



Appeal Decision

Site visit made on 23 July 2018

by Thomas Shields MA DipURP MRTPI

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

Decision date: 10 August 2018

Appeal Refs: APP/A2470/C/17/3180262, 3180264

The Paddocks, Glaston Road, Preston, Oakham, Rutland LE15 9NH

- 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 Act").
 - The appeals are made by Mr Victor Turner (3180262) and Mrs Wendy Turner (3180264) against an enforcement notice issued by Rutland County Council.
 - The enforcement notice was issued on 5 June 2017.
 - The breach of planning control as alleged in the notice is, without planning permission;
 - (i) the material change of use of the land from agricultural use to a mixed use of agriculture and use as a caravan site for the stationing of a mobile home and a storage container for residential occupation and use, and
 - (ii) the formation of a hard surface, the installation of a septic tank, the alteration of the contours of the land and the erection of timber structures and polytunnels on the land.
 - The requirements of the notice are:
 - (i) Cease the use of the land for the residential occupation of a mobile home and associated siting of a storage container.
 - (ii) Remove from the land the mobile home, storage container, septic tank, all the timber structures and polytunnels.
 - (iii) Remove from the land the hard surface and any materials used in the construction of the hard surface including the materials used to retain the change in the level of the land which forms part the hard surface.
 - (iv) Restore the contours of the land to the contours of the land prior to the unauthorised development specified in paragraph (iii) above (which was a natural slope as indicated in the photographs attached to this notice at page 4). Thereafter restore the surface of this part of the Land by laying topsoil and seeding the same with grass seed.
 - (v) Remove from the land all materials arising from compliance with the requirements at (ii) and (iii) above.
 - The period for compliance with the requirements is 6 months.
 - Appeal 3180262 is proceeding on the grounds set out in section 174(2) (a) and (c) of the Act. Since the prescribed fees have not been paid within the specified period for appeal 3180264, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed. It therefore proceeds on ground (c) only.
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Decision

1. The appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The appeal site and background

2. The appeal site comprises a roughly triangular parcel of land of approximately 1.75 Ha within attractive open countryside off Glaston Road.
3. Section 3 of the enforcement notice ("the notice") alleges two breaches of planning control. The first relates to a material change of use, the second to operational development.

The appeals on ground (c)

4. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof for this ground of appeal falls to the appellants; they must show that there has not been a breach of planning control. The relevant test of the evidence is on the balance of probabilities. It should also be noted that the relevant time for determining whether there has been any breach of planning control is at the time the Notice was issued.
5. 'Development' is defined at Section 55 of the Act. It includes *a material change of use* of land. Whether there has been a material change of use is a question of fact and degree in each case. For there to be a material change of use there needs to be some significant difference in the character of the activities on the land from what has taken place previously. Use of land and buildings purely for agriculture does not constitute development and hence planning permission is not required for such use.
6. Section 55 development also includes the carrying out of '*building, engineering, mining or other operations in, on, over or under land*', such as the erection of buildings and other structures, and engineering operations such as physical alterations to the land form and the creation of hard surfaces. Even if such works are by themselves not operational development, they can nonetheless be integral elements of a material change in the use of the land.
7. Apart from a few limited exceptions listed in the Act, planning permission is required for the carrying out of development. Where development has been carried out without the required planning permission, it constitutes a breach of planning control.

Whether there has been a material change of use

8. The appellants introduced a mobile home onto the land in which they live, together with a white storage container. They say the mobile home is not permanent since it is a moveable structure, and that it is necessary for agriculture - in order to look after alpacas on the land which they buy, breed and sell, and from which they produce fleece for wool.
9. I acknowledge that use of the land for raising alpacas to produce fleece as a form of income would fall within the definition of agriculture. However, the siting of a mobile on land for permanent residential occupation is a distinct and primary use of land which is wholly and obviously different in nature and character to agricultural use of land. Hence, the introduction of the mobile home onto the land for residential occupation has resulted in a significant change in the character of the use of the land - that being a change to a mixed residential and agricultural use.

10. Consequently, regardless of whether it is a moveable structure or not, the siting of the mobile home for residential use has resulted in a *material change of use* and therefore amounts to development as defined in the Act.
11. The appellants also contend that the storage container is used for secure storage of hay, feed and equipment connected to the raising of alpacas. However, while that may now be the case they do not dispute the Council's photographic and written evidence from officer inspections of the site when it was recorded that the storage container and other buildings on site were being used for non-agricultural storage, including domestic items and car parts. They have not therefore discharged the duty upon them to demonstrate, on the balance of probabilities; that at the time the notice was issued the use of the container and buildings was not an integral element of the material change of use.
12. I therefore conclude that the use of the land for a mixed use of agriculture and as a caravan site for the stationing of a mobile home for residential occupation together with the siting of a storage container for residential purposes has resulted in a material change of use constituting development as defined by the Act.
13. Since planning permission has not been granted for the development it constitutes a breach of planning control.

Operational development

14. The land form has in part been altered and raised, creating a level hard surface compound area upon which the mobile home is sited, and with fencing to separate it from the rest of the land. It is clear from photographic evidence, and from what I could see during my visit to the appeal site, that the alterations to the contours of the land in order to create a level compound area are substantial. As such, the alterations to the land levels and formation of a hard surface amount to engineering operations. Taken together with the fencing around the edge of the top of the compound area they constitute development for which no planning permission has been granted. Additionally, these features are also integral elements of the material change of use of the land I have previously described.
15. The appellants state that the timber stable blocks were already on the land before they purchased the site. This is supported by third party evidence¹ and is not disputed by the Council. However, that their existence on the appeal site pre-dated the appellants' purchase of the land does not mean that they are exempt from the need for planning permission.
16. The term 'building' in section 336 of the Act has a wide definition which includes '*any structure or erection*'. The blocks are not inconsequential in terms of their size and mass and appear to have been located in the same positions for a considerable time. Indeed, there is no evidence before me to indicate that they have been regularly moved around the site. Even if that were the case, in the planning context they are significant in terms of their built-form appearance and effect in the context of this countryside field, and I saw during my visit to the appeal site that their presence would have the same effect wherever else in the field they could be positioned. Given these factors I

¹ Richardson Estate agent details, dated 15/09/2015

consider them to have a substantial degree of permanence and, as a matter of fact and degree I conclude that they are 'buildings' as defined by the Act. Since no planning permission has been granted for them they constitute a breach of planning control.

17. The appellants' contention that the septic tank was also installed prior to their purchase of the land conflicts with the Council's records. That conflict aside, it is nonetheless an engineering operation under the land, as defined by the Act, and as set out at paragraph 7 above. It also therefore constitutes development for which planning permission is required but has not been granted.
18. With regard to the two small green poly-tunnels, I am satisfied on the appellants' undisputed evidence that they are used as animal shelters, and are clipped to the ground in a non-permanent way only to prevent them from blowing away. Given these factors, together with their fairly limited size and appearance, I do not consider them to be buildings as defined by the Act. However, they have been brought onto the land as part of the material change of use of the land to a mixed use as previously described.
19. To conclude, the appellants have failed to discharge the burden of proof upon them that the matters alleged in the notice do not constitute a breach of planning control.
20. The appeals on ground (c) therefore fail.

The appeal on ground (a)/deemed planning application

21. The ground of appeal is that planning permission ought to be granted for the unauthorised development subject of the enforcement notice.

Main Issues

22. The main issue is whether, having regard to the aims of national and local planning policies that seek to resist new dwellings in the countryside, there is an essential need for a person to live permanently at the site.

Reasons

Relevant local and national planning policies

23. Policy CS4 of the Council's Core Strategy Development Plan Document (2011) (CS) strictly limits development in the countryside to that which has an essential need to be located in the countryside. Such development includes development which supports the rural economy or which meets affordable housing needs.
24. Policy SP6 of the Site Allocations and Policies Development Plan Document (2014) (SADPD) requires, amongst other matters, that a rural worker's dwelling will only be permitted where it can clearly be demonstrated that there is an existing functional need for such a dwelling; that the need relates to a full time worker, or one solely or mainly employed locally in an established enterprise requiring a rural location; and the dwelling is of a size commensurate with the functional requirement and financial capabilities of the enterprise. Guidance on the 'functional need' test for permanent and temporary rural worker's dwellings is set out in Appendix 1 to the SADPD.

25. SADPD Policy SP7 supports non-residential rural enterprise development in the countryside where, amongst other matters, it comprises small scale alterations or other development which is ancillary to an existing established use, and provided that the development itself, or cumulatively with other development, would not be detrimental to the character and appearance of the landscape.
26. SADPD Policy SP8 states that proposals for the stationing of mobile homes and residential caravans will only be approved on sites which would be considered acceptable for permanent dwellings and where such provision would not detract from the character and visual amenity of the area.
27. Taken together, the Council's Development Plan policies seek to protect the character and appearance of the countryside by strictly limiting new development within it to particular circumstances where development is demonstrably justified.
28. That approach is broadly consistent with the Government's policies set out in the National Planning Policy Framework (2018) (the Framework). The Framework (para. 83) advises that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, while also (para.170) contributing to and enhancing the natural and local environment by recognising the intrinsic character and beauty of the countryside. With regard to new dwellings in the countryside the Framework (para. 79) states that isolated homes in the countryside should be avoided except in limited circumstances. One such exception (para. 79a) is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
29. Given the focus of local and national planning policies on protecting the countryside by strictly limiting new development to within particular circumstances, the *need* test for a rural worker's dwelling is an appropriately rigorous one, and which must be evidentially demonstrated in each individual case.

Whether there is an essential need for a rural worker's dwelling

30. It is not clear from the appellant's evidence whether the mobile home is intended to be a permanent dwelling, or whether temporary for a period of time during which the business establishes itself. However, the lack of clarity on this point it is not critical to my decision. That is because the functional need test of SADPD Policy SP6, which correlates with the essential need test at paragraph 79a in the Framework, is necessary for both temporary and permanent scenarios.
31. The appellant argues that the care and welfare of alpacas on the land creates a functional/essential need to permanently live on the site.
32. However, there is very little detail of the nature and operation of the business before me. There were five alpacas on the land at the time of my visit to the appeal site, one of them pregnant. That is the same number initially brought onto the land. I have no information as to whether there has since been any further purchases, sales, births, and throughput of alpacas bought and sold since commencement. Reference is made to the intention to accommodate *future livestock*, up to 40 to 50 alpacas, but there is no further detail provided

- of how that is to be achieved. No detailed information has been provided of quantities or receipts for fleece sold to a company in the Lake District.
33. Given these factors I am unable to determine the nature and scale of the existing enterprise and how that might relate to functional need for a permanent on-site presence, or whether the enterprise has been planned on a sound financial basis. There is also no explanation of why occupation of a house in a nearby village would not meet the wider functional need of the enterprise.
34. Notwithstanding the above, I acknowledge that alpacas will need fresh water and feeding every day, but for small herds that can be achieved without living on the land. Also, while birthing can take place at any time there is no evidence before me that such anticipated occurrences could not be adequately managed by way of temporary arrangements, for example by brief periods of overnight stays in a touring caravan.
35. There may be need for occasional veterinary assistance, but the number of alpacas on site does not seem to me likely to generate such a number or frequency of such occurrences as to justify a permanent on-site presence.
36. The appellant refers to the risk of theft of the animals and/or equipment from the site if there was no permanent presence. However, there is no information before me regarding any previous attempts of theft so far at the site, or at other alpaca farms, such that the risk could be assessed in any meaningful way. Moreover, I am not convinced that alternative security provisions would not be adequate, for example through the use of alarms, CCTV monitoring and living close by in one of the nearby villages.
37. For these reasons, I come to the conclusion that an essential need for a rural worker to live permanently on the appeal site has not been demonstrated and hence the use of the land for the siting of a mobile home and storage container for residential occupation is not justified. As such, the development conflicts with the requirements of SADPD Policy SP6 and paragraph 79 of the Framework.
38. Although the storage container and timber buildings are now used in connection with the alpacas, I must take account of them cumulatively along with the mobile home, formation of a hard surface, septic tank, and alteration of the land contours; all of which are associated development of the land. Collectively, in the context of the appeal site, they are not small scale and detract from the character and appearance of the landscape in conflict with SADPD Policies SP7 and SP8.

Other matters

39. I have considered whether the imposition of planning conditions on the grant of planning permission would make the development acceptable, but conclude that there are none that would do so.
40. The appellants allege that the Council's officers acted improperly. However, that is not a material planning consideration relevant to my decision. Reference is also made to unfair comments from third parties. However, as I am required to do so, I have determined the appeal on the basis of the relevant evidence before me in the context of the development plan policies, and relevant

material planning considerations. In doing so I have concluded that the appellants have failed to justify the proposed development.

Conclusion

41. For all the above reasons the appeal on ground (a) fails.

Thomas Shields

INSPECTOR