



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: 20 January 2020

Appeal A Ref: APP/U1105/C/19/3227987

Appeal B Ref: APP/U1105/C/19/3227988

Land to the west and south of P & R Autos, Rath Na Ri, Clyst Honiton, Devon EX5 2HR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr John McCarthy and Appeal B is made by Mr Paul McCarthy against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 27 March 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 a mixed agricultural use and car repair business to a mixed use of the land for agricultural use, car repair business and residential use by the siting on the land of a mobile home for residential purposes shown in the approximate position edged in blue on the plan attached .
 - The requirements of the notice are:
 - I. *Permanently cease the residential use of the mobile home shown edged blue on the attached plan.*
 - II. *Permanently remove from the land the mobile home shown in the approximate position edged in blue on the plan attached.*
 - III. *Permanently removed from the land any domestic paraphernalia associated with the residential use of the mobile home.*
 - IV. *Permanently remove from the land all materials associated with the compliance of steps (I) to (III) above.*
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended, whilst Appeal B is proceeding only on ground (g).
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Decision

1. It is directed that the enforcement notice be varied by deleting the period of compliance of 3 months and substituting 9 months. Subject to this variation the appeals are 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.

Procedural matter

2. The appellants argue that the notice has been drawn too widely, in that it incorporates land in a separate use. The leading case on planning units is that of *Burdle and Williams v Secretary of State for the Environment* [1972]. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different

and unrelated purposes. Thus, the concept of physical and functional separation is key. In terms of the unit of occupation there is no dispute that the appellants own and occupy all of the land included in the enforcement notice, and that there is no physical separation between the different uses carried out on the site.

3. There are three uses of the whole enforcement notice site – the residential use of a mobile home, the vehicle recovery and repair business and the use of the fields for growing vegetables and fruit. There is a close relationship between the mobile home and the business use of the site in that the occupier works in the business, and argues that the residential use is an essential component of the business use. In respect of the field, whilst it may be a separately registered unit of land, it appears to me that the scale and nature of the growing of fruit and vegetables is not an agricultural one, but one carried out as a recreational activity in connection with the residential use of the mobile home. The appellants' statement refers to it as a garden, and this reinforces my view that it falls within the same planning unit as the mobile home and the car recovery and repair use. Having regard to the functional links between all three uses, I am firmly of the view that the planning unit should encompass the whole site as shown on the enforcement notice.

Appeal on ground (a) – that planning permission should be granted

Main Issue

4. Whether there are business and personal circumstances sufficient to justify allowing a residential use in the open countryside, contrary to local and national policies.

Reasons

5. The site lies in the open countryside to the south of Exeter Airport, near to an isolated group of dwellings and farm buildings, outside the development boundaries of any settlement. P&R Autos is a car repair and recovery business which benefits from a Certificate of Lawful Development granted in 2014. The business is operated from a building located close to the site of the mobile home, and two smaller buildings nearby are used for related storage. The remainder of the appeal site comprises a grassed area, an area used for growing vegetables and two small polytunnels.
6. Planning permission for the residential use of the mobile home was refused by the Council on 18 January 2018, and an appeal was dismissed on 28 September 2018¹. The Inspector found that the residential use of the mobile home conflicted with Strategy 7 and Policy H4 of the East Devon Local Plan (LP) and that there was insufficient business justification to allow it, even on a temporary basis for 3 years. There is no dispute that the proposal conflicts with these policies, so it is unnecessary for me to deal with them in detail. Whilst the Inspector found that the location of the site was unsuitable in terms of accessibility to services and facilities, he did not refer to any conflict with LP Policy TC2. That policy requires new development to 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

¹ Ref: APP/U1105/W/18/3204746

- remote from public transport and services and facilities, and so I find a conflict with this policy as well.
7. The emerging Clyst Honiton Neighbourhood Plan Policy E1 supports live/work units on previously developed land. I accept that the site is on previously developed land. However, a residential mobile home is not a "live/work" unit, and I consider that the policy provides only very limited support for the proposal. Regardless of any informal resolution to use the plan in considering planning applications in the area, the plan has yet to be made, thus policy carries only limited weight.
 8. The previous Inspector gave little weight to the emerging Greater Exeter Strategic Plan (GESP) due to its early stage of preparation. Matters have moved on, but even so, a draft plan is not envisaged to be produced until November 2020, with a view to an examination date of about September 2022. Whilst there may be an informal acceptance by the relevant Councils that the area around the appeal site may be included in the plan for development, the embryonic stage of the plan means that it can carry only very limited weight. In this regard, in the recent appeal decision relating to a proposed hotel development at Hill Pond Caravan and Camping Site to the south of the appeal site, the Inspector gave only limited weight to the plan. However she found that the site-specific circumstances, that the site was already developed and was adjacent a large industrial estate, justified the development. Those same circumstances do not apply here, but I too attach limited weight to the GESP.
 9. The appellants accept that the deemed application raises similar issues to those addressed in the previous appeal but argue that there are some matters which require fresh consideration. The first of these relates to the recent expansion of the out-of-hours service, requiring someone to be on hand to open the site and the workshop and to provide materials and services, as well as ensuring that health and safety requirements are met. An on-site presence is also a clear deterrent against crime. I have had regard to the letters in support from local businesses, who clearly value the ability of the appellants' business to serve their needs out of hours.
 10. I recognise that having someone on site is extremely convenient; however, like the previous Inspector, I do not see it as essential. It is the proprietor's choice to live some distance away, rather than within a few minutes' drive from nearer settlements. The increasing incidence of out-of-hours work could be met by employing someone to provide out of hours cover, or for someone nearby to work "on call". Security is a concern for all rural businesses and the appellants have taken steps to deter crime through CCTV, PIR detectors and lighting, and thus it is difficult to separate out the effect of these recent deterrents from the effect of an on-site residential presence. Notwithstanding this, the business advantages of residential accommodation do not provide sufficient justification to outweigh the strong policy presumption against residential development in such locations.
 11. I have also had regard to the personal circumstances of the occupier of mobile home. Compliance with the enforcement notice would render him homeless, and he is of advanced years with health problems. Whilst the appellants argue that the occupier is unable to afford accommodation near the site, or near to his brother, there is no suggestion that he could not afford to find alternative accommodation elsewhere, albeit that suitable accommodation might not

enable him to play the same role in the business that he currently plays. The Council has indicated its Housing Department has been in contact with him to offer assistance in finding other accommodation.

12. I appreciate that the occupier has strong personal links to the site, which lies adjacent to the former family home, but as a planning matter, this can carry only very limited weight. Whilst living on the site enables the occupier's brother to visit him regularly, there are also obvious disadvantages of an elderly person in poor health living on his own in a remote location, but I recognise that this is a matter of personal choice. These matters engage with the rights of the occupier to respect for his family life and home under Article 8, as well as the appellants' 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, upholding national and local planning policy, and locating development in accessible locations are matters of legitimate public interest.
13. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellants' rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
14. I have taken into account the planning permission granted for the erection of a storage and distribution building at Holbrook Farm, which is located close to the appeal site, which I saw on my visit. That site is similarly poorly located in terms of accessibility, and would be likely to generate significant traffic movements. However, there are two things that differentiate that case from this; one is that there was a fallback position which would have allowed the conversion of the existing building to a storage use under permitted development rights, which would have generated unrestricted traffic movements. The other is that the imposition of a condition on movements resulted in a safeguarding of residential amenity for nearby occupiers, which gave some planning gain over and above the fallback position. Neither of these applies in this case.
15. For the reasons given above, I conclude that planning permission should not be granted for the residential use of the mobile home, even on a temporary basis, and that it conflicts with the policies I have referred to above. Accordingly, the appeal on Ground (a) fails.

Appeal on ground (g) – that the period for compliance is too short

16. I appreciate that there has been a significant period of time between the date of issue of the notice and the date of this decision. Whilst I recognise that the Inspector took that period into account in the appeal decision Ref: APP/U1105/C/19/3225493 referred to me by the Council, that appeal was made solely on ground (g), so the appellant would have known that the compliance with the notice was required and that the appeal would not have affected the certainty of the requirement. In this case, at least in respect of Appeal A, the appeal was made on other grounds, and the appellant is entitled to assume success on that ground.
17. I therefore must consider whether 3 months is a sufficient period after the notice comes into effect. In my view, finding a new home can be time-

consuming, particularly when the occupier is said to have limited means. Although the Council's Housing Team may be able to offer some assistance, I consider that 3 months is unreasonably short in the circumstances. On the other hand, 12 months as suggested by the appellants is too long, and I shall therefore vary the period for compliance to 9 months.

Overall conclusions

18. For the reasons given above, I conclude that the appeal on Ground (a) fails, and that the appeals on ground (g) succeed only to the extent that the period of compliance shall be extended to 9 months. Subject to this variation, the notice is upheld and the deemed application for planning permission under s.177(5) of the Act is refused.

JP Roberts

INSPECTOR