



Appeal Decision

Site visit made on 8 January 2018

by Andrew Hammond MSc MA CEng MIET MRTPI

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

Decision date: 08 February 2018

Appeal Ref: APP/H1840/C/17/3177567 Winterfell, Bricklehampton, Evesham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jack Gittens against an enforcement notice issued by Wychavon District Council.
- The enforcement notice, numbered IN/17/00121, was issued on 9 May 2017.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the unauthorised material change of use of the land from agricultural land to the mixed use for the siting of a mobile home for residential purposes, erection of decking, siting of domestic paraphernalia associated with the residential use of the land, including, but not limited to, the siting of two trampolines, all approximately in the position marked "A" on the plan; change of use to equestrian use and the siting of a wooden field shelter, approximately in the position marked "B" on the plan; change of use to land used for a commercial tree surgery business and storage of logs and waste associated with the tree surgery business.
- The requirements of the notice are;
 1. Permanently cease the use of the land for the siting of a mobile home for residential purposes;
 2. Permanently remove from the land the mobile home, decking and any domestic paraphernalia including two trampolines and return the land to its original use, that of agricultural use;
 3. Permanently remove from the land any utilities, pipework, cables, sewerage connections associated with the residential use of the land and return the land to its original use, that of agricultural use.
 4. Permanently cease the use of the land for equestrian purposes and permanently remove from the land the wooden field shelter;
 5. Permanently cease the use of the land for the commercial tree surgery business and permanently remove from the land all logs and waste associated with the tree surgery business.
- The period for compliance with the requirements is 4 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words "and return the land to its original use, that of agricultural use" from requirements 2 and 3 of the notice; the deletion of the words "and permanently remove from the land the wooden field shelter" from requirement 4 of the

notice. The enforcement notice is varied by the substitution of a period of 9 months for compliance after the notice takes effect. The appeal is allowed insofar as it relates to the tree surgery business and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the change of use of the land from agricultural land to land used for a commercial tree surgery business and storage of logs and waste associated with the tree surgery business.

2. It is directed that the enforcement notice be varied by the substitution of 9 months for 4 months as the period for compliance.
3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused in respect of the change of use of the land to use for the siting of a mobile home for residential purposes, erection of decking, siting of domestic paraphernalia associated with the residential use of the land, including, but not limited to, the siting of two trampolines, all approximately in the position marked "A" on the plan; and of equestrian use on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

4. Requirements 2 and 3 of the notice require the land to be returned to "its original use, that of agriculture". An enforcement notice cannot require the return to a previous use, only the cessation of an unauthorised use and the restoration of the land to its state before the breach of planning control occurred. It is incumbent upon me to correct any defects in the notice regardless of the outcome of the appeal. Given the conclusion on the use of the land for a tree surgery business it would, however, be inappropriate and unreasonable to require the land to be returned to its condition before the breach took place.

The Ground (a) Appeal

Background

5. The appeal site is located in the small hamlet of Bricklehampton outside of any defined settlement boundary. The site was once part of the former Bricklehampton Hall Estate and it is understood that it was a part of an orchard.
6. The appellant is operating a tree surgery business from the site and has been clearing it of scrub including brambles, as was evident on the site visit, and has sited a mobile home as residential accommodation for himself and his family. Whilst there was a quantity of timber stored on the site there was no evidence of any substantial on-site operations such as logging or of the burning of waste material.
7. There is a field shelter on the land but this is currently used for storage of materials and equipment. It is understood that a horse, previously on site, has been relocated.
8. The breach of planning control alleged in the enforcement notice is a material change of use to a mixed use comprising the siting of a mobile home for residential purposes, including domestic paraphernalia; equestrian use; and use for a commercial tree surgery business. However, both the reasons for

service of the notice and the Council's statement are silent on the commercial use of the appeal site, other than that the change has been made without planning permission, and only specifically criticise the residential use.

Main Issue

9. The enforcement notice requires cessation of both the use of the appeal site for a commercial tree surgery business and the use for the siting of a mobile home for residential purposes. It appears to me that, although interlinked, those matters should be considered separately. It follows that the main issues are:-
- Whether the tree surgery use is an appropriate and sustainable development within the rural community, outside of any development boundary; and
 - Whether there is an identified need or justification for residential occupation of the appeal site.

Reasons

10. The development plan for the area is the South Worcestershire Development Plan (SWDP). Applications for planning permission must be determined in accordance with the development plan unless material considerations dictate otherwise. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions.

Tree surgery

11. The council's statement makes no specific reference to objections to the use of the appeal site for a commercial tree surgery business. Whilst the statement does include "The change of use constitutes an unacceptable encroachment into open countryside being contrary to the South Worcestershire Development Plan policies and is therefore contrary to the principles of sustainable development.", it is not clear whether this refers to the tree surgery business or just to the residential use.
12. Policy SWDP 2 sets out development strategy and settlement hierarchy and does not preclude employment development in rural areas. The Framework, in paragraph 28 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.
13. The appellant's tree surgery business represents the provision of a local rural business serving the local community, thus fulfilling a social and economic role and, by reducing the distances to travel between the site and customers, an environmental role.
14. The appeal site was formerly part of the locally listed park and garden of Bricklehampton Hall, a Grade II listed building. However the land has been severed from the park which has also been subject to piecemeal development, including Yew Tree House to the north. Whilst the Council have not identified, within the reasons for issuing the notice, any harm to the setting of the heritage asset, the Heritage Officer did raise some concerns. However, given the juxtaposition of the appeal site and surrounding development any harm to

the significance of the heritage asset is minimal, albeit that the less than substantial harm should be weighed against any public benefits.

15. The occupiers of Yew Tree House, and one other local dwelling, Walnut House, have suggested that the use of the land has resulted in nuisance from burning of waste, chain saws and chipping of branches. The appellant responded that the burning on site was limited to brambles being cleared from the site and that sawing and chipping have only occurred occasionally, such activities normally taking place on the client's premises, and only during working hours. There was no evidence on the site visit of any recent burning of material or of substantial operation of mechanical equipment.
16. In contrast, it is noted that 49 other persons, including local residents have signed a petition in support of the appellant. Whilst the petition is not, in itself, a material consideration of significant weight, it would imply that there has been no substantial local disturbance from activity on the appeal site.
17. The resident of nearby Walnut House has also suggested that the land was previously a haven for wildlife. No evidence has been provided in support of this suggestion.
18. In summary, the use of the land for a commercial tree surgery business and associated uses is an appropriate and sustainable use of the land within the rural community and the public benefit, in the provision of local employment and a local service, outweighs any minimal harm to the significance of Bricklehampton Hall and its remaining park and garden. The development is not contrary to the development plan or to the Framework and planning permission for that use will be granted.

Residential Occupation

19. In relation to dwellings Policy SWDP limits development in the open countryside to dwellings for rural workers and Policy SWDP 19 allows for a time limited permission for a temporary dwelling until the economic viability of the enterprise is established. Applications for such dwellings must meet the functional and economic tests contained in SWDP Annex G.
20. With regard to functional need, SWDP Annex G states that evidence will be required to prove that any additional dwelling is necessary for reason of animal welfare, security of animal stock or other stock, security of buildings or other machinery, or the maintenance or delivery of essential processes, a full time worker is required to live on the unit for most of the year.
21. It is suggested that the tree surgery business utilises expensive and potentially dangerous equipment, the security of which is imperative from both a financial and safety point of view. However, the appellant has not provided evidence as to the precise nature of the equipment which would be kept on the site or any reason why security could not be provided by other means such as secure storage and/or CCTV, or indeed storage elsewhere.
22. In addition to the tree surgery business, the appellant proposes to grow tree seedlings for sale, however whilst the appellant claims that the seedlings enterprise, intended to complement the tree surgery business, would require constant attention no firm details have been provided of either the enterprise or the necessity of any 'constant attention' which would not be possible with automated systems. The appellant explains that he has not been able to

develop that side of his business until his position with regard to planning permission is resolved.

23. Although the appellant questions whether the appeal site is in a remote location it is outside of any settlement as defined in SWDP and therefore the provision of a temporary dwelling must be in accordance with Policies SWDP 2 and 19. As the appeal proposal is contrary to these policies, in that the need for the dwelling and hence the requirements of Annex G have not been met, the development is contrary to the provisions of the development plan. There being no material considerations sufficient to outweigh the conflict with the development plan, the ground (a) appeal in respect of the use of the site for the siting of a mobile home for residential purposes, and associated matters, must fail.

Other Matter

24. The enforcement notice also attacks the change of use of the appeal site to equestrian use and the siting of a wooden field shelter. The equestrian use of the site has ceased and the shelter is used for storage in association with the tree surgery business. There is no objection in principle to the siting of a storage building and it is appropriate to remove the requirement to remove the field shelter from the appeal site given the conclusion on the use of the site for the tree surgery business. However, it would not be appropriate to remove the requirement to permanently cease the use of the land for equestrian purposes.

Ground (a) Overall Conclusion

25. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Conditions

26. The Council suggested a number of without prejudice conditions which it considered would be appropriate were the appeal to be successful. All of these related to restrictions on the residential use of the site. However, the appellant suggested a condition regarding the burning of organic waste on site. Such a condition is not necessary as any significant burning of waste brought onto site would be covered by other legislation.

The Ground (g) Appeal

27. The appellant suggests that 4 months is insufficient time for the appellant to find alternative accommodation for himself and family, particularly given the need to find new schools for his children.
28. The Council argue that the appellant has had sufficient time to consider alternative accommodation. However, an appellant is entitled to expect the possibility of success at appeal and should not be expected to comply with any requirement of a notice until the appeal has been determined.

29. Given the desirability of continuity of schooling for the appellant's children, a period of 4 months for the family to find alternative suitable accommodation is insufficient.
30. For the reasons given above I conclude that a reasonable period for compliance would be nine months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Andrew Hammond

Inspector