



Appeal Decisions

Site visit made on 30 September 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/D3125/C/18/3216210

Mount Pleasant Farm, Chapel Lane, Northmoor, Oxfordshire OX29 7SU

- 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 Matthew Prickett against an enforcement notice issued by West Oxfordshire District Council.
 - The enforcement notice, numbered 2018/5, was issued on 18 October 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission the siting and use of a mobile home on the land for residential purposes.
 - The requirements of the notice are:
Cease residential use of the mobile home and remove it from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended
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Appeal B Ref: APP/D3125/C/18/3217980

Mount Pleasant Farm, Chapel Lane, Northmoor, Oxfordshire OX29 7SU

- 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 Matthew Prickett against an enforcement notice issued by West Oxfordshire District Council.
 - The enforcement notice, numbered 2018/6, was issued on 18 October 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission the change of use of agricultural land for the storage of non-agricultural items and items not ancillary to agricultural use of the land including but not limited to the following: Non-agricultural vehicles, caravans, metal containers, scrap metal, gas bottles, tyres, domestic radiators, windows.
 - The requirements of the notice are:
Remove the unauthorised non-agricultural items stored on the land and items not ancillary to the agricultural use.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by the substitution of the plan with the plan attached to this decision and that the description of the land

affected by the notice be deleted and replaced with the words "The land occupied by the mobile home at Mount Pleasant Farm, Chapel Lane, Northmoor, shown edged in red on the attached plan". Subject to these variations 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 enforcement notice is quashed.

Procedural matters

3. The two notices both relate to the same area of land yet allege different uses in each notice. The Council has confirmed that the notices have not been issued in the alternative, and thus the descriptions of the breach are clearly incompatible. Moreover, the notices do not refer to other uses carried out on the site, namely agriculture, the keeping of horses and the carrying out of car repair, welding and furniture restoration uses. This matter was raised with the main parties, in response to which the Council asked that I substitute the plan in respect of the notice dealing with the mobile home, to show a smaller area encompassing only that piece of the wider site occupied by the mobile home and its immediate surroundings, and to amend the description of the site accordingly. I consider that I can vary the notice to deal with the smaller site area without prejudice to either of the main parties, and I shall deal with the appeal on this basis.
4. In respect of Appeal B I was also asked to amend the plan to exclude the buildings in which the car repair, welding and furniture restoration uses are carried out, together with the site of the mobile home. I was also asked to amend the description of the site accordingly. The requirements of the notice would be unaltered.
5. I have a legal duty to get an enforcement notice in order, if I can do so without prejudice to the main parties. In respect of the notice subject of Appeal B, the Council concedes that the car repair, welding and furniture restoration use has expanded beyond the building subject of the B1 planning permission, and that some extensions to it may have become lawful through the passage of time, whilst another is said to be under investigation. The Council also accepts that the keeping of horses is acceptable, and there is no wish to enforce against this use, although I note that the appellant says that planning permission has been granted for the stables.
6. Reducing the area of the planning unit and divorcing part of a mixed use of the planning unit has implications for the grounds of appeal, and potentially the way in which the appellant may have argued his case, particularly in the light of the "hidden" ground (c) appeal, where the appellant argues that the siting of the cars, gas bottles, radiators, windows and some storage containers is incidental to the car repair and furniture restoration use, and that other storage takes place in connection with the agricultural use of the land. The use of the newer industrial buildings, if lawful, would not be constrained by the condition on the original planning permission restricting outside storage. I therefore find that removing the business buildings from the planning unit would be prejudicial to the appellant.

7. In all the circumstances, following the decision in *R. (on the application of East Sussex CC) v Secretary of State for Communities and Local Government* [2009], I consider that the notice fails to identify the breach in the terms required under s173(1) and (2), and that it cannot be varied or corrected without prejudice. Accordingly, the notice subject of Appeal B shall be quashed. This does not affect the Council's power to issue a further notice if it deems it expedient to do so.

Appeal A

Ground (a) – that planning permission should be granted

Main issues

8. The main issues are:
- i) whether the site is an appropriate location for residential use having regard to the Council's housing strategy for the area, and if not, whether there are operational needs which justify making an exception to the policies of restraint in the countryside;
 - ii) the effect of the mobile home on the character and appearance of the countryside, and
 - iii) the implications of the development for flood risk.

Reasons

Appropriateness of the location

9. The site comprises part of a large field in the countryside, outside of any formal settlement boundary. Although there are sporadic dwellings along Chapel Lane, the area has a highly rural character. The mobile home is sited in a northern part of the site, near to buildings where car repairs, welding and furniture restorations takes place. Stables lie nearby, and the area to the north is used for the storage of various cars, containers and miscellaneous items, which the Council argues is unauthorised and is subject of the quashed notice (Appeal B).
10. Policy H2 of the West Oxfordshire Local Plan 2011-2031 (LP), adopted in September 2018, says that new dwellings will only be permitted in small villages, hamlets and open countryside where they comply with the general principles set out in Policy OS2 and in specified circumstances. The only criterion of relevance to this development is where there is an essential operational or other specific local need that cannot be met in any other way, including the use of existing buildings. It goes on to say that, where appropriate, new homes provided (other than replacement dwellings) will be controlled by an occupancy condition linked to the operational need and/or to the 'rural exception site' approach for permanent affordable dwellings.
11. There is no dispute that as a result of the recently adopted development plan, the Council can demonstrate a 5 year supply of housing land, and accordingly, there are no reasons why proposals such as this should not be determined in accordance with the up-to-date policies of the LP.

12. Whilst the plan supports windfall development on previously-developed land in built-up areas, this does not apply to the appeal site, which is located well away from any contiguous built-up area.
13. The appellant argues that the car repair business involves keeping high value classic vehicles on the site, and that a residential presence is necessary in order to provide security, in what is otherwise a relatively isolated location. It is also suggested that clients would be deterred from bringing high-value cars to the site without such a presence.
14. I recognise that security is often a significant risk for rural businesses. However, that is a factor which needs to be taken into account when starting any rural based business where there is no on-site residential presence, and risk can be mitigated by security measures such as CCTV, alarms, lighting, PIR detectors and physical barriers. Whilst having someone living on the site is no doubt convenient and useful, I consider that it falls well short of an essential need for the operation of the business, and the fact that the business has persisted for many years when no-one was living on the site reinforces my conclusion that a residential presence is not essential. Whilst classic car restoration may not have taken place at that time, it is likely that the site would still have been a potential target for thieves, as the tools and equipment would be of value.
15. The agricultural use of the site is confined to the rearing of ducks, and I saw around 70 ducks in and around the pond in the north-eastern part of the appeal site. However, there is no substantive evidence that such a small-scale agricultural activity justifies a full-time residential presence on the site.
16. The appellant has referred to other farmers having mobile homes, but I do not know the circumstances of these unspecified cases, and therefore this matter carries little weight.
17. Accordingly, the residential use of the site is contrary to local and national policies aimed at restricting residential development in locations such as this, and it conflicts with LP Policy H2.

Character and appearance

18. The site lies in an area characterised in the Council's Landscape Character Assessment as semi-enclosed flat vale farmland, and the appeal site, barring the lawful development on it, has many of the attributes which the document lists as comprising such a character type, such as being flat and low-lying, with a network of ditches, lined by hedgerows and trees.
19. The mobile home is of a typical, utilitarian design, located near the northern boundary of the site, well away from the access to the site from Chapel Lane. It is seen in the context of the nearby workshop and stable buildings, and is partly screened by planting within the site. It is not prominent when seen from public viewpoints, including from the public footpath which runs along the southern boundary of the site, where planting permits only intermittent glimpses. Even so, it, together with associated residential paraphernalia, contributes to the consolidation of a cluster of development in a predominantly open field, and this damages the mainly rural character of the area, albeit that because of the screening, the extent of that harm is small. The appellant's

intention to plant additional trees to help screen the mobile home would be unlikely to wholly overcome this harm.

20. I therefore find that the siting of the mobile home results in some harm to the character and appearance of the countryside, and conflicts with LP Policies OS2 and EH2, which respectively deal with locational criteria for development and landscape character.

Flood risk

21. Part of the mobile home is located within an area shown as Flood Zone 2 on the Environment Agency's (EA) Flood Map for Planning. Whilst the southern part of the mobile home and the access track leading to Chapel Lane are in Flood Zone 1, this area is a small "island" of lower flood risk, entirely surrounded by Flood Zone 2 land, as a result of the site being located between two watercourses identified as "main rivers" which run to the north and south of the site respectively. The land to the south lies in Flood Zone 3.
22. The appellant argues that the land is at a lower risk of flooding and has referred me to a document produced from the EA's website which says that the site is in Flood Zone 1. However, the Council has used the map produced by the EA for planning purposes, which is clear in its demarcation and I attach greater weight to this.
23. LP Policy EH7 reflects Government policy in the National Planning Policy Framework which sets out a sequential approach to development, directing it in the first instance to areas with the lowest flood risk. No sequential evidence has been submitted by the appellant to demonstrate that there are no other sites in the area with a lower risk of flooding which could be developed for residential purposes. Even if it were to be accepted that the mobile home was essential to serve the operational needs of the business, Policy EH7 requires that a site-specific flood risk assessment will be required for any proposal in Flood Zone 2. No such assessment has been submitted in this case.
24. Accordingly, the proposal fails the sequential test, and I cannot be satisfied that the mobile home would not place occupiers at risk of flooding, or that a safe means of escape can be demonstrated. This could place the safety of both the occupier and that of emergency service personnel at risk. The proposal directly conflicts with LP Policy EH7.

Other matters

25. I have also had regard to the appellant's personal circumstances. Compliance with the enforcement notice would require him to give up his home. However, there is no suggestion that he would not be able to buy or rent property elsewhere. Whilst I recognise that this would not be as convenient as living on site, it would not result in him being homeless.
26. These matters engage with the rights of the occupier to respect for his family life and home under Article 8, as well as the owner's 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, locating development in appropriate places, protection of character and appearance and the minimisation of flood risk are all matters of legitimate public interest.

27. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's and owner's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
28. The appellant has pointed out that he pays Council Tax on the mobile home. However, this has no bearing on the planning merits of the case. Several local residents have raised objections on matters which do not relate to the planning merits of the siting of the mobile home, and I have not taken them into account. On the other hand, I have had regard to the letter of support from local people, who clearly hold the appellant in high regard and support his arguments for continuing to live on the site. However, these are insufficient to outweigh the strong planning objections to the development that I have found.

Conclusions on ground (a)

29. I have found that the siting of the mobile home for residential purposes conflicts with policies aimed at restricting residential development in locations such as this, and that it results in some small harm to the character and appearance of the area. The location of the site within Flood Zone 2, results in flood risks, which cannot be adequately mitigated, and conflicts with local and national policies aimed at minimising such risks. The Framework says that where a planning application conflicts with an up-to-date development plan, as is the case here, permission should not usually be granted. The harm that results from the development, and the conflict with development plan policies are not outweighed by the operational needs of the business, or the personal considerations in this case. Accordingly, the appeal on ground (a) fails and planning permission is refused.

Conclusion on appeal A

30. For the reasons given above, the appeal on ground (a) fails and the deemed application for planning permission under s.175(3) of the Act is refused.

Appeal on ground (e) – that the notice was not served as required by the Act

31. The notice was served on all those identified by the appellant in his response to the Council's Planning Contravention Notice as having an interest in the land, being the owner and occupier (the appellant). No-one else has been identified as being a person who should have been served with a copy who was not served. That the Council previously served an enforcement notice which was withdrawn does not preclude the Council from serving a fresh notice. Accordingly, the appeal on ground (e) fails.

Overall conclusions

32. For the reasons given above, I conclude that Appeal A fails, and that subject to variation, the enforcement notice is upheld, and that the deemed application for planning permission made under s.177(5) of the Act is refused. The notice subject of Appeal B is quashed.

JP Roberts

INSPECTOR



Plan

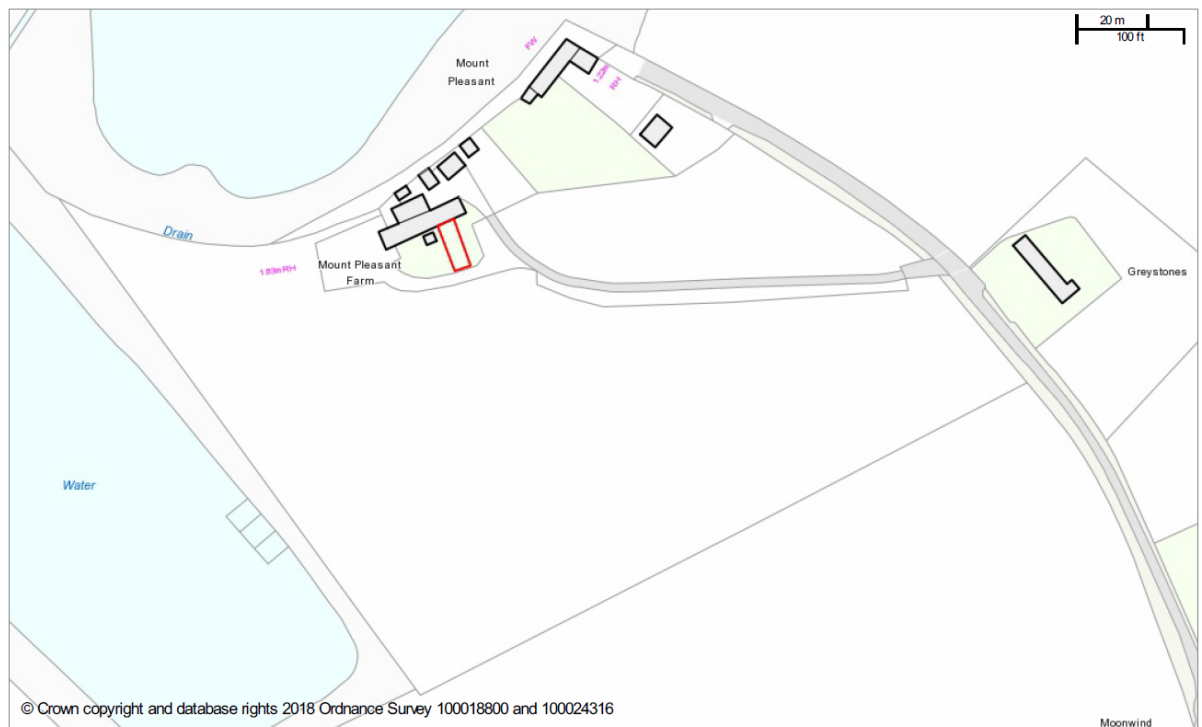
This is the plan referred to in my decision dated: 20 January 2020

by **JP Roberts Bsc(Hons) LLB(Hons) MRTPI**

Land at: Mount Pleasant Farm, Chapel Lane, Northmoor, Oxfordshire OX29 7SU

Reference: APP/ D3125/C/18/3216210

Not to Scale



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Plan relating to Enforcement Notice ref. 2018/5 at Land at Mount Pleasant Farm, Chapel Lane, Northmoor

Scale: 1:1250

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