development would be removed after a fixed period if the venture proved unsuccessful. If it were successful the appellants would then have the opportunity to make a new planning application.
32. Although in other circumstances this should be regarded as an isolated dwelling in the countryside, which NPPF paragraph 55 advises should be avoided, I consider the special circumstances exist as set out in the first bullet point of that paragraph. Furthermore, this development promotes an aim of paragraph 28 of the NPPF to promote the development and diversification of agricultural businesses in order to support a prosperous rural economy. I therefore conclude on the main issue that the development causes no significant harm to the character and appearance of the appeal site and the area in the vicinity. The development is a dwelling for a rural worker, and is of appropriate scale and type with regard to the local landscape character, and accords with the aims of SWDP Policy 2.
33. However, this is an enterprise in its early days, and the possibility of its failure must be taken into account in order to avoid a situation where and the need for a dwelling in a location such as this no longer exists, and the agricultural buildings become redundant. I consider this would be allowed for by granting a temporary permission for 3 years, with the use of the caravan tied to the agricultural use of the land. At the end of that period the state of the business could be assessed, and it would be open for the appellant to make a further planning application if appropriate.
34. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted on the deemed application

subject to conditions. I do not therefore need to consider the appeal on grounds (f) and (g).

The s.78 planning appeal

35. The proposals for the temporary dwelling and agricultural buildings must be considered in a similar light as the siting of the caravan and associated development in respect of the functional need for a dwelling, and demonstration of a sound financial basis for the enterprise. Again, I consider these criteria have been satisfied. Furthermore, the proposal to build the two agricultural buildings reinforces my view of the appellants' firm intentions to develop the enterprise.
36. Given that background I consider the main issue in the planning appeal to be the effect of the proposals upon the character and appearance of the appeal site and the area in its vicinity.
37. The proposed timber cabin would be a substantial building, which I estimate would have a footprint some two-and-a-half times greater than the existing mobile home on the site. The length of its frontage onto Strensham Road would be roughly one-and-a-half times that of the mobile home. As I commented at the Hearing, it appears to me that the size of the proposed 3-bedroom dwelling is quite generous for its purpose. In my view this arises particularly because of the large proportion of space given over to the living, dining, kitchen, and utility/wet room areas. The result is a building of considerable bulk, and a relatively long road frontage, whereas a more compact plan could reduce this apparent bulk.
38. Close behind the timber cabin - and significantly higher - would be the stock handling building, the gable end of which would be readily visible. These buildings would not be particularly well screened by the boundary hedge, would be a prominent feature, and in my opinion would in themselves constitute a significant consolidation of development between Naunton and the various buildings to the north.
39. Furthermore, the hay barn/equipment shed would be sited in a somewhat isolated position in the south-western corner of the field, immediately adjacent to the back garden of the house called 'Cornerstone'. Again this would be a relatively high building, prominently visible from the nearby public footpath, and above the hedgerow along the western appeal site boundary. Placing it in this position would extend development across the site, exacerbate the consolidating effect along Strensham Road, and make the development an intrusive feature in views from the public footpath.
40. The appellants argued that views from Strensham Road were no more than in glimpses by motorists, possible travelling at speed. However, I saw both cyclists and pedestrians using the road. Furthermore, the proximity to Naunton, and to the public footpath, mean that the development would readily and regularly be seen by nearby residents.
41. It was argued that the barn was sited in that position to provide a degree of security against theft and vandalism. Furthermore, I understand there is a major water main crossing the site in the east-west direction, and that this to some extent constrains potential sites for buildings. However, security can be provided by other means than setting the building back from the road at such a

distance from the proposed dwelling, and the site is adequately large find different locations for this building.

42. Given that the functional need for a temporary dwelling has been demonstrated, and that the enterprise has been shown to have a sound financial basis, I can see no reason in principle why some form of temporary dwelling and associated agricultural buildings on this site should not gain planning permission. However, the way in which the proposal before me has been laid out, and the significant overall bulk of the buildings proposed on this relatively small site result in a scheme that causes significant harm in terms of consolidation of development in the countryside, and a development that is overly prominent. While these buildings are for agricultural purposes, that does not mean – as the appellant appeared to suggest – that they must be acceptable in this countryside location, and I consider account must be taken of their size, siting as a group, and their prominence.
43. I conclude on the main issue that the proposals would cause significant harm to the character and appearance of the appeal site and the area in its vicinity. The development would not accord with the development plan in terms of Policy SWDP 21, which includes aims for development to be of high design quality, complement the character of its area, and be of a form suitable to the setting of the site, and surrounding landscape character.

Conclusions

44. As concluded above the enforcement appeal succeeds on ground (a), and I intend to quash the enforcement notice and grant planning permission subject to conditions. However, for the reasons given above I conclude that the planning appeal should be dismissed.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Robson	of Counsel, instructed by
Marc Willis BTP MRTPI MBIAC	Marc Willis
	Chartered Town Planner, principal of
	Willis & Co.
Andrew and Karen Openshaw	Appellants.

FOR THE LOCAL PLANNING AUTHORITY:

Penelope James	Solicitor with Malvern Hills District Council.
Ian Hiscock	Planning Officer - Malvern Hills District Council.
Paul Clements	Planning Enforcement Officer
	Malvern Hills District Council.

INTERESTED PERSONS:

Jeremy Owenson	District Councillor for Ripple Ward.
Jason Jackson	Farmer and nearby resident.

DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the appeal, dated 21 June 2017, and list of consultees..
- 3 Letter of representation.
- 4 Statement of Common Ground.
- 5 E-mail dated 12 May 2017 from Reading Agricultural Consultants to Kernon Countryside Consultants.
- 6 Letter dated 7 June 2017 from Kernon Countryside Consultants to the Council.
- 7 Extract from Landscapes of Worcestershire 'Settled Farmlands on River Terraces'.
- 8 Policy SWDP 21: Design.
- 9 Policy SWDP 25: Landscape Character.
- 10 The appellants' costs application.
- 11 The Council's costs rebuttal.