



Appeal Decision

Hearing Held on 21 July 2020

Site visit made on 23 July 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2020

Appeal Ref: APP/F2415/C/19/3242823

Land at Springfield Farm, Broughton Lane, Leire, Leicestershire LE17 5HA

- 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 a Jack of Chapman against an enforcement notice issued by Harborough District Council.
 - The enforcement notice, numbered EN 615, was issued on 20 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission the siting of a mobile home on agricultural land at Springfield Farm, for residential use, in the approximate location hatched red on the attached plan.
 - The requirements of the notice are:
 - a) Cease the use of the Land for the siting of a mobile home
 - b) Remove the mobile home and all surrounding material and equipment associated with the unauthorised use from the Land.
 - 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) and the prescribed fees have been paid, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that:

- a) The heading of the enforcement notice is corrected by the deletion of 'MATERIAL CHANGE OF USE' and substitution with 'FAILURE TO COMPLY WITH A CONDITION'.
- b) The enforcement notice is corrected by:
 - the deletion of 'section 171A(1)(a)' in section 1 and its replacement with 'section 171A(1)(b)';
 - the deletion of the words 'hatched black' in section 2 and their replacement with 'outlined in red'; and
 - the deletion of the text of section 3 and its replacement with:

Failure to comply with condition 2 of planning permission reference 13/00346/FUL which was granted, subject to conditions, on 25 June 2013 for granted for the siting of mobile home for temporary period, to be occupied as a temporary agricultural worker's dwelling at Springfield Farm, Broughton Lane, Leire, Leicestershire.

Condition 2 stated "The permission for the dwelling is for (i) a limited period of 3 years from the date of this permission, or (ii) a limited period ending with the cessation of the game rearing enterprise, whichever is the sooner. On or before the expiry of 3 years from the date of this planning permission, or the cessation of the game rearing enterprise, whichever is the sooner, the occupation of the dwelling hereby approved shall cease and the site shall be reinstated to its former condition."

It appears that condition 2 has not been complied with in that (a) the use of the land for the siting of the mobile home did not cease on or before 24 June 2016 but has continued thereafter, in the approximate location hatched black on the attached plan, and (b) the land has not been reinstated to its former condition.'; and

- c) The enforcement notice is varied by the deletion of '3 months' and the substitution of '12 months' as the periods for compliance.
2. Subject to this correction and variation, the enforcement notice is upheld, and the deemed planning application is refused.

Preliminary Matters

3. Following my request for clarification the appellant's name has been confirmed as Mr Jack Chapman.
4. The Council explained that the policies referred to in their suggested planning conditions were incorrect and requested that I consider Policies GD3 and GD4 of the Harborough Local Plan 2011 to 2031 (2019) (the Local Plan) as the relevant policies in this regard. Copies of these policies were made available to me and I do not find that any injustice would arise were I to consider them as part of my decision in relation to planning conditions, if necessary.
5. The Council has also provided a copy of Leire Conservation Area plan and map and the listing descriptions for Western House, Main Street, Leire and the Village Pump, Back Lane, Leire which are both listed grade II.
6. During the course of the hearing I was provided with a copy of a letter from Sanham Agricultural Planning Limited (SAP Ltd) dated 22 February 2019 (the SAP Ltd letter). SAP Ltd had been consulted by the Council with regard to an application for a rural worker's dwelling which was submitted by the appellant in 2019. The appellant was aware of this letter and indicated that he had intended to submit it as part of his appeal statement. On that basis I ruled that the SAP Ltd letter could be submitted as late evidence, without prejudice to the parties and I have taken account of its contents in my determination of the appeal.

The Notice

7. The enforcement notice, headed Material Change of Use, states that it appears there has been a breach of planning control under section 171A(1)(a) of the 1990 Act, as described in section 3. However, the reasons for issuing the notice explain that a time-limited planning permission was granted for a mobile home and that the permission expired in June 2016. I explored with the Council and the appellant whether the notice should refer to the alleged breach being under section 171A(1)(b) of the 1990 Act – the failure to comply with a condition subject to which planning permission has been granted.

8. There is no evidence before me to suggest that the mobile home site is not the same one which was approved under planning permission reference 13/00346/FUL (the 2013 consent). Thus, it follows that the change of use occurred when the 2013 consent was implemented. The Council's explanation for taking enforcement action under 171A (1)(a) is that it is concerned to secure a permanent solution regarding the mobile home particularly in the light of the erection of a permanent dwelling on the Land.
9. From the appellant's perspective, he considers that the mobile home was granted as a dwelling in its own right and that it should be considered separately to the existing dwelling. The fact that there is no condition on the 2013 consent to link the occupation of the mobile home to the completion of any permanent dwelling on the Land supports this view.
10. Neither of these viewpoints clarify why it is more appropriate to consider the breach as a material change of use without planning permission as opposed to a breach of condition 2 of the 2013 consent.
11. In the light of the evidence and no compelling reason to consider otherwise, the breach in this case is the continuation of a use after the expiry of a planning permission granted for a limited period. Therefore, the breach falls under 171A(1)(b) of the Act being a failure to comply with any condition or limitation subject to which planning permission has been granted.
12. The point at issue which is whether or not the mobile home should remain on the land is understood by both parties. In the light of this there would be no injustice arising from a correction of the notice to refer to a failure to comply with a condition. Furthermore, such a change would not preclude a more permanent solution which is the aim of the Council or a retention of the mobile home which is the aim of the appellant.
13. I will correct the notice to amend the heading to relate a 'failure to comply with a condition', to refer to the relevant section of the Act and to reference the alleged failure to comply with condition 2 of planning permission reference 13/00346/FUL.
14. The notice also incorrectly references the plan as identifying the land to which the notice relates as hatched black and the approximate location of site of the mobile home hatched red. The plan shows the Land outlined in red and the location of the mobile home hatched black. It is clear that the main parties understood the location of the land and the mobile home, therefore no prejudice would arise from my correction of the plan.

Appeal under ground (a) and the Deemed Planning Application (DPA)

15. As a consequence of my correction of the notice, the DPA, would be for the development as originally permitted but without the condition, with effect from the day following the date when the limited period condition expired. In the event that the ground (a) appeal is successful, I am not bound by any conditions imposed on the previous time-expired permission, and I can impose any new conditions which fairly and reasonably relate to the continuation of the use.

Main Issue

16. Notwithstanding the change that I have made to the notice, the main issue is the same as would have been relevant to the unauthorised change of use, which was alleged in the notice, as served. That is to say the main issue is whether or not, with regard to national and local policies in respect of development in the countryside, there is an essential need for an additional dwelling in the form of a mobile home at Springfield Farm.

Reasons

17. There is no dispute between the parties that Policy SS1 of the Local Plan sets out the Council's spatial strategy of managed sustainable growth focussed on a hierarchy of settlement types and that Broughton Astley is defined as a 'key centre' and Leire is an 'other village'. Similarly, the parties are agreed that Policy GD4 of the Local Plan relates to new housing in the countryside and includes criteria against which such development can be judged.
18. With regard to the criteria set out in Policy GD4 of the Local Plan I am satisfied that this is an established business, is financially sound and has a clear prospect of remaining so. The appellant has invested in the business since its relocation to Springfield Farm and has acquired additional land which provides for further expansion. Similarly, there is space within existing buildings for additional plant.
19. The location of the mobile home is well-related to existing buildings and the functional needs of the enterprise. It is also capable of being kept available for use by a rural worker at Springfield Farm through an appropriate occupancy condition.
20. It follows that some of the criteria of Policy GD4 are met. However, in order for rural worker's housing to be supported all of the criteria need to be met and on the basis of the information before me I have found that this is not the case in respect of criteria (iii) and (iv).
21. The SAP Ltd letter says that the enterprise has a labour requirement for 3 to 3.5 full time persons but notes that this is an average and that in the winter period less than one full time person is required. The information provided by the appellant demonstrates this in terms of the hours worked on rearing birds but there are other activities taking place such as fabricating in the winter period which are associated with the business. Furthermore, the appellant points out that other farms have periods of down time and this seems a reasonable assumption for me to draw given the seasonal nature of farming.
22. I am satisfied that overall, the need to have two rural workers for the enterprise all year round can be justified. However, the test set out in the National Planning Policy Framework (the Framework) is whether it is essential for the rural workers to live permanently at or near their place of work and this is reflected in Policy GD4, which both parties are agreed is in accordance with the Framework.
23. On the basis of the evidence before me and the appeal site visit, which was helpful for my understanding of the enterprise, it is clear that the breeding and rearing of game birds in the manner carried out by the appellant is a 'hands-on' activity. During some parts of the year the regular checking, catching and delivering of birds to customers involves very long working days and night-time

- activity. During those peak periods it is entirely understandable that the appellant would wish to share the burden of these tasks.
24. It was also clear from the evidence provided and on the basis of the discussion at the hearing that the high level of checking of livestock which is undertaken reduces the likelihood of events which would have a harmful effect on the well-being of the birds. This adds weight to the argument of the need to share the tasks of regular checking and to ensure that the checks are carried out when the deliveries are being undertaken off site.
 25. The appellant also explained that as a result of the need for biosecurity measures to be undertaken between the inspection of types of bird and their level of maturity, additional time was needed for these tasks. In an emergency this additional time requirement could have an adverse impact on the birds.
 26. The relationship of the mobile home to the holding makes it convenient for its occupier to access the egg store, hatchery and the birds quickly.
 27. The appellant confirmed that the moving of birds to customers which takes place from June to September involves 60/70 deliveries and about 20 of these include working overnight so that the birds are on site by dawn with others involving early morning starts. At these times the checking of birds at Springfield Farm continues to be necessary to avoid harmful events arising.
 28. Whilst it is clearly convenient for the occupier of the mobile home to make the checks while the occupier of the house is away on deliveries and it is essential that these checks be carried out it does not follow that this justifies the provision of an additional rural workers dwelling if other options are available. The occasions when the deliveries coincide with a presence on site to do the checks are also limited and do not occur all year round.
 29. There is already a house on the holding which is occupied by the appellant and his family. It is a substantial detached building and as such provides good quality living space. There is no evidence to suggest otherwise than that for the majority of the time the appellant will be on site and able to carry out the checks on the birds.
 30. The appellant says that the existing house has been designed to meet the needs of his family and that subdivision of the house to provide accommodation for two separate households is impractical but there is no information to clearly demonstrate this. On this basis accommodating someone in the house on those limited occasions when an overnight presence is necessary, whilst not necessarily convenient, would be one way of meeting the essential needs of the farm.
 31. There are also outbuildings on the farm in addition to the large-scale buildings which accommodate the egg storage areas, hatchery and general storage. These are currently used for domestic purposes but there is no evidence before me to rule out the possibility of conversion of these buildings to provide overnight accommodation for a rural worker on those occasions when this is necessary.
 32. Leire and Broughton Astley have been identified as the closest settlements to Springfield Farm. The appellant has ruled out the potential for a rural worker to live in those settlements and meet the essential needs of the farm on the grounds of the cost of accommodation, however there is no substantive

- evidence of this before me. He also rules out the possibility of a rural worker and his family living in these places for parts of the year on the basis of the practicality of doing so, but again there is little information before me in this regard.
33. The added time which it would take to access the farm in an emergency, together with the time taken to address biosecurity safeguards, would increase for a person living off site. However, the regular checks which are carried out to reduce such risks could be carried out by an employee who lives close by.
34. The appellant argues that because the mobile home is on site it is a cost-effective solution to meet the needs of the farm. He also considers that being able to offer on-site accommodation to his assistant manager ensures staff retention and makes the role easier to fill in the event of a vacancy. However, these benefits to the business do not justify a deviation from planning policy which is designed to ensure that the countryside is protected from all but essential development.
35. Drawing all of these strands together I find that it is not essential for an additional full-time rural worker to be present on the holding in addition to the appellant who occupies the existing dwelling. There are limited periods of the year when animal husbandry is more difficult given the range of tasks which are being carried out on and off site. However, based on the evidence before me there are other options which could be pursued to address the on-site accommodation needs at those times.
36. The siting of the mobile home which is occupied as an agricultural workers dwelling is therefore contrary to Policy GD4 of the Local Plan which requires that the need for a housing to meet the needs of a rural worker cannot be met by existing residential accommodation at the business or in the locality. For the same reasons the development does not accord with the Framework which points towards the essential need for a rural worker to live permanently at or near their place of work.

Other Matters

37. The Council refer to Leire Conservation Area (the CA) and two listed buildings (Western House and the Village Pump) in their submissions. The CA and these listed buildings are not affected by the siting of the mobile home as a consequence of their significant distance from it and the intervening buildings and land uses. This view was also reached by the Council.
38. Whilst mindful of my statutory duties under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and that under the Framework great weight should be given to a heritage asset's conservation, I do not find that the proposals would have a harmful impact on the heritage assets which I have identified. It is therefore not necessary for me to carry out the test of balancing public benefit against that harm as required by the Framework.

Conclusion on ground (a) and the DPA

39. I conclude that the appeal fails on ground (a) and that there is no justification for planning permission to be granted for the development as permitted under the 2013 consent without condition 2.

Ground (f)

40. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
41. In this case the purpose of the notice is to remedy the breach of planning control. The requirements set out in the notice must address the purpose of the notice and in this case nothing short of cessation of the use of the land and removal of the mobile home would secure compliance with condition 2 of the 2013 consent.
42. The appellant argues that a mobile home could remain so long as it is in agricultural use and he cites its potential use as accommodation for seasonal workers, storage space, a farm office or a mess room. The Council accepts that the mobile home could be used for these purposes but considers that it may be difficult to enforce a mixture of permitted uses throughout the year.
43. Notwithstanding the need for additional storage space or a farm office/mess room given the scale of the existing house and buildings at Springfield Farm, the reversion of the use of the land to agricultural use and the stationing of a mobile home for agricultural storage, a farm office/mess room could potentially be carried out on the land as permitted development.
44. With regard to accommodation for seasonal workers, again subject to compliance with the limitations imposed on such accommodation, agricultural land can be used for this purpose. Whilst I can understand the Council's fears regarding the enforceability of use as seasonal accommodation for part of the year and say agricultural storage for the remainder, this concern cannot outweigh the appellants rights to permitted development.
45. The requirements of the notice cannot and, in this case, do not prevent the appellant from doing something he is entitled to do without planning permission. On this basis the requirements do not exceed what is necessary to remedy the breach of planning control and the appeal under ground (f) fails.

Ground (g)

46. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short because it provides insufficient time for alternative accommodation to be sourced for the occupier of the mobile home. He seeks an extension to 12 months.
47. The Council are agreeable to the extension of the compliance period to 12 months. I find this to be an appropriate timescale given the fact that the mobile home is currently occupied, that a shorter timescale could result in hardship for that individual and having in mind the right set out in Article 8 of the Human Rights Act 1998. For this reason, I conclude that the period for compliance with the notice falls short of what is reasonable and proportionate. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

48. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Sarah Dyer

Inspector

THE APPELLANT

Mr Jack Chapman

FOR THE APPELLANTS:

Mr Henry Doble

Acorus Rural Property Services Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Heather Wakefield

Planning Enforcement Officer

Harborough District Council

Documents submitted at the hearing:

- Letter from Sanham Agricultural Planning Limited dated 22 February 2019

Documents submitted after the hearing:

- Copy of Policy GD3 of the Harborough Local Plan 2011 to 2031.
- Site plan to be referred to by planning condition in the event that the appeal is allowed.