



Appeal Decisions

Site visit made on 14 January 2021

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 25 March 2021

Appeal Refs: APP/D1265/C/20/3259686 & 3259687

Higher Holnest Farm, Holnest, near Sherborne, Dorset DT9 6HA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Leslie J & Mrs Sally F Gould respectively against an enforcement notice (the Notice) issued by Dorset Council.
 - The enforcement notice was issued on 18 August 2020.
 - The breach of planning control as alleged in the Notice is, on parts of the Land which partly fall within the residential curtilage of Higher Holnest Farmhouse and partly on the adjacent agricultural land, the erection of a timber-built single-storey residential dwelling (the Building), and the increase in the size of the concrete pad on which the Building sits, shown in the approximate position outlined in black and filled in yellow on the attached Plan A.
 - The requirements of the Notice are:
 - (i) Cease the use of the building as a residential dwelling.
 - (ii) Remove the timber-built, single storey dwelling from the Land.
 - (iii) Reduce the concrete pad that the dwelling sits on to its former size of 12.1x3.6m
 - (iv) Remove from the Land all building materials and rubble arising from compliance with requirement (ii) and (iii) above, and restore the Land to its condition before the breach took place by levelling the ground and re-seeding it with grass of a similar type which exists on the Land.
 - The period for compliance with the requirements is 12 months from the date the Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are 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.

Reasons

Ground (c)

2. Ground (c) is that the matters set out in the Notice do not constitute a breach of planning control. The burden to make this out rests with the appellants, on the balance of probability. This ground is argued on the basis that the Building, which is referred to as a log cabin in the appellant's appeal statement, benefits from permitted development under Schedule 2, Part 4, Class A of the GPDO¹ (temporary buildings and uses). The appellants argue that it is a caravan,

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

essentially because it is not comprised of more than two sections, which could be unbolted and removed from the site in two halves.

3. The statement presented by the appellants paraphrases the legislation concerning the meaning of a caravan.² In short, the definition of a caravan is any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. The structure can comprise not more than two sections designed to be assembled on site, which is physically capable when assembled of being moved by road from one place to another, provided the structure does not exceed specified dimensions.
4. There is no dispute that the Building falls within the specified dimensions of a caravan, nor is there any dispute that it is being lived in by Mark Gould (the appellants' son), his wife and three daughters. However, the Council queries the well-established tests regarding its construction and mobility. The tests in the legislation are acknowledged both in the Gravesend decision³ cited by the Council and in the Teddington decision⁴ cited by the appellants.
5. I have carefully looked at the evidence submitted by both parties. Although I acknowledge that the appellants say the Building was transported to the site via a lorry with a trailer, the photographs they provide do not show the building being delivered to the site in two sections, merely two other unrelated buildings on two lorries in some unrelated distant car park.⁵
6. I prefer the Council's evidence; Appendices S and T of its appeal statement show photos from 12 September 2016 during the construction of the Building and photos from 8 June 2018 of its constructed state (as at present) respectively. It appears from the former photos that the Building was erected as one unit with the aid of scaffolding. The Council claims that Mark Gould told a member of the Council's staff at the site visit on 8 June 2018 that it had taken four weeks for the New Forest Log Cabins Ltd's contractors to build it and that they had stayed in the relocated old mobile home (see below) on and off during this construction period. I note the appellants do not contradict this statement. The photos from that date show the finished timber-clad Building. It was clearly not a finished mobile home brought to the site in two halves and simply bolted together. It required a building construction operation.
7. In terms of the mobility test I acknowledge that the Building sits on an enlarged concrete pad and is not physically attached to the ground by its own foundations. But it is a large structure (about 20m by 6.5m with a twin pitched roof) and, as in the Gravesend appeal decision building, its own size and weight would render it immobile. More fundamentally, it is not capable now when assembled (my emphasis since this is the test in the legislation) – even if it was delivered to the site in two sections and bolted together – of being picked up by a crane and moved off site by a lorry. I agree with the Council's Engineering team that any attempt to do so would result in its breakage or disintegration.
8. The Building fails both the construction and mobility tests and is not therefore a caravan. It is a building whose erection constitutes operational development

² Caravan Sites and Control of Development Act 1960 & Caravan Sites Act 1968 (both as amended)

³ LPA Statement Appendix M

⁴ Appellants' Statement Appendix 8

⁵ Ibid Appendix 7

- within the meaning of Section 55 of the 1990 Act for which no planning permission has been granted.
9. The appellants argue that the Building is within the curtilage of the Grade II listed Farmhouse and is temporary in that it is only required in order to carry out the refurbishment/rebuild works, the subject of the implemented planning and listed building consents granted in 2012, and that it is a building incidental to the enjoyment of that dwellinghouse. However, even if it was stationed entirely within the residential curtilage/garden of the Farmhouse, Schedule 2, Part 1, Class E.1(g) (buildings etc incidental to the enjoyment of a dwellinghouse) states that any such building is not permitted development if it is situated within the curtilage of a listed building.
 10. Additionally, the Building cannot be incidental to the enjoyment of the Farmhouse because that has been uninhabited since the 1990s. It cannot be incidental to a use that currently is not taking place, notwithstanding that such a use has not been abandoned. The Building is a separate dwelling encompassing all its own facilities and so is, in any case, clearly not incidental to any other dwelling.
 11. The Notice concerns both operational development and a material change of use. The Council consider the material change of use, without the benefit of planning permission, to be the southern part of the land on which the Building is sited. This is the land to the south of the former fence line running from the adjacent agricultural building immediately to the north west and linking to the continuation of the access road to the east leading to Sunnymead Farm, as shown on the aerial photo from 2002⁶. The appellant claims that this land, originally agricultural land, was formerly occupied by the previous mobile home.
 12. Schedule 2, Part 4, Class A of the GPDO states "*The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, or under or over that land or on land adjoining that land*" is permitted development. But I agree with the Council that the deemed consent only applies for the actual physical siting of a temporary building or structure. It does not confer any residential use of those temporary buildings or structures.
 13. The Council agrees that the mobile home was situated on this southerly land from 2005 until its removal in August 2016 – as shown in the aerial photos of 2005, 2009 and 2014/15⁷ – and its replacement the following month with the new Building.
 14. It says that Les Gould claimed in 2007 that the mobile home was simply there for the duration of the renovation works required on the Farmhouse and that it benefited from permitted development under Schedule 2, Part 5 of the 1995 GPDO⁸ (Caravan Sites) and that no indication was given that this was for permanent residential use. The appellant does not dispute that. This granted permitted development for the use of land as a caravan site subject to the condition that the use should be discontinued following the cessation of building and engineering operations on the Farmhouse (which in the event

⁶ LPA Statement Appendix U

⁷ Ibid Appendices V, W & X

⁸ The Town and Country Planning (General Permitted Development) Order 1995

never actually occurred during this period). The use was discontinued when the caravan was removed in 2016 simply because the new Building, for the reasons explained above, is not a caravan.

15. Hence the presence of the previous mobile home on this agricultural land, despite its presence there for more than 10 years, is irrelevant. That is because the Building the subject of the Notice creates a new chapter in the use of this agricultural land. Its part location on the agricultural land is the reason why the Notice is correct in referring to a material change of use, because the use of that land for residential purposes is unlawful.
16. The appellants do not dispute that the extension of the concrete pad to accommodate the size of the new Building, which was laid on 10 August 2016, is a building or engineering operation comprising development under Section 55 of the 1990 Act.
17. For these reasons the Building constitutes a breach of planning control, and the appeals on ground (c) therefore fail.

Ground (d)

18. Ground (d) is that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Again, the onus is upon the appellants to demonstrate, on the balance of probability, that the development took place outside the relevant time limits for taking enforcement action.
19. I have already explained above why the presence of the former (and much smaller) mobile home on the site is irrelevant despite being there for more than 10 years itself.
20. The Notice addresses the extension in size of the concrete pad to accommodate the size of the new Building. The appellants argue that this pad was laid on 10 August 2016, eight days before the Notice was served and that as operational development it had already existed for more than 4 years and is therefore immune from enforcement action.
21. However, it was only laid to specifically accommodate the size of the Building erected on the site. Consequently, I agree with the Council that it formed part of the overall building operations to erect and install the new Building. The Building was completed in December 2016 and occupied, as stated in the Planning Contravention Notice, by Mark Gould and his family on 1 January 2017. That is less than 4 years prior to the date the Notice was served.
22. For these reasons the appeals on ground (d) fail.

Ground (a)

23. Ground (a) is that planning permission ought to be granted for the Building. The appellants do not dispute that the appeal site lies in the open countryside outside the defined development boundary of any settlement. No case has been made that it is required to house a farm worker on site and in this context I note that there are already two other buildings on the site occupied by farmworkers – Cloverdale occupied by the appellants themselves and Sumacs by another worker on the farm, the former having an agricultural occupancy condition.

24. The appellants' case is essentially that the Building is only required for a temporary period – they ask for 5 years – in order to give the wider family the time to complete the work to refurbish the listed Farmhouse so that Mark Gould and his family can move into it, following which the Building would be removed.
25. I appreciate the wider family circumstances, particularly the fact that Mark Gould now runs the livestock/dairy farm and has moved into the Building following a significant drop in milk prices in recent years that obliged the farm business to sell off part of the holding to the north including a house that he and his family previously lived in.
26. I also acknowledge the need, as rightly encouraged by the Council, for the listed Farmhouse to have the works the subject of the 2012 planning permission and listed building consent completed as soon as possible in order to ensure its long term preservation by allowing its viable use as a dwellinghouse to re-commence.
27. But beyond simply making the Farmhouse watertight by repairing its roof and walls and removing its former rear extension sufficient to implement the planning permission, little work has been done to it – and a significant amount of work remains to be done. Furthermore, no schedule of works to complete the Farmhouse's refurbishment and its re-establishment as a dwelling or any timetable for such has been produced by the appellants, let alone agreed with the Council.
28. I note that these issues were also considered in the Gloucestershire appeal cited by the Council⁹ (which has many similarities with this appeal), although there was actually a timetable for the works to the listed building in that case and the Notice related to a caravan rather than a separate dwelling; nonetheless, that appeal was still dismissed.
29. No estimates or quotes from builders for the costs of the works have been tendered in the appellants' documentation. It is unclear where the finances for such building works would come from; for instance, no details of any bank loan or alternative source of financing has been put to me. I appreciate that maybe Mark Gould may wish to carry out some of the works himself, but it appears that this is unlikely to happen given his full-time role managing the farm. In any event, the works required are substantial and will require a builder with expertise in repairing and refurbishing listed buildings, as also pointed out by the Inspector in the above Gloucestershire appeal.
30. The reason for the siting of the previous mobile home on the site was also given as enabling the refurbishment of the Farmhouse. I appreciate that there have been financial difficulties at the farm and other difficulties that prevented this happening. But nothing has been said or provided by the appellants that convince me that the refurbishment works to the Farmhouse would be carried out if I was to give temporary planning permission for the Building.
31. I appreciate that the Building could be disassembled in the same way in which it was assembled. But it is a building, for the reasons explained above. To give planning permission for such a dwelling would be exceptional, unusual and unjustified.

⁹ LPA Statement Appendix DD

32. The Notice in any case provides for a 12-month compliance period. That gives 12 months from my decision for the wider family to secure the funds, appoint a builder and complete the refurbishment works to the Farmhouse, assuming I dismiss the appeal. Even if the family has not completed the refurbishment but has made a concerted start on it within this 12-month period, it could request the Council under Section 173A(1)(b) of the 1990 Act to extend the compliance period of the Notice.
33. For these reasons granting planning permission for the Building, a self-contained dwelling, would be contrary to Policy SUS2 (Distribution of Development) of the West Dorset, Weymouth & Portland Local Plan 2015 (LP); it would be a dwelling outside a defined settlement boundary for which no justified reason has been given to except it from the general policy of restraint for such proposals.
34. It is contrary to LP Policy HOUS6, specifically subsection iv) because no case has been demonstrated that there is an essential need for another agricultural worker's dwelling on this farm holding. For the same reasons as above, it is also contrary to paragraphs 8c, 12, 47, 58 and 79 of the National Planning Policy Framework (NPPF).
35. The Building also lies partly within the curtilage and certainly within the setting of the listed Farmhouse. I acknowledge that the Farmhouse's setting is more dominated by the nearest agricultural shed and indeed the larger sheds behind it and the farmyard to the north west. But it is still a large structure within 30m of the Farmhouse itself. It can be clearly seen from the Farmhouse despite the intervening vegetation.
36. Its presence detracts from the setting of the listed building, albeit this setting is already compromised to some degree by the existing farm buildings. The Building detracts from the significance of the listed Farmhouse, although this harm is clearly 'less than substantial' in terms of paragraph 196 of the NPPF and also at the lower end of the spectrum of such harm. Nonetheless, there are insufficient public benefits from retaining the building in this location even for a limited period beyond the 12-month compliance period in the Notice to justify such harm.
37. Consequently, its retention, even for a temporary period, would fail to comply with LP Policy ENV4, which mirrors the requirement in Section 16 of the NPPF to ensure any harm to listed buildings is clearly and convincingly justified.
38. For these reasons the appeal on ground (a) fails.

Conclusion

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

Nick Fagan

INSPECTOR