
Appeal Decisions

Site visit made on 2 December 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal A Ref: APP/U1105/C/19/3228476

Land Adjoining Huntsland Farm being Valley View Paddock, Church Hill, Pinhoe, Exeter EX4 9JJ

- 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 Daren Richards against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 12 May 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission the carrying out of a material change of use of the land from agriculture to a mixed use of the land for agriculture and residential use (use class C3) by the siting of a single decker bus registration number L116YOD adapted for residential purposes.
 - The requirements of the notice are:
 - (I) *Permanently cease the use of the land for residential purposes.*
 - (II) *Permanently cease the use of the land for the siting of the bus L116YOD used for domestic or residential purposes.*
 - (III) *Permanently remove from the land the bus registration number L116YOD together with any other caravan, mobile home or non agricultural vehicles.*
 - (IV) *Permanently removed from the land all domestic paraphernalia associated with the residential use of the land.*
 - (V) *Permanently remove from the land all debris or materials resulting from compliance with steps (I), (II), (III) and (IV) above and return the use of the land to that of an agricultural field.*
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/U1105/W/19/3228141

Valley View Paddock, Church Hill, Exeter EX4 9JJ

- 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 made by Mr Daren Richards against the decision of East Devon District Council.
 - The application Ref 18/2513/FUL, dated 29 October 2018, was refused by notice dated 28 March 2019.
 - The development proposed is described as "change of use of land to allow existing mobile home (converted bus) on the area of site as shown on Drawing J 433/02A".
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by the deletion in Requirement (V) of the words "and return the use of the land to that of an agricultural field." Subject to this variation the appeal is dismissed and 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.

Appeal B

2. The appeal is dismissed.

Procedural matters

3. The proposal subject of Appeal B is similar to the development being enforced against in Appeal A, although the siting of the bus would be different. As the planning issues are the same for both appeals, it is appropriate for me to deal with them together. In respect of Appeal B, the Council's decision notice describes the proposal as the "*Change of use of land for siting of mobile dwelling (retrospective)*". For the avoidance of doubt, I shall treat the application as one for the siting of a single-decker bus to be used as a dwelling. The application was amended by a letter dated 18 February 2019 and by the submission of amended plans, and I shall base my decision on these amended documents.
4. The appellant refers to the bus as a "motorhome". That word is usually associated with a purpose-built recreational vehicle using a bus or van chassis, rather than a converted bus. To avoid any confusion, I shall refer to it as a bus.
5. Requirement (V) of the Notice requires that the use of the land be returned to that of an agricultural field. Use as an "agricultural field" is not a use of land, but even a return to agricultural use would go further than remedying the breach; it would be excessive to require that the land be put to a positive use, as it is open to landowner not to use land for any purpose. I shall therefore vary the notice by the deletion of the words in step (V) "and return the use of the land to that of an agricultural field".

Appeal A ground (a) and Appeal B

Main Issues

6. The main issues are:
 - i) whether the residential use of the site would accord with local and national policies aimed at locating development in accessible locations;
 - ii) the effect of the use on the character and appearance of the surrounding countryside, including the effect on trees, and
 - iii) whether there are any personal circumstances sufficient to outweigh any planning harm.

Reasons

Housing strategy and accessibility

7. The appeal site comprises a field in the countryside to the south-east of Huntsland Farm and the adjoining Huntsland Cottage, which are separated from the site by a field, lined by tall trees where it borders the appeal site. Other fields surround the site. It is well outside the built-up limits of Pinhoe, a village on the eastern edge of Exeter, the nearest contiguous part of which is about 1km away. Whilst the site is not isolated, as it is fairly close to a cluster of dwellings and other buildings to the north-west, it is nevertheless outside any defined boundaries or site-specific allocations in the East Devon Local Plan (LP), and Strategy 7 of that plan considers it to be in the countryside. In such a location, development will only be permitted where it is in accordance with a specific local or neighbourhood plan policy that explicitly permits such development, and where it would not cause landscape, amenity or environmental harm. I have not been referred to any policies which would permit the residential use of this site, and thus the development conflicts with Strategy 7.
8. LP Policy TC2 says, amongst other things, that new development should be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car. The site is about 1 mile from the nearest shops, and Church Hill is unlit, hilly and without a footway, which would discourage most people from either cycling or walking, particularly in the dark. There is no bus service nearby. Accordingly, occupiers would be heavily reliant on travel by private vehicle, and the residential use of the site would conflict with local and national objectives to locate new residential development where it would make the best use of public transport or walking. I recognise that most people living in remote locations use a car to travel, but this is not a reason to encourage further development in such locations.
9. I note that the appellant has a boar, two sows and a small number of chickens on the site, and that he hopes that the enterprise will become a self-sufficient small-holding. Whilst the National Planning Policy Framework (the Framework) indicates that an exception to the general policy of restraint in countryside is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside, the small scale of the agricultural use of the land does not justify a full-time presence on the site.
10. The Council alleges that the residential use of the site conflicts with LP Strategy 27, but that deals with development at the small towns and larger villages and says nothing about development outside such locations. Accordingly, whilst there is no conflict with this policy, I conclude that the residential use of the site conflicts with the Council's housing strategy and that occupiers would be reliant on travel by car, contrary to the other policies I have referred to above.

Character and appearance

11. LP Policy D1 deals with design and local distinctiveness, and, amongst other things and of relevance to this case, seeks to ensure that developments respect the key characteristics and special qualities of the area in which the development is proposed, and that they do not adversely affect trees worthy of retention.

12. The bus used as a dwelling is a white painted single decker bus, with the words "shopper bus" displayed on the front. There is a hardcore access and hardstanding between the bus and the entrance to the site, on which was parked a van and piles of logs were stored. Wooden duck-boarding leads from the hardstanding to the bus. On the north side of the bus are some wooden sheds and more logs. Three pig sties have been built on the east side of the bus.
13. The site is in a highly rural location, and despite there being a stable in the north-eastern part of the field, it is in a dip where it cannot be seen from the road, the appeal site would have an appearance typical of the surrounding countryside were it not for the bus and the paraphernalia associated with it. The roadside bank and trees growing on it partially screen the site from public view. Although the trees are deciduous, ivy growing on the trunks helps to filter views. Even so, the upper part of the bus is clearly visible from the road, and would also be obvious at night when lit, although I accept that in summer, when the trees are in leaf, views would be far more limited.
14. As it is, the appearance of the bus, the hardcore entrance, parked vehicles and other domestic paraphernalia are at odds with the appearance of the undeveloped countryside. However, bearing in mind that the stables have already been approved on the site, and so a degree of activity would be associated with such a use, including the parking of vehicles, I find that the harm to the character and appearance of the area is only moderate.
15. There are trees along the roadside bank, and a row parallel to it about 10m back. Many of these trees are of some age and are not good specimens; even so, they make a positive contribution to the rural character of the site and the wider area. I see no reason why the continued siting of the bus in its current position would threaten the existing trees in any material manner. In respect of Appeal B, there is a proposal to connect the re-sited bus to the mains sewer in the road, which would need to run under the roadside bank and close to the roots of a line of trees which runs parallel to the roadside bank. I accept that there is a risk that the construction of a drainage run could pose a risk to well-established trees. This could be mitigated and compensated for by additional planting and/or replacement planting, and thus the potential threat posed by the drainage could be adequately addressed. This risk does not add to my concerns on this issue.
16. I therefore conclude on the second main issue that both the existing and proposed developments result in, or would result in, material harm to the character and appearance of the countryside, albeit that the degree of harm would only be moderate, and would conflict with LP Policy D1.

Personal considerations

17. I have given consideration to the appellant's personal circumstances and those of his wife, and, in particular, to the fact that upholding the notice will result in the loss of their home. I understand that the occupiers are of Gypsy background, and formerly led a more itinerant lifestyle, and that living in the bus is compatible with that style of living. I attach some weight to this, but there is a prospect that they could continue that lifestyle on an approved site, and it is insufficient to outweigh the harm I have found.

18. The requirements of the notice engages with their rights to respect for their family life and their home under Article 8, as well as the right to respect for property, under Article 1 of the First Protocol, which are Convention rights enshrined into UK law by the Human Rights Act 1998. However, these rights are not absolute, and interference may be justified in the public interest. In this case, whilst the appellant may have owned the land for many years, the planning system exists to regulate the use of land in the public interest, and in doing so interferes with a landowner's rights. The appellant would have known that the residential use of the site required planning permission and must have been aware of the possibility of enforcement action being taken against an unauthorised use. In this case, upholding national and local planning policy, and the importance of protecting the character and appearance of the countryside are matters of legitimate public interest.
19. There are no lesser steps which could be taken to meet the policy and conservation area objectives, and whilst I recognise that the interference with the appellant's rights and those of his wife would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
20. I therefore find that the appellant's personal circumstances and the interference with his family's human rights do not outweigh the harm that I have found.

Other matters

21. The appellant has referred me to several other sites in the area where planning permission has been granted for residential development, and argues that the Council has been inconsistent and that he has been treated unfairly. One of these examples is the residential development now known as Hux Shard. It is nearing construction and lies to the north of Huntsland Farm, just a few hundred metres away from the appeal site. The appellant claims that it is for 4-6 dwellings, but the planning permission refers only to one large dwelling.
22. This building is architecturally striking and was approved as an exception to the general policy of restraint in the countryside set out in the Framework¹, which allows dwellings of exceptional design and quality. At the time of granting that permission, it was only the fourth dwelling to have been approved under this exception in the district. I accept that the arguments in respect of poor accessibility apply equally to this dwelling, but the architectural merits were considered to outweigh that and any other disbenefits. From what I have seen, these circumstances can be clearly distinguished from the current case. Thus, the principle of allowing this dwelling in the countryside follows Government policy, and although I recognise that not everyone might agree that the design is "truly outstanding" or that it is appropriate in a rural location, it is clear that the Council took a careful and informed decision, which justified its approval.
23. A further large-scale housing development has been allowed further down Church Hill, at Home Farm, to the south-east of the appeal site, within the administrative area of Exeter City Council. The Council has provided me with a copy of an appeal decision which makes it clear that the proposal was approved contrary to Council policies at the time, because of the failure of the Council to demonstrate that it had sufficient housing land, and thus those policies were

¹ Then para 55, now para 79 in the 2019 revised version

out of date and the harm caused by the proposal did not clearly outweigh the benefits. The Council in this case can demonstrate a five year supply of housing land, and thus there is no reason not to afford its policies full weight. The other distinguishing feature about the Church Hill site is that it abuts the built-up limits of Exeter, and thus in terms of both character and appearance and accessibility to services and facilities, it is far better located than is the current appeal site.

24. Two other examples of development have also been referred to, at Huxham View to the north and Cheynegate Barton to the south. These are both large residential properties, but as I understand it, they are not new dwellings on greenfield land, but are redevelopment of existing residential development. Whilst I recognise that they are more prominent in the landscape than the bus in this case, in terms of principle, they are clearly different from new residential development on an otherwise almost wholly open field as in this case.
25. The appellant has also referred to a nearby caravan, which has apparently been in situ for some years. However, I know nothing of the circumstances of this caravan, and I am therefore unable to judge whether there are any similarities to this case, and it does not alter the balance of my considerations.

Conclusions

26. For the reasons given above, I conclude that the appeal under ground (a) on Appeal A fails, and the application deemed to have been under Section 177(5) is refused, and the enforcement notice is upheld subject to variation. Appeal B is dismissed.

JP Roberts

INSPECTOR