



Appeal Decision

Site visit made on 12 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2020

Appeal Ref: APP/M9496/C/20/3250054

Land at 'One Acre Wood' east of Heyburn Farm, Little Hayfield in the County of Derbyshire ("the land")

- 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 Paul Senior against an enforcement notice issued by the Peak District National Park Authority.
 - The enforcement notice was issued on 2 March 2020.
 - The breach of planning control as alleged in the notice is:
 - (i) Without planning permission, building operations comprising the construction of a dwelling ('the dwelling'), the approximate position of which is shown coloured black on an attached plan, and engineering operations comprising the construction of an associated hardstanding area ('the hardstanding'), the approximate position of which is shown hatched on an attached plan.
 - (ii) Without planning permission change of use of land from agricultural use to a mixed use comprising residential use and agricultural use.
 - The requirements of the notice are:
 - a) Demolish the dwelling, remove all of the materials used in the construction and/or demolition of the dwelling from the land.
 - b) Remove the area of hardstanding (including all solid slabs, paths and semi-permeable surfacing), and remove all of the materials used in its construction and/or demolition from the land.
 - c) Cease the use of any part of the land for residential purposes.
 - The period for compliance with the requirements is six months in respect of requirements (a) and (b) and three months in respect of requirement (c).
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the allegation set out in section 3 (ii) of the notice – the matters which appear to constitute the breach of planning control and the replacement with the following:

(ii) Without planning permission, the material change of use of land from a mixed use of forestry and recreational purposes to a mixed use of residential and forestry purposes.
2. Subject to the correction, 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.

The Notice

3. The enforcement notice is directed at two different types of development as defined in Section 55 of the 1990 Act. One is carrying out "operational development" (the erection of buildings or structures); the other is making a material change of use of land. In considering the grounds of appeal, it is necessary to refer to both "operations" and "change of use". For the purposes of the different grounds of appeal I have dealt with these separately in the order they are set out in the notice.
4. However, given the dispute regarding the allegation in respect of the material change of use of land, specifically what was the pre-existing use of the land, I shall first address this matter. The Authority acknowledged in their statement that based on the submitted evidence they considered the lawful use of the land is for forestry not agriculture and invited me to amend the allegation accordingly.
5. The appellant and his wife purchased the land in around July 2004 for use for the purposes of holiday accommodation and land for private domestic use. At that time the appellant stated it comprised of an area of woodland and there were two buildings on the land, an amenity block comprising toilet and washing facilities and a woodstore, there was also a hardstanding for parking. In 2009 the appellant added a small utility building which they used to prepare and cook food whilst working on the land to carry out maintenance or play with their children.
6. They stated that since they bought the land they have regularly visited, spent time and slept at the site with their four children. They stay over on a regular basis - at least 12 weekends per year, along with visits to the land two or three times a week with their children playing on the land during the day and after school. Additionally, they have held three to four large family gatherings on the land each year where some people slept over on the site in tents.
7. The Authority's officer report refers to the evidence indicating that the land is in use for low level recreation. Notwithstanding the appellant's view that the use is for holiday accommodation/leisure use, I share the Authority's view that this use has the characteristics of a recreational use.
8. The appellant confirmed that they maintain the land, including tending to the woodland and maintaining boundary walls but stated that they have not felled trees for commercial purposes and only cleared fallen or dead trees and use these for their own purposes.
9. There is no definition of forestry for the purposes of the Act, but it seems to me that it need not involve a commercial element, the practice of maintaining woodland could be considered forestry. Additionally, I note that the appellant in their supplementary statement to their Planning Contravention Notice (PCN) reply, stated that they understood the building, subject of the appeal, would be 'covered under our permitted development rights for agriculture and forestry'. In my view this indicates that they considered that forestry takes place on the land.
10. There is little evidence to corroborate the appellant's alleged use of the land, for example statements from the former owner or anyone with knowledge of the land. However, overall, based on the submitted evidence which I find to be

sufficiently precise, I consider that the pre-existing use of the land consisted of a mixed use of forestry and recreational purposes.

11. Consequently, the allegation in respect of the material change of use should be corrected to reflect this and this is the starting point from which to assess the grounds of appeal.
12. I am satisfied that correcting the notice in this way would not cause injustice to either of the main parties since the appellant was aware that the Authority seeks only the cessation of the residential use and has addressed this in his evidence.

The appeal on ground (b)

13. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.' Therefore, the onus is on the appellant to demonstrate that a dwelling had not been erected and the land was not being used for a mixed use comprising residential and forestry at the relevant date, being the date of issue of the notice, 2 March 2020.

Operational development

14. The appellant's argument is essentially that the building is not a dwelling, on the grounds that the building was not purchased as a dwelling and was adapted to provide some basic facilities, there is no running water to the building and water is brought to the site in containers, additionally no rates are paid and there is no phone line or mains electricity. Furthermore, at 24sqm it is not of a sufficient size to accommodate a family of six. In support of their case the appellant referred to the cases of *Stephen Grendon v The First Secretary of State, Cotswold District Council* [2006] EWHC 1711 (Admin) and *Gravesham BC v SSE and O'Brien* [1983] JPL 306.
15. In the Gravesham case a building had been erected for a weekend and holiday chalet. It was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if occupation was restricted by condition to four months in the year. Consequently, the practice of using the dwelling throughout the year, is not essential and it did not lose that characteristic if it was only occupied for part of the year.
16. In the case of the appeal building, it contains a bathroom, kitchen area, sitting area/living space and upstairs is an area where people could sleep, albeit there are no beds and it is located in the roof space where it is not possible to stand. Electricity is provided by means of a generator and wind turbine and gas is provided through tanks. Water is brought to the site in containers however, according to the Authority these provide a piped supply to the bathroom and kitchen facilities. The appellant confirmed that foul water does not run into the existing water course and reinstated culvert but did not state where it does discharge. Nevertheless, this along with the building's relatively small size, that it cannot accommodate a family of six and council tax is not paid are not determinative matters in my assessment.
17. The building clearly lacks certain amenities generally found in most dwellings, and largely thought to be desirable, such as a piped water supply. It is

however, plainly capable of being used as a dwelling and given the appellant's acknowledged use of the building in his response to the PCN - that the building has been used for personal use staying/sleeping over approximately once a month, I find as a matter of fact and degree that the building constitutes a dwellinghouse.

18. The building in the Grendon case consisted of a one room building which had no running water, bathroom or toilet and a butane gas hob for cooking. Part of the building was open to the elements when the shutters were open, prior to a window being installed. I find that case is not sufficiently comparable to the appeal development and has little bearing on my assessment.
19. There is some suggestion in the appellant's evidence that the dwelling is an altered version of a former building however, it is evident that the dwelling is a new building. Whilst it has a similar footprint and occupies a broadly similar position, it is orientated differently and as the appellant confirmed the walls and roof are entirely new. In any case, this does not appear to be an argument advanced any further by the appellant.

Material change of use

20. In assessing whether a change of use is materially different from the previous use it is the character, type and nature of the alleged use that should be evaluated. I have established that the pre-existing use of the land consisted of a mixed use of forestry and recreational purposes.
21. The appellant contended that the land is not used for residential purposes and that it is better described as holiday accommodation/leisure use. And, that is how the land has been used for 16 years and there has been no material change to the way in which the land is used.
22. They referred to the case of *Jennings Motors v SSE [1982] JPL 181* where it was established that where there had been some physical alteration to part of a site by the erection of a new building or the alteration of an existing building, that is one of the factors to be taken into account in considering whether there has taken place, in relation to the land, a change of so radical a nature as to constitute a "break in the planning history" or a "new planning history".
23. The appellant's evidence included a site plan and photographs of the pre-existing buildings on the land. The buildings in the photographs appear to be in a relatively dilapidated condition and the land around the buildings appears more natural. Whilst a toilet and small kitchen area are shown, there is no evidence to indicate that there was a bathroom or sleeping areas. Notwithstanding the appellant's assertion that they used the original buildings for sleeping, the evidence does not demonstrate that they constituted a dwelling or were indeed capable of being used for residential purposes. It seems more likely to me that they provided low key facilities for use by the appellant and his family when maintaining the land and visiting for recreational purposes.
24. By contrast, the works carried out by the appellant in around 2017 following flooding on the adjacent access road, effected a significant change to the character, and use of the land. From being primarily woodland, with some recreational use, the land was formalised with a dwelling erected and areas around developed to facilitate use for residential purposes, including

hardstanding areas and relatively extensive areas of paving and terracing enclosed by domestic type fencing. I consider that taken together, all of this resulted in a clear and considerable change in the character of the use made of the land.

25. If you occupy land as your residence, whether on a short term or holiday basis, then your residential use of that land can embrace any activity relating to that residence, such as recreational use of sitting out areas and the woodland. The surrounding land is used in association with and clearly has a relationship with the dwelling and as such can be described as residential.
26. Consequently, I find that a material change of use to a mixed use comprising residential and forestry use has taken place. I find that this material change in the use of the land amounted to development in the terms of s.55 of the Act, such that it required a grant of planning permission. No such planning permission was sought or granted.
27. Accordingly, the appellant has failed to demonstrate on the balance of probabilities that as a matter of fact the breaches, as alleged, have not occurred. The ground (b) appeal therefore fails.

The appeal on ground (d)

28. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
29. To succeed on this ground, the appellant must prove on the balance of probability that the dwelling was erected on or before 2 March 2016 and the use of the land changed to use for a mixed use of residential and forestry purposes on or before 2 March 2010 and, that this use then continued for at least 10 years after the change without significant interruption.
30. It is evident from the appellant's response to the PCN that the dwelling was substantially completed in or around June 2017 and consequently, the operational development and associated material change of use took place after the material dates. As such, the appellant's ground (d) claim in respect of both the operational development and material change of use cannot succeed.

The appeal on ground (a) and the deemed planning application

31. The main issues are whether the location is a suitable site for the development having regard to development plan policies in respect of the provision of housing and the effect of the development on the character and appearance of the area.
32. The appeal site is located in a countryside location within the Peak District National Park. The National Planning Policy Framework (the Framework) requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues.
33. The site is located within the Dark Peak Western Fringe as set out in the Peak District Landscape Character Assessment July 2009. This landscape as stated in the assessment comprises the sloping and lower lying landscapes of the Goyt, Etherow and Tame Valleys. The upper slopes of the landscape are settled with

- occasional dispersed gritstone farmsteads with pasturing and lower lying valleys adjoining floodplains in the valley bottom.
34. Policy HC1 of the Core Strategy¹ states that provision will not be made for housing solely to meet open market demand and goes on to set out the exceptional circumstances under which new housing in the National Park will be permitted, none of which are relevant to the appeal development. Consequently, the development is contrary to Policy HC1.
35. The appeal site consists of a relatively modest size area of woodland accessed from a private lane, off the A624, which serves Heyburn Farm and Heys Meadow Farm. The site is located between these properties with Heyburn Farm being situated around 95m broadly west of the site and Heys Meadow Farm around 35m broadly east of the site. This cluster of buildings is set away from but visible from the A624 which appeared at the time of my visit to be a relatively busy road.
36. The dwelling is constructed from dark coloured timber under a metal roof. I observed at my visit that it can be seen in views from Monks Road which is located broadly north of the site and from the A624 which runs broadly east of the site. However, such views from both Monks Road and the A624 would be relatively distant and limited to passing glimpses. Whilst the dwelling would be visible in some limited views to users of a public right of way, located broadly north east of the site, such views would be similarly distant.
37. Given the distances concerned and as the trees and surrounding walls provide screening, the dwelling does not have a prominent appearance in such views. Whilst in winter it would be more visible, given its simple form, timber construction and location between and proximity to neighbouring properties, including a farmstead, I find that it does not appear isolated or have an incongruous appearance.
38. Therefore, for the reasons given, I find that the dwelling causes no material landscape harm and there is no conflict with the design and landscape protection aims of Policies DMC1, DMC3 and DMC13 of the DMP² or Policies GSP2, GSP3 and L1 of the Core Strategy. There is also no conflict with the landscape protection aims of the Framework.
39. In support of their case the appellant referred to Policy RT3 of the Core Strategy and Policy DMR1 of the DMP.
40. Policy RT3 relates to proposals for caravans and camping sites and sets out the principles with which any proposal must conform. The development is not a touring caravan or camping site. However, the appellant referred to the supporting text which states that *There may be some locations where, through the use of effective design and landscaping, small, simple timber structures may be acceptable as replacements for existing static caravans where this would result in enhancement.* The appeal development is a dwelling and is not a replacement of an existing static caravan, as such it does not accord with this policy or the explanatory text and consequently, it does not weigh in favour of the development.

¹ Peak District National Park Local Development Framework Core Strategy Development Plan Document – Adopted October 2011

² Development Management Policies Part 2 of the Local Plan for the Peak District National Park Adopted May 2019

41. The appellant stated that this exception has been applied to permit small timber pods and shepherds huts on sites, which were named, across the National Park. However, I do not know the circumstances of such developments being permitted and cannot be certain that the circumstances are comparable. Consequently, this is a matter of little weight in my assessment.
42. Policy DMR1 of the DMP relates to touring camping and caravan sites. DMR1 c. states that *Exceptionally, the development of structures may be permitted where these are small, simple, wooden pod structures in woodland locations with minimal landscape impact, or a single shepherd's hut where this can be located close to the facilities of a farmstead without harm to the natural or historic landscape.*
43. The explanatory text to the policy at paragraph 5.20 refers to alternative forms of accommodation such as camping pods, yurts, shepherd's huts etc. However, the policy itself is not prescriptive in terms of describing precisely what constitutes a wooden pod structure.
44. The explanatory text states that touring camping and caravanning are historically the most popular type of visitor accommodation. It seems to me that the policy recognises the importance of such sites but that read fairly and objectively, it relates to visitor accommodation. In my view it is not intended to support the erection of dwellings for personal use by individuals for holiday or recreational purposes.
45. In this case there is no evidence to indicate that the dwelling is used or intended to be used as a form of visitor accommodation. Indeed, it is evident that the dwelling is used by the appellant and his family who live only around 1.9 miles away from the site.
46. Consequently, notwithstanding that I have found favour with the appellant's argument in respect of the landscape impact of the development, the development constitutes the erection of a dwelling in the countryside for which no exceptional circumstances exist. Accordingly, the development is contrary to Policy HC1 of the Core Strategy which is a fundamental breach of a key development plan policy and therefore conflicts with the development plan taken as a whole.
47. The Authority referred to Policies HC2 of the Core Strategy and Policies DMH1 and DMH4 of the DMP however, the development is not an affordable dwelling nor is it used for a key worker in agriculture, forestry or another rural enterprise consequently, these policies are not directly relevant and do not advance the Authority's case. Policy DS1 sets out the Authority's development strategy including what type of developments would be acceptable in principle. The Authority also referred to Policy DMC4 of the DMP which relates to settlement limits. However, in the absence of substantive explanation I consider neither policy is directly relevant and weighs neither for nor against the development.
48. Having regard to all matters raised, I conclude that the appeal on ground (a) should not succeed.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR