



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Appeal Ref: APP/J1860/C/20/3260729

Six Acres Barn, Sutton, Worcestershire WR15 8RN

- 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 Robinson, Simply Stoves, against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 11 September 2020.
- The breach of planning control as alleged in the notice is;
Non-compliance with condition 5 imposed on approved planning application 13/000628/FUL (Temporary residential structure as permanent dwelling and erection of barn).

Condition 5 states:

The occupation of the dwelling shall be limited to a person solely or mainly working or last working in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990 or forestry or a dependant of such a person residing with him/her (but including a widow or widower of such a person).

Reason: The proposed dwelling would be situated in open countryside, outside any defined settlement boundary where there is a general presumption against new residential development. The proposed dwelling is justified on an exceptional basis on the basis of the agricultural case submitted in accordance with guidance contained in PPS7 "Sustainable Development in Rural Areas", Policies DS3, DS14, and CN4 of Malvern Hills District Local Plan and Policies CTC21, D10 and D16 of Worcestershire County Structure Plan.

- The requirements of the notice are to comply with condition 5 of planning permission ref.13/00628/FUL approved on 4th November 2013.
Any person(s) occupying the dwelling who do not satisfy the requirements of condition 5 shall not reside at the dwelling known as Six Acres Barn.
Ensure that the occupation of the dwelling is limited to a person solely or mainly working or last working in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990 or forestry or a dependant of such a person residing with him/her (but including a widow or widower of such a person).
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (e), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (e)

1. Ground (e) is concerned with whether the enforcement notice was properly served as required by s172(2) of the 1990 Act. This provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the

land, being an interest, which, in the opinion of the authority, is materially affected by the notice. The appellant maintains that whilst he received a copy of the notice, his partner did not. In a ground (e) appeal the burden of proof is firmly on the appellant and the test is the balance of probability.

2. In an email dated 8 October 2020 the Council confirm that the enforcement notice was served on those with an interest in the land as registered at H.M. Land Registry. The official copies of the title show only Mr P. Robinson (at a different address) as the owner and a company named Harpmanor Limited as a charge holder. A copy of the Notice was served on both parties. In addition to this a copy of the Notice was also served on 'The Occupier' at Six Acres Barn, Sutton, Worcestershire, WR15 8RN.
3. Effective service in compliance with s172(2)(a) can take place by addressing a copy of the Notice to 'the occupier' without specifying a name and by leaving it at or sending it to the premises, as provided by s329(2) of the Act.
4. Whilst I accept that service of the Notice at the property was not specifically addressed to the appellant's partner, a Notice was served on the occupier of the premises. Thus, the requirements of s329(2) were met.
5. That being so the appeal on ground (e) fails.

The appeal on grounds (b) and (c)

6. I consider these grounds of appeal together as there is some overlap between them. Under ground (b) the onus of proof falls on the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. Under ground (c) that those matters (if they did occur) do not constitute a breach of planning control. The burden of proof falls on the appellant and the test of the evidence is on the balance of probability.
7. The appeal concerns the alleged non-compliance with condition 5 imposed on planning permission for a 'Temporary residential structure as permanent dwelling and erection of barn.'¹ (hereafter referred to as the '2013 permission').
8. The planning history of the site includes planning permission granted for a 'Proposed replacement of present dwelling with permanent dwelling house.'² (hereafter referred to as the '2020 permission'). The agricultural occupancy condition subject of the Notice was re-imposed on the 2020 permission.
9. During the determination of the 2020 permission, the Council raised concerns regarding the 'possible' breach of the 2013 agricultural occupancy condition. The appellant confirmed to the Council in an email³ that his circumstances had materially changed due to a number of reasons namely, the Coronavirus pandemic, the health of his partner, market conditions and associated changes in the appellant's occupation. Whilst I have been provided with no specific information, the appellant states that he carries out contract work in the locality which includes both non-agricultural and agricultural work as well as work on the holding.
10. As well as limiting the occupation of the dwelling to a person solely or mainly working in agriculture, the planning condition on the 2013 permission includes

¹ Planning permission Ref: 13/000628/FUL granted on 4 November 2013.

² Planning Permission Ref: 20/00148/FUL granted on 12 August 2020.

³ Email dated 21 May 2020.

those persons 'last working in the locality in agriculture'. In further email⁴ correspondence to the Council the appellant argues that prior to ill health, his partner was fully employed in agricultural activities on the holding. The appellant also suggested to the Council an amendment to the condition to include 'persons occupied on the holding in association with the stove and solid fuel showroom business as approved under planning permission'⁵.

11. Whilst, the Council argue that none of these suggested options were pursued by the appellant, it has provided no evidence as to why they consider the appellant is in breach of the 2013 agricultural occupancy condition as alleged in the notice.
12. Whilst the burden of proof is on the appellant to make his case and the evidence submitted by both parties is quite limited, the appellant is well placed to know the nature of his work. The Council's limited submissions do not, in any event, directly contradict that of the appellant. Neither is there any other evidence that throws doubt upon the appellant's explanation or render it less than probable.
13. Having regard to all the submitted evidence, I am not satisfied that on the balance of probability, that there has been non-compliance with condition 5 imposed on approved planning application 13/000628/FUL as alleged in the Notice. It follows that, on the balance of probability a breach of planning control has also not occurred.

Conclusion

14. For the reasons given above, I conclude that the appeal should succeed on grounds (b) and (c). The enforcement notice will be quashed.
15. In these circumstances, that appeal on ground (g) does not fall to be considered.

Formal Decision

16. The appeal is allowed and the enforcement notice is quashed.

Elizabeth Jones

INSPECTOR

⁴ Email dated 5 June 2020 and 6 August 2020.

⁵ Planning permission Ref: 11/00715/FUL.