



Appeal Decision

Site visit made on 21 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/B2355/C/19/3236130

Land at Farm Hill Farm, Edgeside Lane, Waterfoot, Rossendale BB4 9TZ

- 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 Neil Strong against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 20 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land from agriculture to a mixed use comprising agriculture, motor vehicle/motorbike storage (within an agricultural building on site) and residential use, facilitated by the siting of an unauthorised mobile home with associated enclosure, positioned on a purpose-built concrete base surrounded by a stone skirt wall.
 - The requirements of the notice are:
 - i. Cease use of the Land for residential purposes.
 - ii. Remove all residential paraphernalia from the Land.
 - iii. Remove the mobile home, its concrete base, the skirt stone walling and all associated paraphernalia from the Land.
 - iv. Cease the use of the Land for the storage of motorbikes and motor vehicles.
 - v. Remove all motorbikes and motor vehicles from the Land.
 - vi. Remove all materials resulting from compliance with requirements 1-5 from the Land.
 - vii. Once the concrete base facilitating the siting of the mobile home has been removed, seed all this area of the Land with grass to match the adjacent fields.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be varied and corrected by:
 - By deleting all the requirements in paragraphs 5 iv. and 5 v. and replacing them with a new paragraph 5 iv that states "Cease the use of the Land for storage and remove all stored motorbikes and motor vehicles not used for the purposes of agriculture from the Land."
 - Renumber paragraphs 5 vi and 5 vii as paragraphs 5 v and 5 vi
 - deleting the wording "requirements 1 - 5" and substituting with "requirements i - iv" in renumbered paragraph 5 v.; and

- Deleting “i.e. on or before the 20 December 2019” in paragraph 6.
2. Subject to these corrections and variations 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.

Preliminary Matter

3. I have also dealt with another appeal Ref: APP/B2355/W/19/3235715 on this site. That appeal is the subject of a separate decision.

Appeal on ground (a), deemed planning application

Main Issues

4. The main issues in this case are:
 - Whether the development is acceptable in principle in this location, having regard to local and national planning policies; and
 - The effect of the development on the character and appearance of the area.

Reasons

Acceptable in principle

5. The Land encompasses fields and an associated agricultural building which are situated within open upland countryside above Waterfoot, Rossendale. The lawful use of the Land is agriculture and access to the Land is from Edgeside Lane via a rough track.
6. Policy 1 of Rossendale’s Core Strategy Development Plan Document, adopted 2011 (CS) seeks to ensure that new development enhances the quality and sustainability of places by, amongst other things, maximising access to public transport, walking and cycling to contribute to maintaining and creating sustainable and inclusive communities. Policy 9 of the CS relates specifically to accessibility and seeks to ensure that new development is concentrated close to main public transport corridors or within 400m of a bus stop with regular services. These policies are consistent with the National Planning Policy Framework (the Framework) which seeks to ensure that opportunities for walking, cycling and public transport are pursued.
7. In addition, the Framework requires housing to be located where it will enhance or maintain the vitality of rural communities and states that the development of isolated homes in the countryside should be avoided.
8. Despite the proximity of the Land to the original dwelling at Farm Hill Farm, its upland countryside location, the means of access to it and its elevated position, all contribute to the Land being physically isolated from shops, services and public transport. The access track from Edgeside Lane is only single track, has an unmade surface, steep incline in places and an absence of lighting. Consequently, although there is a bus service within half a kilometre of the Land, there is not a suitable means by which pedestrians can access that service, particularly in inclement weather or hours of darkness. In addition, the bus service does not operate during the early morning or evening. Furthermore, the terrain and topography in this location does not offer realistic

opportunities for cycling. There is no doubt in my mind that the residential use of the Land has resulted in the creation of an isolated home in the countryside where there would be reliance on the private car for most journeys to employment and to access shops and services on a daily basis. The development does not therefore contribute to maintaining or creating sustainable or inclusive communities.

9. At the time of my site visit the agriculture building appeared to be used for the purposes agriculture and included the storage of tools, wood, lawnmower, quad bike and a Land Rover body. However, it is clear from the Council's evidence that when the notice was served it was predominantly in use for the storage of motorbikes and motor vehicles. The appellant states that the motorbikes and vehicles are not being stored or used as part of any commercial enterprise but are stored there for his own personal use and ancillary to the residential use of the Land. However, I have found that the site is not sustainably located and not suitable in principle for residential use. Consequently, for the same reasons any domestic storage associated with a residential use would also be unacceptable in this location. I am also mindful that the use of the agricultural building for the storage of motorbikes and motor vehicles would significantly undermine the ability of the Land to contribute to the rural economy.
10. I conclude that development is not acceptable in principle in this location, having regard to local and national planning policies. It would conflict with the Framework and Policies 1 and 9 of the CS, the aims of which are set out above.

Character and appearance

11. The mobile home is sited on a prominent hillside in an area of open upland countryside which is generally characterised by pasture. It is single storey with a shallow pitch roof and walls clad to give a timber boarded effect. A stone skirt wall has been constructed around its base and ranch style fencing encloses a garden and parking area.
12. The design, appearance and materials of the mobile home do not respond to the local vernacular and have a harmful effect on the pastoral character of the landscape. In addition, at the time of my visit there was an area of outside seating and other domestic paraphernalia all of which have an urbanising effect on the character and appearance of the natural environment.
13. I conclude that the unauthorised residential use, facilitated by the siting of the mobile home has a harmful effect on the character and appearance of the area. I therefore find conflict with Policies 1, 18, 23 and 24 of the CS which amongst other things, require development to enhance and protect the countryside and seek to ensure the highest standard of design that respects and responds to local distinctiveness and positively contributes to the landscape.

Other Matters

14. I have taken into consideration the appellant's request for permission to be granted for a temporary period of two years, which would allow the appellant to live on the site whilst they convert the agricultural building to a dwelling. However, the Council refused planning permission for the conversion of the agricultural building to a dwelling in August 2019. In addition, it will be seen from my recent decision¹ that the appellant's appeal against that decision has

¹ APP/B2355/W/19/3235715

been dismissed. There is therefore no demonstrable reason to grant a temporary consent for a residential use on the Land and I give this consideration little weight.

Conclusion

15. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) fails.

Appeal on ground (f)

16. The issue is whether the requirements are excessive to achieve the purpose (s) of the notice.
17. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control to ensure that the Land reverts to a single primary agricultural use.
18. The appellant considers that the requirements of the notice are excessive. The reason given is that it requires all motorbikes and motor vehicles to be removed from the Land which he believes would mean that all vehicles, including vehicles used for the purposes of agriculture, for example a tractor or quad bike would also need to be removed. The appellant is also concerned that other vehicles visiting the premises in association with the agricultural use of the Land would not be permitted.
19. A requirement has to specify what has to be done so that the recipient of the notice knows what he has to do to remedy the breach. In addition, a requirement cannot take away a lawful right. In this case paragraph 5 v. requires the removal of all motorbikes and motor vehicles from the Land, and I agree with the appellant that this requirement is excessive. The appellant should not be prevented from storing items or vehicles ancillary to an agricultural use. Therefore, to remedy the breach of planning control it is only necessary to remove the motorbikes and motor vehicles that are being stored on the Land and not required for the purposes of agriculture. I shall therefore vary the requirements to achieve that purpose. The appeal on ground (f) succeeds to that extent.
20. Turning to the appellant's concern regarding the parking of vehicles. The requirements of the notice only seek to prevent the use of the Land for storage. Case law has confirmed that there is a clear distinction between storage and parking. Parking generally means leaving a vehicle while it is in current use, i.e. a temporary cessation from when the vehicle is in motion. Storage is when something is put away for a period of time because it is not needed, or its use is not contemplated in the short term. Consequently, the requirements of the notice would not prevent the parking of vehicles on the Land ancillary to its primary agricultural use.
21. In addition, in the interests of clarity I shall delete the wording "requirements 1-5" from paragraph 5 vi and substitute with "requirements i – iv" in a renumbered paragraph 5 v.

22. I am satisfied that the variations and correction will not cause any injustice to the Council or the appellant as they are made in the interests of clarity and do not alter the purpose of the notice.

Appeal on ground (g)

23. The issue is whether the compliance period of 3 months is reasonable. The appellant has requested that the period for compliance should be extended to two years. This period would allow the planning appeal against the Council's refusal to grant planning permission for the conversion of the agricultural building to a dwelling to be determined and if allowed, for the conversion works to be carried out.
24. As I have set out in my section on "other matters" above, the appeal against the refusal to grant permission for the conversion has now been determined and dismissed. There is therefore no requirement for a residential use of the Land as suggested by the appellant.
25. The appeal on ground (g) fails. That said, I will delete the reference to the date when 3 months would have lapsed had the appeal not been made.

OVERALL CONCLUSION

26. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with corrections and 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.

Elizabeth Pleasant

INSPECTOR