The Planning Inspectorate

Appeal Decisions

Site visit made on 14 July 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020

Appeal A Ref: APP/Y3940/C/20/3246154
Appeal B Ref: APP/Y3940/C/20/3246564
Land known as Breach Lane Orchard, Breach Lane, Wynsome Street, Southwick, Trowbridge, Wiltshire BA14 9RG

- 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 Paul Martin and Appeal B is made by Mrs Martin, both against an enforcement notice issued by Wiltshire Council.
- The enforcement notice was issued on 17 December 2019.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the unauthorised material change of use of the land from agriculture to a mixed use of agriculture and residential as well as the siting of an unauthorised shipping container.
- The requirements of the notice are:
  a) *Permanently cease the occupation of the land for all residential and ancillary residential purposes.*
  b) *Permanently removed from the land the mobile home (as shown in the photograph attached to the notice).*
  c) *Permanently remove from the land the touring caravan (as shown in the photograph attached to the notice).*
  d) *Permanently remove all residential and associated items ancillary to the residential use of the land, these include, but are not limited to, washing line, garden furniture, gas cylinders, chimnea, pot plants, tables and chairs as well as general household effects.*
  e) *Demolish the porch attached to the mobile* (sic) *(as shown in the photograph attached to the notice) and permanently remove the resultant materials from the land.*
  f) *Permanently remove all fencing on the land which subdivides the unauthorised residential use of the land from the rest of the agricultural holding.*
  g) *Permanently remove the metal garden shed and base from the land (as shown in the photograph attached to the notice).*
  h) *Permanently remove the gravelled path that leads to the mobile home as well as the paving slabs that lead to the metal shed and remove all the resultant materials from the land.*
  i) *Removed the unauthorised shipping container (as shown as crossed hatched in the approximate location on the plan attached to the notice) from the land.*
- The period for compliance with the requirements is 6 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.
- Appeal B is proceeding on the grounds set out in section 174(2) (g) 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.

Decisions

1. It is directed that the enforcement notice be varied by inserting a comma after the word "residential" in the description of the breach of planning control, followed by the insertion of the words *"including the siting of a mobile home used for residential purposes,"* and varied by varying the period of compliance from 6 months to 9 months. It is also directed that the notice be corrected by inserting the word "home" after the word "mobile" in requirement(e). Subject to these variations and correction 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 matters

2. I have a duty to get the notice in order if I can do so without prejudice to the parties. The allegation omits any reference to the siting of a mobile home. Whilst the siting of the mobile home is a residential use of the land, I consider that it is important that the notice is clear. All parties understand that the notice attacks the siting of the mobile home, and therefore no-one would be prejudiced by my varying the notice to refer to the mobile home in the allegation.

3. In requirement (e) of the notice, the word "home" has been omitted after the word "mobile". I shall correct the notice to include the missing word, as no injustice would be caused to either party.

Reasons

The appeal on ground (a) – that planning permission should be granted for the development

Main issues

4. The main issues are:

    a) whether agricultural arguments justify making an exception to policies which seek to limit residential development outside of settlement limits and in areas not served well by public transport, and

    b) the effect of the development on the character and appearance of the surrounding area.

The agricultural justification

5. The container referred to in the notice was removed some time ago, and no arguments have been made that planning permission should be granted for it. I shall therefore confine my consideration to the use of the site for the siting of a mobile home used for residential purposes.

6. The site lies on the southern edge of Southwick, outside of the settlement boundary limits as defined in the Wiltshire Core Strategy (CS), Policy CP2 of which says that other than in specified circumstances, development outside of settlement boundaries will not be permitted. One of the specified circumstances relates to supporting rural life, to which CS Policy CP48 applies. That says that proposals for residential development will be supported where

these meet the accommodation needs required to enable workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside.

7. The policy also says that proposals for accommodation to meet the needs of employment essential to the countryside should be supported by functional and financial evidence. However, the financial test is no longer required by the National Planning Policy Framework, and to this extent the policy is not consistent with it.

8. The mobile home is used to provide residential accommodation in connection with the agricultural use of the wider site, used for raising and breeding of alpacas. The appellants accept that I should consider the deemed application to be for the use of the land for the siting of a residential mobile home for a temporary period. This approach is consistent with the Planning Practice Guidance which says that in the case of new enterprises, a consideration is whether it is appropriate to consider granting a temporary permission for a trial period.

9. The business has been operating since 2012, with the appellants travelling from their home to tend to the alpacas. The business has grown since then, and the appellants sold their home and moved to the site in 2018.

10. In 2019 the appellants sought planning permission for the siting of a mobile home for a temporary period of four years, which was refused on 23 October 2019. At that time, the Council engaged an agricultural consultant to assess the agricultural justification for that proposal, who identified a number of areas of concern, which led to the Council refusing the application and issuing the enforcement notice subject of this appeal.

11. In considering the agricultural arguments, I am conscious that the underlying rationale behind a temporary permission is that it provides a trial period for an agricultural enterprise to demonstrate that there is likely to be an enduring need for someone to live on the site on a permanent basis.

12. The Council's expert accepts that the enterprise, if it proceeds as planned, is likely to generate a need for a full-time worker and that it is likely to generate an essential need for a presence at most times. However, the Council argues that the appellants have not shown why it is necessary for someone to live on the site. The appellants operated the business for a number of years from their home, just 10 minutes' drive away, and they have not demonstrated that there are no nearer available dwellings which would fulfil the need to be on hand.

13. I saw on my visit that there is a range of dwelling types in the vicinity, including small dwellings, just a few minutes' walk away from the appeal site. Despite the Council raising the matter as a key concern, the appellants have not provided any evidence to show that there are no other suitable properties to buy or rent which would enable them to be on hand at the most critical times to care for the alpacas. I therefore consider that the need for on-site accommodation has not been justified.

14. The Council is also concerned that the appellants do not possess sufficient land to enable their plans to come to fruition, in that the stocking densities for the number of alpacas planned require more land than the appellants' own, and

that there is no coherent management plan in place to demonstrate that the appeal site land could be used in a satisfactory manner.

15. I saw on my visit that the alpacas now number 12, and that the land on which they are kept has been sub-divided with fencing, but without explanation, I am unable to conclude whether this would provide the kind of stock management that is required for such an intensively used site. I am also concerned that no security of tenure for the leased land has been demonstrated which would be necessary to ensure that the appellants' plans can come to fruition, and that the essential need would endure.

16. However, these concerns do not contribute significantly to my findings; the need for the additional land and carefully managed stocking arrangements only becomes critical when the higher stocking rates are reached, which would be towards the end of any trial period. Such concerns would be far more important if a permanent dwelling were sought, but that is not the case here. Accordingly, these shortcomings add only minor weight to my conclusions.

17. I therefore conclude that the appellants have not shown that there is an essential agricultural need to justify making an exception to the policies which restrain residential development outside of the settlement limits. The development is contrary to the policies that I have referred to above. Owing to the closeness of the site to Southwick and the services and facilities available there, I find only a very limited degree of conflict with CS Policies 60 and 61, which deal with sustainable travel. I find no conflict with CS Policy CS 1, as that merely informs other policies and provides no criteria against which proposals can be assessed.

Character and appearance

18. The site is well-screened from Breach Lane by a high and thick hedge, although I consider it likely that the site will be more exposed in winter, when the predominant deciduous hedge species lose their leaves. The site also hosts two agricultural buildings, which in themselves offer some screening, and dilute the undeveloped character of this hinterland site. The appearance of a container (since removed, but nevertheless part of the deemed application), the mobile home and associated residential paraphernalia detracts from the open and undeveloped appearance of the countryside, weakening the transition between the edge of Southwick and the countryside, but, for the reasons I have explained above, has only a minor adverse impact on the character and appearance of the locality.

19. I therefore conclude that the development results in small harm to the character and appearance of the area, and that there is a limited degree of conflict with CS Policies 51 and 57, which respectively deal with landscape and high-quality design and place shaping.

Other matters

20. The requirements of the notice engages with the appellants' rights to respect for their family life and their home under Article 8, as well as the 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, the planning system exists to regulate the use of land in the public

interest, and in doing so interferes with a landowner's rights. The appellants would have known that the residential use of the site required planning permission and must have been aware of the possibility of enforcement action being taken against an unauthorised use. In this case, upholding national and local planning policy, and the importance of protecting the character and appearance of the countryside are matters of legitimate public interest.

21. 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.

22. The appellants have referred me to another alpaca enterprise on a smaller site in the adjoining district where residential accommodation was permitted. However, I do not know all of the circumstances which led to the grant of that permission, and thus I have determined this ground of appeal on its own facts and circumstances.

Conclusion on the ground (a) appeal

23. For the reasons given above, I conclude that the appeal on this ground must be dismissed, and that the deemed application for planning permission should be refused.

Appeals on ground (g) – that the period for compliance falls short of what should reasonably be allowed

24. The notice specifies a period of 6 months to comply. In normal circumstances, I consider that this would be a sufficient period in which to find new accommodation and physically remove the mobile home and associated items. The appellants' arguments on this ground refer to the Covid-19 pandemic but reiterate the case argued under ground (a) for a temporary permission and refer to the s.78 appeal which was turned away as it was submitted out of time. These arguments have limited relevance to an appeal on this ground.

25. Nevertheless, I accept that the pandemic may have introduced some volatility in the local housing market which may limit the choice of suitable alternative housing. I shall therefore extend the compliance period to 9 months and will vary the notice accordingly.

Overall conclusion

26. For the reasons given above, the appeals are dismissed, except insofar as the period for compliance will be extended, and, subject to correction and variation, the enforcement notice is upheld, and the application for planning permission deemed to have been made under s.177(5) of the Act is dismissed.

JP Roberts

INSPECTOR