The Planning Inspectorate

Appeal Decision

Site visit made on 7 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 18 October 2019

Appeal Ref: APP/P1615/C/18/3215508
Land at Mantley Chase Workshop, Ross Road, Newent, GL18 1QY

- 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 Gardiner against an enforcement notice issued by Forest of Dean District Council.
- The Enforcement Notice (EN) was issued on 2 October 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a dwelling and the change of use of the land for the siting of a static caravan for residential use.
- The requirements of the notice are: i. Cease using the land edged red on the attached site location plan for residential purposes; ii. Demolish the building located within the approximate location hatched orange on the attached site location plan and remove all associated drainage; iii. Remove from the land the static caravan located within the approximate location hatched blue on the attached plan together with all associated drainage, gas bottles and pipes, fixtures and fittings; iv. Demolish the small wooden structures that includes the decking adjacent to the caravan and the glass house as witnessed in photograph attached, all located in the approximate location hatched blue on the attached plan; v. After compliance with steps (ii) to (iv) above, regrade the land level with the adjoining land levels and reseed with grass; vi. Remove from the land all resultant materials generated through compliance with Steps (ii) to (iv) above; vii. Remove from the land all other residential paraphernalia.
- The period for compliance with the requirements is: Steps (i), (iv) and (vii) within 6 months from the date this Notice takes effect. Steps (ii), (iii), (v) and (vi) within 9 months from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by deleting the sentences under section 6 of the EN and replacing them with "Within 12 months from the date this Notice takes effect". Subject to this variation, the appeal is 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 1990 Act as amended.

The ground (e) appeal

2. Although the EN has apparently been signed by a different officer from the Council to the first EN served in March 2018, there is no dispute about the Council's evidence submitted to show that the officer concerned did have the relevant authority to issue the EN.

3. Despite the address shown on a Barclays bank statement for Mr Maith, who lives in the caravan on the appeal site, being slightly different to that specified on the EN, most of the address including the road name, town and postcode is the same. My attention has not been drawn to anything to show that Mantley Chase workshop and Mantley Chase Business Park are not the same site or that there is another caravan to which the EN could have been delivered. There is no evidence to show that the EN sent by post was not delivered to the caravan in question. There is also nothing to dispute the Council's evidence showing that the EN was served directly in an envelope taped to the window of the caravan and there is no claim that Mr Maith did not know about the appeal. Against this background I am satisfied that copies of the EN were served as required by s172 of the 1990 Act and there has been no prejudice to Mr Maith arising from what may be an address discrepancy.

4. In view of the above, the ground (e) appeal fails.

The ground (b) appeal

5. The appellant's comments are noted about the extent of the alleged breach of planning control and that some of the land within the red line on the EN plan may include some lawful storage. Nevertheless, the allegation that a dwelling has been erected and that there is a static caravan being used for residential purposes is correct. Therefore, as a matter of fact, the matters alleged have occurred. Consequently, the ground (b) appeal cannot succeed.

The ground (d) appeal

6. In legal grounds of appeal, such as this one, the onus to make out their case rests with the appellant.

The dwelling

7. Even if the dwelling was substantially complete and the appellant moved into it on 25 September 2014, which I note is more than four years from when this EN was issued on 2 October 2018, the Council did issue an earlier EN on 8 March 2018 which is within the relevant four-year period. That EN alleged the same breach of planning control as the current appeal EN. Under the 'second bite' provisions of s171B(4) of the 1990 Act the Council had clearly purported to take enforcement action in respect of the breach of planning control and so it had a further four years in which to issue the subsequent notice. Despite the misgivings expressed about how the Council approached the issue of the first EN and that the Council allegedly knew about the unauthorised residential occupation at the site from a previous planning application, these matters do not nullify the provisions of the 1990 Act. The dwelling has not accrued the required four-year time limit for immunity from enforcement action. Consequently, this part of the ground (d) appeal cannot succeed.

The caravan

8. Both sides refer to the caravan as a 'static caravan'. From what the submitted photographs show and what I saw at my site visit, it is clearly a large single unit that meets the size definition of a caravan typical of what is found at holiday sites. Although it may not have its axles, wheels or a tow bar, that does not mean it could not be picked up intact and transported by lorry the way that static caravans of this size and type are typically moved around from one site to another. The steps up to the caravan door and a timber gas bottle

store abut the caravan but they are not integral to it and thus do not affect its mobility. I noted a timber plinth that fills the gap between the underside edges of the caravan and the ground, but that appeared to simply be a decorative feature built after the caravan was sited and serves no structural role. There is a clear gap between a log store and the caravan and there are various other fences enclosing a small garden and a free-standing greenhouse.

9. As a matter of fact and degree, these various structures have not given the caravan a degree of attachment to the ground or permanence such that it could now be considered a building. They may have been in place for more than four years, but the static caravan is clearly still a caravan being used for residential purposes which therefore constitutes a change of use of the land to which the ten year 'rule' applies. No case has been made that the residential occupation of the caravan has exceeded the required ten years. Consequently, this part of the ground (d) appeal also cannot succeed.

Ground (d) Conclusion

10. No other matters raised, including the appellant's legal note, cause me to change my findings. Therefore, the ground (d) appeal fails.

The ground (a) appeal

11. The main issues are:

- whether the site is appropriately located in terms of development plan policies, having regard to the development's effect on the character and appearance of the area and the need to reduce travel;
- whether there are other considerations, such as site security and personal circumstances that may outweigh any identified harm and justify living on the site.

Location

12. The site is located outside the defined settlement boundary for Newent as shown in the adopted Forest of Dean Core Strategy (CS). In CS terms the site is therefore part of the open countryside. Moreover, although the southeast boundary of the overall site abuts the settlement boundary, the dwelling and the caravan are some distance away from that. While not an isolated location in the context of the National Planning Policy Framework (NPPF), the dwelling and the caravan are in my view also outside the settlement of Newent which is very well demarcated by the physical limit of existing development on this side of the town.

13. Whilst a different Inspector (APP/P1615/W/18/3213122) found that CS policy CSP.4 *Development at Settlements* might have flexibility in it to allow development outside of the defined settlement boundaries, the policy is very clear that it must contribute to reinforcing the existing settlement pattern. The sporadic siting of the dwelling and the caravan at the top end of the field with a grass meadow separating them from the town, bear no relationship to the tight knit layout of the residential estates of the settlement, including the new housing on the other side of Ross Road.

14. Moreover, whilst the site already has the workshop building and uses associated with that occupying some of the land around it, the log cabin chalet

style of the dwelling has no local design distinctiveness and it bears no resemblance to an agricultural building. It looks alien and out of place. The caravan with its associated structures has introduced a residential clutter and domesticated appearance that pays little regard to the rural countryside setting. I acknowledge that due to boundary trees the visual presence of the appeal development is relatively limited. However, despite the impact being localised, it is not attractive, and it does not contribute to environmental enhancement.

15. Although not far from the edge of the town, the main services and facilities likely to be used by occupiers of the site are a reasonable distance away. Using informal pedestrian accesses onto Bradfords Lane is unlikely to encourage regular walking to and from the site. There is no information about the availability of public transport such as local buses. Despite what the Council officer report might say, I consider that it is far more likely that for convenience purposes most journeys by persons living at the site would be typically taken by private vehicle, which is the least sustainable mode of transport. Whilst the adverse impact of such travel may not be great given that there are only two dwellings, the development would nevertheless be contrary to national aims of minimising pollution, mitigating against climate change and moving to a low carbon economy.

16. It may be the case that the delivery houses in Newent expects some to come from windfall sites. However, this is not such a site as, for the reasons given, it is not within the town. It may also be that a review of the development plan may allow for expansion of the town in the future on its southwest side. However, the appellant accepts that little weight can be given to this prospect. I appreciate that delivering houses can contribute to the local economy and that they do not need to arise from volume housebuilders. It is also the case that the Government wishes to boost significantly the supply of housing. Nevertheless, the NPPF and the purpose of the planning system is to contribute to achieving sustainable development. This is not the case with the appeal scheme due to its conflict with environmental objectives.

Other considerations

17. It is regrettable that the appellant's business premises suffered several break-ins and that the initial presence of someone living in the caravan on the site helped to prevent these. However, whilst there is reference to 'crime incident reports' submitted with an earlier planning application made to the Council, there are no details of those with this appeal. It is difficult to afford significant weight to the crime incidences in the absence of substantive evidence showing the extent and potential severity of the problem. Moreover, there is nothing to show that instead of living at the site, other security options were explored such as CCTV, alarms or regular site security patrols. Also, I would find it highly unusual to justify two residences at a rural business. I give the site security consideration little weight.

18. It is noted that the site is a local wildlife site. There is no substantive evidence to show that an on-site presence is needed to deter trespassers from disturbing flowers. I give this matter very little weight.

19. I have read the appellant's personal statement which gives details of his age and the age and health of Mr Maith. I am conscious that my decision to dismiss the appeal and uphold the EN will mean that both persons must vacate

the site. I have therefore had regard to the possibility of granting temporary or personal planning permissions. However, the harm I have identified above would continue over, possibly, three years, and no clear rationale has been put forward to show that the site or policy circumstances would be materially changed at the end of such a period to then possibly lead to a permanent planning permission. I have referred above to the review of the development plan, but there is no clear certainty that this would change the planning policy situation at the site over such a timeframe. No exceptional circumstances have been advanced that would cause me to grant personal permissions either.

20. In accordance with the law, the need to uphold the aims of the relevant planning policies in the public interest means that the interference with the homes concerned is a justified and proportionate response. In this balance I have had further regard to my powers to extend the time limit for compliance with the EN which I shall explore below.

Ground (a) Conclusion

21. For the reasons given, the appeal development conflicts with the aims of policies CSP.1, CSP.2, CSP.5 and CSP.15 from the CS and policies AP.1 and AP.4 from the adopted Forest of Dean Allocations Plan insofar as they relate to protecting the environment, mitigating against climate change, reinforcing existing settlement patterns, achieving sustainable development and high quality design that takes account of local character.

22. The other considerations in this appeal do not outweigh the harm I have identified or the conflicts with the development plan. As such, they do not indicate a decision other than in accordance with the development plan. Consequently, the ground (a) appeal should fail.

The ground (f) appeal

23. The appellant's case under this ground of appeal is that a temporary or personal planning permission could be granted. However, I have just considered that above under the ground (a) appeal.

24. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. The notice alleges the erection of a dwelling and the change of use of the land for residential use. Given that the steps require the dwelling to be demolished, the residential use to cease, the caravan and associated infrastructure and paraphernalia and demolished materials to be removed, and the land regraded and re-seeded, the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its condition before the breach took place. The steps require no more and no less. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, the ground (f) appeal must fail.

The ground (g) appeal

25. My decision means that the appellant and Mr Maith will have to find somewhere else to live. The works of clearing the land and putting it back to how it was before would also not be inconsiderable. As the appellant points out, that could involve trying to find another place to put the building or at least store it. In my view, the time periods specified fall short of what should be reasonably allowed. One combined period of 12 months to comply with all steps would be

more reasonable and it would be a more proportionate response having regard to the personal circumstances considered under the ground (a) appeal. To this extent, the ground (g) appeal succeeds and I shall vary the EN accordingly.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR