



Appeal Decisions

Site visit made on 13 January 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal A: APP/U1105/C/19/3236773

Appeal B: APP/U1105/C/19/3236774

Appeal C: APP/U1105/C/19/3236775

Land to the South of 8 Grange Cottages, Rockbeare, Exeter, Devon EX5 2EP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Jason Everett-Brown (Appeal A), Mr Brian Frank Reginald Brown (Appeal B) and Mrs Sheila Patricia Brown (Appeal C) against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 22 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a two bedroom building for residential purposes (C3) shown edged blue on the plan attached.
 - The requirements of the notice are: (I) Permanently dismantle and remove the building from the Land (II) Permanently cease the use of the Land for residential purposes (III) Permanently remove from the Land all debris and materials resulting from the compliance with steps (I) and (II) above, and reinstate the site to its conditions before the breach took place.
 - The period for compliance with the requirements is SIX (6) months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) in respect of Appeal A, and grounds (d) and (e) in respect of Appeals A, B and C of the Town and Country Planning Act 1990 as amended. Since the 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.
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Appeal D: APP/U1105/W/19/3236759

Land South of 8 Grange Cottage, Rockbeare, Exeter, Devon EX5 2EP

- 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 Jason Everett-Brown against the decision of East Devon District Council.
 - The application Ref 19/0452/FUL, dated 25 February 2019, was refused by notice dated 13 June 2019.
 - The development proposed is the erection of a 2 bedroom chalet as a residential dwelling.
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Summary of Decisions

Appeals A, B and C

1. The appeals are dismissed and the enforcement notice is upheld with corrections.

Appeal D

2. The appeal is dismissed.

The Enforcement Notice

3. The enforcement notice only alleges a breach of planning control in respect of the erection of a building for C3 residential purposes. However, one of the requirements is to permanently cease the use of the land for residential purposes. As this is not part of the alleged breach, it is not possible to require the use of the land to cease, if indeed there remains any residential use of the land following compliance with the other requirements of the enforcement notice. I will therefore correct the requirements in my formal decision below as I do not consider that injustice to the parties arises.

Preliminary Matters

4. I have noted the different spelling of the name of the appellant who I have considered under Appeal C. Having sought clarification it has been confirmed that it is Mrs Sheila Patricia Brown and I have therefore used this throughout my decision.
5. The appellant has noted that the Council has referred to Policy No. Rock04 as opposed Policy No. Rock07 of the made Rockbeare Neighbourhood Plan (the NP). However, a copy of the correct policy has been provided by the Council and the appellant has been able to comment accordingly on this. This policy is therefore also before me. I accordingly do not consider that injustice to the parties arises.

Appeals A, B and C

The ground (e) appeal

6. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.
7. It is my understanding from the appellant's case that the envelope containing the enforcement notice was only addressed to Mr Jason Everett-Brown. However, it is acknowledged that the letter inside included all the parties and I note that the enforcement notice itself is addressed to all three parties who are said to have an interest in the land; namely Mr Jason Everett-Brown, Mr Brian Frank Reginald Brown and Mrs Sheila Patricia Brown.
8. Even if the enforcement notice had not been served correctly on all three parties, I have powers under S176(5) of the Act to disregard non-service provided that neither an appellant nor other relevant persons had been substantially prejudiced by the failure to serve him or her.
9. Accordingly, as the three relevant parties with an interest in the land have appealed the enforcement notice it cannot be said that they have been substantially prejudiced. They were evidently aware about the existence of the enforcement notice and were able to submit an appeal within the relevant timeframe.
10. I conclude that consequently the appeal on ground (e) fails.

The ground (d) appeal

11. For the ground (d) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the building enforced against and its residential occupation would thus be 22 August 2015.
12. The appellants contend that the building was occupied by Mr Jason Everett-Brown following completion on 14 April 2015. The Council have provided an aerial photograph which they advise was taken on 8 June 2015 and which does not indicate the presence of the building. The appellants query the date of this photograph however their response is also that there are no photographs that they have been able to find that can prove the contended April 2015 date.
13. It remains that the appellants need to demonstrate their case. On the basis of the very little evidence that has been put before me I am not satisfied on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
14. I conclude that consequently the appeal on ground (d) must fail.

Appeals A and D

The ground (a) appeal and refusal of planning permission

Main Issues

15. The main issues are:
 - i. whether or not the site is in a suitable location for a residential (C3) building having regard to local and national planning policy; and,
 - ii. the effect of the building on the character and appearance of the area.

Reasons

16. The site is set in rural surroundings and is approached via a long access drive which serves approximately 10 properties known as Grange Cottages. The site itself consists of land offset to the rear of No. 8 Grange Cottages which slopes downwards to the south and which also contains a number of mature trees. The building the subject of these appeals consists of a two-bedroom dwelling of timber construction amounting to approximately 60sqm.

Location

17. The site is located some 600m to the east of Rockbeare. For the purposes of the East Devon Local Plan 2013 to 2031 adopted January 2016 (the LP), the site is located in the countryside as it is outside of a built-up area. Strategy 7 of the LP states development in the countryside will only be permitted where it is in accordance with a specified Policy of the LP or NP that explicitly permits such development. The Council's approach to residential development within the District is consistent with the housing approach set out in the National Planning Policy Framework (the Framework).

18. Policy No. Rock07 of the NP is concerned with development limits. According to the map referenced in this policy the site is outside the defined village settlement of Rockbeare. In order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality and sustainability of rural communities. However, irrespective of any justified exceptional circumstances, the site is not well related to the village and is remote from many day-to-day services and facilities. Occupiers are also heavily reliant upon a private car as the nearby roads are narrow and unlit. There is also little evidence about employment opportunities that could be accessed without being reliant upon a private car. It is therefore not a location where a new dwelling would normally be considered acceptable and is a significant factor weighing against its retention.
19. The appellant has brought to my attention that the site is within the Cranbrook Plan Area (the CPA), which relates to a new development/town area, and is not within a Green Wedge. He considers that a further 600/800 house are to be erected in close proximity of the site and therefore it cannot be said to be within the open countryside. However, the CPA relates to a significant area and it does not necessarily mean that development will occur in the whole area. I am therefore not persuaded on the basis of the evidence before me that the CPA supports the retention of a single piecemeal dwelling.
20. Policy H4 of the LP relates to rural workers homes. Whilst I note the appellant has brought to my attention a rural business award issued by the Council for a camper van conversion specialist, I do not accept that the appellant's tattoo business, which operates from the dwelling, is a rural business or activity for the purposes of this policy, despite him wishing for it to be set in a different environment to those on the High Street. There is therefore no proven and essential agricultural or forestry or rural business need for the occupier of the dwelling to be housed permanently on the unit or in the specific rural location for functional reasons.
21. The appellant contends that the dwelling is situated within the residential curtilage of No.8, where there was previously a patio. The land however has a different character to that of the domesticated gardens of No.8 and has the appearance of an unkept field along with some mature trees. Even if I am wrong and the land does form part of the curtilage, the relevance of this in relation to local and national policy has not been brought to my attention as it would still be within the countryside. I therefore do not consider that this matter supports the retention of the dwelling.
22. I conclude that the site is not in a suitable location for a residential (C3) building having regard to local and national planning policy. The dwelling therefore conflicts with Strategy 7 and Policy H4 of the LP, Policy No. Rock07 of the NP as well as the Framework, which, in particular, seeks to locate new residential development in the most accessible and sustainable locations.

Character and appearance

23. The buildings known as Grange Cottages were formerly barns that were converted approximately 35 years ago. They are set in rural surroundings situated predominantly amongst fields and woodland.

24. The site is accessed by passing through the courtyard of converted barns and then part of the garden of No.8. The building is located on a parcel of otherwise undeveloped land. It is set on stilts to account for the gradient of the site and in contrast to the converted brick-built barns it is constructed from timber. It therefore does not relate well with the predominant character or appearance of residential built form in the immediate area.
25. I accept that the building is constructed from sustainable materials. It is also sheltered by existing landscaping, to some extent, and is therefore unlikely to be visible from neighbouring residential properties. Nevertheless, at some 60 sqm it appears as an overly large garden structure which is detrimental to this otherwise undeveloped parcel of land and the rural character of the wider area; the intrinsic qualities of which remain important to protect. I am therefore not persuaded that the building has been designed to suitably accommodate its environment. My findings are unaffected by whether or not the dwelling is within the curtilage of No.8.
26. I conclude that the building is harmful to the character and appearance of the area in contravention of Policy D1 of the LP, which amongst other things, requires development to respect the key characteristics of the area and ensure the materials of buildings relate well to their context.

Other considerations

27. Mr and Mrs Brown have owned No. 8 for 30 years. Mr Brown suffers from severe Alzheimer's dementia and Mrs Brown severe COPD. Their son, Mr Jason Everett-Brown, occupies the appeal dwelling with his 11-year-old son as well as his two other children who he cares for on a 50/50 basis. It is said that the additional dwelling enables for daily care to be provided and that if Mr and Mrs Brown had to be put into a care home this could cause serious issues for their health. They wish to be cared for by their family rather than perceiving themselves as being a burden on society.
28. I accept that because the enforcement notice is directed at the home of Mr Jason Everett-Brown and with it his children, there is likely to be a serious interference with their human rights, as well as potentially those of Mr and Mrs Brown. However, it does not follow that there would be a violation of their human rights.
29. Accordingly, whilst I have sympathy for the personal circumstances of the appellants, I have little evidence to persuade me that other options have been adequately pursued and discounted. In this regard I note that the Doctor's letter¹ advises about the prospect of a care package should Mr Jason Everett-Brown no longer live with/near his parents. There is also little evidence to support the contention that alternative accommodation would not be available within a suitable proximity to still enable care to be provided or that the tattoo business could not be adequately relocated. I am consequently not persuaded that juggling the life of parents, children and work would not be possible should planning permission not be granted.

¹ Dated 26 July 2019

30. Moreover, the appellant has not sought to appeal the enforcement notice on ground (g) in an effort to secure a longer compliance period, and I have very little evidence to indicate that a longer period would be necessary.
31. I can therefore only conclude that despite the personal circumstances of the appellants, adequate alternative arrangements could be made within a period of 6 months in which to cater for their respective needs and comply with the requirements of the enforcement notice. The enforcement action is therefore proportionate.
32. That the dwelling does not give rise to other planning harms, such as in respect of the living conditions of neighbouring occupiers or the loss of any trees, amongst other things, are only neutral factors.

33. Planning balance

34. The Government is seeking to significantly boost the supply of housing and the development makes a contribution, albeit very modest, to this supply. However, the development of a single dwelling would bring only very limited benefits to the economic and social well-being of the wider community.
35. I have found that the dwelling is not in a suitable location and is harmful to the character and appearance of the area. Whilst I have sympathy for the personal circumstances of the appellants, these do not amount to other considerations that outweigh these harms.

Conclusion

36. For these reasons and having regard to all other relevant matters raised, I conclude that the appeals on ground (a) and against the refusal of planning permission should fail.

Overall Conclusion

37. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission, including on the deemed application.

Formal Decisions

Appeals A, B and C

38. It is directed that the enforcement notice be corrected by:
- deleting the words "(II) Permanently cease the use of the Land for residential purposes (III) Permanently remove from the Land all debris and materials resulting from the compliance with steps (I) and (II) above, and reinstate the site to its conditions before the breach took place." and their replacement with the words "(II) Permanently remove from the Land all debris and materials resulting from the compliance with step (I) above, and reinstate the Land to its condition before the breach took place."
39. Subject to these corrections, 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.

Appeal D

40. The appeal is dismissed.

Paul T Hocking

INSPECTOR