



Appeal Decision

Site visit made on 1 September 2020

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 September 2020

Appeal Ref: APP/G2815/C/20/3244733

The land at Daglan, 42A Gretton Road, Harringworth, Northamptonshire, NN17 3AD

- 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 Mark Pollard against an enforcement notice issued by East Northants District Council.
 - The enforcement notice, numbered 17/00370/PPD-1, was issued on 16 December 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the Land and building to a separate residential unit, plus the siting of a shipping container and other paraphernalia (eg patio furniture) ancillary to this use, without planning permission.
 - The requirements of the notice are:
 1. Permanently cease the residential use of the Land marked by a red boundary on the attached Site Plan¹.
 2. Permanently cease the residential use of the building (shown in photograph AP1, Appendix A and marked 'A' on the attached site plan) on the Land.
 3. Permanently remove all residential paraphernalia from the building and the Land (eg patio table and chairs etc).
 4. Permanently remove the shipping container from the Land (shown in photograph AP1, Appendix A), and return the Land to its condition prior to the development.
 5. Permanently remove all resultant debris from steps 1 – to 4 from the Land.
 - The period for compliance with the requirements is six months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and building at Daglan, 42A Gretton Road, Harringworth, Northamptonshire, NN17 3AD, as shown respectively edged red and marked 'A' on the plan attached to the notice, as a separate residential unit subject to the following conditions set out in the schedule hereto.

Ground (e)

2. This ground may succeed if copies of the notice were not served as required by s172 of the 1990 Act. However, by s176(5), where a person has not been

¹ I.e. the plan attached to the notice.

served as required, this can be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.

3. Albeit with some technical criticisms, the appellant accepts that he was served. Furthermore, even though he complains that he had limited time to respond, he has lodged a detailed appeal on all grounds except ground (b). There is no suggestion that any other person who should have been served has not.
4. Accordingly, even if there were deficiencies in the manner of service, I am satisfied that no one has been substantially prejudiced and the appeal on ground (e) therefore fails.

Ground (c)

5. To succeed on ground (c), the appellant must prove on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
6. Whilst the appellant relies on ground (d) before ground (c), it is normal practice to consider ground (c) first. This is because, if there is no breach of planning control, there is nothing which could have become immune from enforcement action, and ground (d) becomes irrelevant.
7. The appellant contends that, if the appeal site was previously used for residential purposes in connection with the dwelling at No 42, then the current occupation of the land and appeal building for residential purposes could be considered not to represent a breach of planning control. However, the matter alleged is not just use for residential purposes, but the material change of use of the land and building to use as "a separate residential unit."
8. There is no appeal on ground (b) and no suggestion that the land and building are not being used as a separate residential unit. The matters alleged in the notice do constitute a breach of planning control and ground (c) must fail.

Ground (d)

9. To succeed on ground (d), the appellant must prove on the balance of probability that the material change of use of the land and building to use as a separate residential unit occurred on or before 16 December 2015² and that this use then continued without significant interruption for 4 years after the date of the change.
10. The appellant previously appealed under Ref APP/G2815/X/18/3197172 (the previous appeal) against the Council's refusal to grant a certificate of lawful use or development (LDC) concerning the conversion of the appeal building to a "residential property." That appeal was dismissed on 22 March 2019, but this does not necessarily mean the use had not become lawful; the Inspector was simply not persuaded by the evidence presented to her that it had. That appeal decision is nevertheless an important consideration and it is necessary to consider what additional, different and more compelling evidence is before me now.
11. The appellant purchased the appeal site and the adjacent No 42 Gretton Road in October 2012. They comprised 2 separate registered titles but were in single ownership. As recorded in the previous appeal decision, the 2 plots were

² This being the date 4 years prior to the issue of the enforcement notice.

separated by an access track, over which there was a right of way. That decision refers to the investigation of a complaint regarding the possible occupation of the appeal building and the erection of a fence to screen it in March to April 2016. There is no evidence to suggest that, prior to that, there was anything to physically separate the 2 parcels of land, aside from the access track.

12. The appellant's own evidence in his statutory declaration is that he converted the appeal building (described by him as a "workshop" and by the Council and Parish Council as a "garage") into a dwelling between November and December 2012. He also says he has occupied it as his dwelling since completing that conversion.
13. A Council investigation in 2017 concluded that there was no evidence of use of the appeal building as a permanent residence at that time and the Parish Council maintained it was only being used for storage. The people who purchased No 42, when the appellant sold it off separately in 2017, made representations in the previous appeal. They appear to have told the Inspector that they believed the appellant had been living at No 42 until the sale and that thereafter he only used the appeal building every 4 or 5 weeks. Against this, several letters and 4 separate statutory declarations, including from tradesmen who worked on the renovation of the house at No 42, now provide strong support for the appellant's claim that he lived at the appeal property from the end of 2012.
14. However, whether or not the appeal building has been continuously occupied, the prior question is whether and when there was a material change of use of the land and building to use as a "separate residential unit." The appellant sold No 42 separately in April 2017 and, since then, the 2 areas of land have been in different occupation. However, up to that point even accepting that the appellant was living solely in the appeal building, he was carrying out works to redevelop the dwelling known as No 42. The Council formed the view that, as that main house was under development, no unauthorised separate dwelling use had been created and the storage container was simply for temporary storage.
15. In the previous appeal, the Inspector was not persuaded by the evidence regarding the appellant's occupation of the appeal building but, in addition, she said:

"34....If it was demonstrated that the appeal building, on the balance of probabilities, had been occupied while the original dwelling redeveloped [*sic*] the appeal building may still have been within the single planning unit of No 42. Until the redevelopment, there may not have been a subdivision of the planning unit into two and a material change of use of the appeal building to a self-contained dwelling. However, it is not possible on the evidence available to ascertain if that was the case, but it does, in my view, add to the uncertainty around when a material change of use of the appeal building took place to form a self-contained dwelling and when the original planning unit of No 42 was subdivided into two separate units. This may well have taken place when No 42 was sold in April 2017 and then occupied separately."
16. As already stressed, the alleged breach involves the material change of use of land to use as "a separate residential unit." The appellant contends that if it

- can be established that, more than four years before the issue of the notice, the use of the appeal building was not part of the same planning unit (PU), or ancillary to the use of No. 42, then that use will be immune from enforcement.
17. What constitutes the planning unit (PU) is a question of fact and degree and my attention has been drawn to the leading case of *Burdle v Secretary of State for the Environment* [1972] 3 All E.R. 240. In that case, Bridge J set out, as a useful working rule, that it should be assumed the unit of occupation is the appropriate PU, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
18. Whilst they were comprised in different registered titles, there is no evidence before me that, when the appellant purchased them in 2012, the appeal site and what is now No 42 had different occupiers, or indeed that they were in separate ownership. On the evidence before her, the Inspector in the previous appeal concluded that, at the time of the appellant's purchase, the appeal building was ancillary to the dwelling at No 42 and part of the same PU.
19. On the evidence before me it still appears that, when the appellant purchased both parcels of land in 2012, they constituted a single unit of occupation. Although it seems this was not put to the Inspector in the previous appeal, the appellant says in his June 2020 statutory declaration:
- "At the time of my purchases, the Appeal Site was used as a workshop which I believe was used by previous owners for an upholstery business and No. 42 was a dwelling which was in need of modernising and refurbishment..."
20. This suggests some functional separation but is vague. It is not clear which previous owners, or when and there is no other evidence to corroborate this assertion of separate business use. The 2011 aerial photograph appended to the statutory declaration does not assist.
21. Furthermore, the evidence indicates the appeal property was only fenced off from the house at No 42 around March/April 2016 so, prior to that, the two areas were separated only by the access track. The appellant draws my attention to two judgements. In *Duffy v SSE* [1981] J.P.L. the use of a staff hostel for a hotel was found to be not part of the same planning unit as the hotel, as it was 150 yards away, and that physical separation may in itself be sufficient to negative any possibility of there being a single PU. In *Swinbank v SSE* [1987] J.P.L. 781 it was held that, although the PU may comprise more than one site or building the Inspector was entitled to conclude that the distance between the appeal site and other land farmed was so great that they could not be considered to be a single PU. In that case, none of the pieces of land was closer to the appeal site than 4 miles.
22. The circumstances of this appeal are far removed from those in either *Duffy* or *Swinbank*. In this case, the 2 parcels of land were only separated by the access track, and I am not persuaded this was enough to create two recognisably separate areas. On the balance of probability, and as a matter of fact and degree, there was neither functional nor physical separation between the appeal site and No 42 when the appellant bought these areas. Having already found that they comprised a single unit of occupation, they therefore constituted a single PU.

23. The appellant remained in occupation of both the appeal site and the land now comprised in No 42, until he sold the latter separately in 2017. Even if the erection of the fence in March/April achieved physical separation of these areas, this was within 4 years of the notice being issued. Furthermore, until the sale of No 42, it appears the appellant lived in the appeal building to facilitate his redevelopment of that main dwelling. The appeal site and the site of No 42 together comprised a single residential unit.
24. The appellant refers to the fact that, when the Council granted planning permission for works to No 42 under Ref 13/00178/FUL the appeal site was not included on the location plan. He says this suggests the Council accepted the curtilage did not extend to the appeal site. He also refers to *Barnett v SCLG* [2009] EWCA Civ 476, in which it was held that the curtilage for a new dwelling in the countryside was defined by the plan submitted with the application, even though other land was within the same ownership. However, the curtilage and the PU are different concepts; they do not necessarily comprise the same area. Furthermore, the concept of the PU is only relevant to material changes of use. Plans submitted with an application for permission to alter an existing building need not identify the PU and the location plan to which the appellant refers cannot determine the extent of the PU.
25. As a matter of fact and degree, I am satisfied on the evidence that the appeal site did not become a separate PU until No 42 was sold off separately in 2017. I therefore conclude on the main issue that the appellant has failed to prove on the balance of probability that the material change of use of the land and building to use as a separate residential unit occurred on or before 16 December 2015 and ground (d) fails.

Ground (a)/the deemed application for planning permission

Background and main issues

26. The terms of the deemed application for planning permission are defined by the allegation in the notice. However, although this includes the siting of a shipping container and other paraphernalia, there is no suggestion that these are anything other than ancillary to the use of the land and building as a separate residential unit. There would be no reason to include these aspects in the description of the development in any planning permission.
27. The main issues are the effect of the development on:
- highway safety;
 - the setting of a Listed Building, namely the Welland Viaduct; and
 - the character and appearance of the area, which lies within the Harringworth Conservation Area (CA).

Reasons

Highway safety

28. The appeal property, No 42 and another dwelling are all accessed from the highway by a 125m long private track of earth and compacted gravel/stone. The track is owned by a local farmer who uses it to access his fields. It varies in width from 3.7m to 4.3m. The Council is particularly concerned that, measure from the highway edge, the first 10m of the track from is not at the

minimum width of 4.5m to allow 2 cars to pass and there is not a hard bound surface for the first 5m.

29. Although there is no evidence from the Highway Authority (HA), the Council relies on the Local Highway Authority Standing Advice, June 2016, (the LHASA). Indeed, that advice is intended to enable local planning authorities to make decisions on minor applications, without formal reference to the HA and it is a material consideration in this appeal.
30. Among other things, the LHASA seeks to ensure that vehicles can safely pass on a shared access without the need to block the highway or reverse onto it. It also indicates that, if an access track is more than 45m long, there may be further requirements for passing places along its length.
31. The appellant has submitted a detailed technical note prepared by Cotswold Transport Planning Ltd (the technical note) and this includes an unchallenged description of the track and surrounding highway network. The track itself has a compacted stone surface and forms a junction with Gretton Road, a single carriageway road, approximately 5.5m wide, with one lane in each direction. This extends in a broadly west-east direction through the village and is subject to a 30mph speed limit. Gretton Road is a lightly trafficked rural village road. Where it meets the public highway, the access track is 4.1m wide, widening further as its splays meet the carriageway.
32. The appellant accepts, having regard to Manual for Streets that, whilst 4.1m is enough for 2 cars to pass when travelling in a straight line, it is insufficient for 2 cars to pass when turning in and out of an access. However, the technical note provides detailed information, including drawings to demonstrate the forward visibility on the track and on Gretton Road, the width of the track and the availability of passing places on it. That note reaches several conclusions, which I find persuasive. They can be briefly summarised as follows:
 - The probability of two vehicles meeting at the junction of the access track with Gretton Road is minimal and there is adequate forward visibility in all directions for approaching drivers to be able to see an oncoming vehicle and take appropriate action. The access has operated satisfactorily with no recorded personal injury accidents in the last 5 years³ in the vicinity of the site, including on Gretton Road and at the site access;
 - Even if two vehicles did meet at the access, a vehicle waiting on Gretton Road for a matter of seconds whilst another exited the access track would not give rise to any highway safety issues, since Gretton Road is not heavily trafficked;
 - There are adequate opportunities for vehicles to pass along the access track, namely at three identified places where there is enough width for two vehicles to pass, as demonstrated by photographs and a vehicle swept path analysis. In addition, there is enough forward visibility between passing places for drivers to be able to see any oncoming vehicle; and
 - Given the access has operated satisfactorily for a number of years, and the proposed dwelling would result in only a minor increase in the

³ I note that, since 2017, the appeal property and No 42 have been separately occupied.

number of vehicle movements, there is no evidence to suggest that the current surface material for the first 5m of the access track would give rise to any highway safety issues.

33. Notwithstanding the failure to comply with the LHASA, I am satisfied on the balance of probability that the increased use of the current access resulting from the appeal development would not give rise to any unacceptable impact on highway safety. Accordingly, I find no conflict with Policy 8 of the North Northamptonshire Core Spatial Strategy 2011 to 2031 (JCS) adopted 2016, which seeks to ensure streets and means of access are safe.

The effect on the setting of the Listed Building

34. The listed Welland Viaduct (the viaduct) lies some 75m to the west of the appeal site. The listing details describe it as:

“an impressive row of 82 tall semi-circular arches on piers, articulated at varying intervals by plain palasters...piers 60-82 are in Seaton parish; remainder are in Harringworth parish, Northamptonshire. The viaduct is an imposing landmark sweeping right across the Welland valley.”

35. The appellant adds that, at just over 1 kilometre in length the viaduct is the longest masonry viaduct built across a valley in the United Kingdom. Indeed, this is confirmed on an information board on Gretton Road, where that road passes under the viaduct. That board also says the viaduct is 21m high in places.
36. The National Planning Policy Framework (the Framework) states that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal, including any development affecting the setting, and then consider the impact on that significance. The Council provides no substantial assessment of the significance of the viaduct, or any analysis of impact of the appeal development on that significance. However, it concludes that the residential use has resulted in residential car parking, residential paraphernalia (eg patio furniture), the siting of a shipping container for storage, and the potential for a domestic garden and the Council says these things cause less than substantial harm to the setting of the viaduct.
37. The appellant has submitted a more detailed assessment. Having regard to that, I am satisfied that the heritage value and significance of the viaduct arises from its scale and by virtue of it being a great feat of Victorian engineering, having been built by manual labour and, at its peak a workforce of 3,500 and 120 horses.
38. Furthermore, the viaduct is an imposing and dramatic landmark feature within the area, and when seen from various vantage points across the Welland Valley, from where its scale and the symmetry and rhythm of its arches can be fully appreciated. I took time to view it from a distance from the B672 between Morcott and Seaton, as well as from just east of Seaton and from southeast of that settlement, near Seaton Station. It is in these longer views that the viaduct can be seen in its valley setting and the significance of this heritage asset can be best experienced and appreciated. The appeal development has no impact on the appreciation of the viaduct in any longer views.

39. That is not to say that closer views can be of no importance. The viaduct can be seen from within the appeal site, including from a public vantage point, namely a short section of footpath NB4, which crosses the site, near its southern boundary. The appellant suggests this section of footpath is little used but, whilst I saw no one using it during the 20 minutes or so I was on site, there is no survey evidence of use. There is nothing to suggest the view from the footpath is a "key view", in terms of JCS Policy 2, but I still regard the existence of the path as material.
40. Nevertheless, whilst car parking and other residential paraphernalia on the appeal site would be briefly apparent to anyone using the footpath, so would the appeal building itself, which is not the subject of enforcement action, along with the substantial, recently extended dwelling at No 42. From the footpath, views of the appeal dwelling and any parking and paraphernalia in its immediate vicinity, are against the backdrop of the taller and generally larger dwelling at No 42, which intervenes between the appeal dwelling and the viaduct. The shipping container is somewhat unsightly and draws the eye. However, the appellant indicates that he only requires this on a temporary basis whilst the planning status of the appeal dwelling is resolved. This could be addressed through a condition.
41. The appellant's evidence is problematic in so far as it says the appeal development does have an impact on the setting of the viaduct, albeit that this is "very limited." By s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Listed Building Act), the duty in this context is to have special regard to the desirability of preserving the setting of the viaduct. Furthermore, the Framework provides that great weight should be given to a heritage asset's conservation, even if any harm is less than substantial. Any such harm would still need to be weighed against any public benefits.
42. However, the appellant later contends that, leaving aside the shipping container, the impact of the development falls some way below "less than substantial harm". The appellant's evidence on this aspect might appear a little ambiguous. Nevertheless, I am satisfied based on all the evidence and my own inspection that, without the shipping container, the appeal development would have no material impact on the setting of the viaduct and its significance as a heritage asset. Whilst it has some effect on a minor view from a short section of a public footpath, this is de minimis in the context of the panoramic views of this immense structure in the wider landscape and having regard to adjacent, existing lawful residential development.
43. I acknowledge that, if residential paraphernalia were to encroach further into this 2 acre appeal site, that assessment could change, but it is possible to address this through a planning condition to define the residential curtilage and control boundary treatment.
44. I conclude on this issue that, subject to conditions, the appeal development preserves, rather than harms the setting of the viaduct. Accordingly, I find no conflict with JCS Policy 2 or the Framework on this score.

The effect on the CA

45. Under s72(1) of the Listed Building Act, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of any CA. As with the impact on the setting of the viaduct, the Council provides no

substantial assessment of the significance of this heritage asset, the way in which the appeal site contributed to it, or how the development affects that significance. Indeed, the Council does not consider this separately from the impact on the setting of the listed building.

46. The Council expresses no concern over the appeal dwelling itself or the works carried out as part of the conversion, given that it was an existing building. As with the previous issue, the Council's main concerns relate to the parking of vehicles, the siting of a storage container and the potential for a domestic garden, rather than the presence or appearance of the appeal dwelling itself.
47. I have not been made aware of any published appraisal of this CA and, in the absence of detailed contrary evidence from the Council, I see no reason to reject the appellant's assessment. The appellant says Harringworth's special character is created by the arrangement of buildings, trees and other elements of the street scene. He says this character is primarily formed by traditional stone built houses located within the core of the village and which either front directly onto the footpath or are set back with boundary treatments comprising of low walls or railings. I must consider the impact of the appeal development on the character and appearance of the CA as a whole.
48. The only public view of the appeal site is from footpath NB4, but it serves as a predominantly open space on the edge of the CA, away from the core of the village. It could be said that that the contribution of the site to the CA is that its largely open nature enables views of the viaduct from the footpath within the CA. However, the appeal development does not obstruct those views and the building itself already existed, along with another much more substantial house to the west. The Council, Parish Council and a neighbour describe the appeal building as a garage and, if it was so used in connection with No 42, there could easily have been vehicles left nearby. Indeed, there could have been associated vehicles if the appellant is correct that its previous use was as a workshop.
49. Furthermore, as discussed, there is scope to secure the removal of the unsightly shipping container and to control the extent of the curtilage, including parking areas and boundary treatment, by condition. In all these circumstances, the appeal development causes no material harm to the character and appearance of this part of the CA, let alone the character and appearance or significance of the CA as a whole. Accordingly, there is no conflict with JCS Policy 2 in this regard. The Council referred to JCS Policy 3, which seeks to protect landscape character. However, it did not elaborate on how the development harms landscape character and, for all the reasons given, I find no conflict with JCS Policy 3.

Overall conclusion and planning balance

50. I have found no harm in terms of highway safety, or the impact on the setting of the listed building or the character and appearance of the CA. The appeal development results in a new dwelling in open countryside, just outside the built up area of the village and JCS Policy 11 generally resists such development. However, the Council accepts that this scheme falls within an exception relating to reuse of buildings in the countryside.
51. The appellant drew my attention to a recent appeal decision Ref APP/G2815/W/19/3232099 in which the Inspector concluded that the Council

could only demonstrate it had a deliverable housing land supply in the region of 4.28 years. In this context, the appeal scheme provides the benefit of an additional housing unit. However, my decision does not depend on this because, I find that subject to conditions, the appeal scheme complies with the development plan as a whole in any event and no material considerations indicate that planning permission should be refused.

52. The appeal should therefore succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore fall to be considered.

Conditions

53. As discussed, in order to safeguard the character and appearance of the CA and the setting of the listed building, it is necessary and reasonable to impose conditions requiring the removal of the shipping container and the definition of a domestic curtilage and approval of boundary treatments.
54. As far as the shipping container is concerned, the appellant indicated that he intended to remove this once the planning status of the appeal dwelling is resolved and he considers a period of 12 months reasonable. This decision resolves that status and it is not clear why 12 months is necessary. The enforcement notice required compliance within 6 months, and I consider this a reasonable period in which to require the removal of this unsightly container from a sensitive location within the CA and close to the listed viaduct.
55. The definition of the curtilage and approval of boundary treatments necessitates the submission of plans and details for approval by the Council. Given that the development has already taken place, in order to be enforceable, the condition needs to provide for the cessation of the use, in the event that the details are not approved, either by the Council or on appeal, and it must provide for the implementation of any approved details. I sought the views of the parties on the wording of the conditions and have taken those views into account.

J A Murray

INSPECTOR

SCHEDULE

These are the conditions referred to in the formal decision:

- 1) Within 6 months of the date of this decision the shipping container shall be permanently removed from the land.
- 2) The use hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for defining the curtilage of the dwelling, including associated boundary treatments, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 10 months of the date of this decision the local planning authority refuse to approve the scheme referred to in (i) above or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and no vehicles, bins, garden furniture, play equipment or other domestic paraphernalia shall be parked, placed, erected or kept on the land outside the approved curtilage.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.