



Appeal Decisions

Site visit made on 14 April 2021

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 June 2021

Appeal A Ref: APP/W1850/C/20/3265993

Appeal B Ref: APP/W1850/C/20/3265994

**Land lying north of Little Kiln House, Little Doward, Whitchurch,
Ross-on-Wye HR9 6DT**

- 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 Paul Hughes (Appeal A) and Mrs M Hughes (Appeal B) against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN/2020/003144/ZZ, was issued on 25 November 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission the unauthorised material change of use of the Land from agricultural to mixed use for agriculture and to site a caravan marked with an "X" on the attached plan for residential purposes and the use of part of the building marked with a "Y" (on) the attached plan for residential purposes ancillary to the siting of the caravan.*
 - The requirements of the notice are: (1) *Cease the residential use of the unauthorised caravan in the approximate location marked "X" and cease the residential use of the ancillary building marked "Y" on the attached plan on the Land.* (2) *Remove the unauthorised caravan in the approximate location marked "X" on the attached plan from the Land.*
 - The period for compliance with the requirements is: (1) 180 days (2) 240 days.
 - Appeal A - the appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - Appeal B is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
-

Decisions

1. It is directed that:

1. The enforcement notice be corrected by substituting "171B(4)(b)" with "171A(1)(a)"; and
 2. The enforcement notice be varied by the deletion of "(1) 180 days (2) 240 days" and the substitution of "(1) twelve months (2) fourteen months" as the period for compliance.
2. Subject to this correction and variation, 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

3. The notice alleges a breach of planning control “within paragraph 171B(4)(b)” of the 1990 Act. However, this section of the 1990 Act does not deal with the meaning of a breach of planning control. Rather, it clarifies the circumstances under which an enforcement notice may be issued where the local planning authority has previously taken or purported to have taken enforcement action.
4. The breach of planning control in this case is alleged to be a material change of use of the land, and therefore the breach is one within section 171A(1)(a) of the 1990 Act.
5. I have a duty to get the notice in order if I am able to do so. The appellant is clear as to what it is that the Council has alleged, and therefore no-one would be prejudiced by my correcting the notice accordingly.

Appeal B - Ground (a) and the deemed planning application

Main Issue

6. This is whether the site is in a suitable location for residential use having regard to the development plan policies.

Reasons

7. The appeal site is, as described by the Council, an existing agricultural smallholding in the hamlet of Little Doward, Whitchurch sited within The Wye Valley Area of Outstanding Natural Beauty (the AONB).
8. The appellant’s accommodation comprises a touring caravan positioned within a shed-like structure and a room accommodated within an attached building of basic construction. The room provides additional living accommodation for the appellants, containing furniture and providing space for domestic storage. These structures are positioned along the western site boundary, which is adjacent to the public highway and defined by a mature hedgerow. There are further buildings on the land which are used for storage¹, and livestock purposes. The appellants have created a small garden and a parking area close to where the caravan is sited. I am informed² that the appellants have occupied the site continuously for the past 9 ½ years.
9. The Council states in its reasons for issuing the notice that the continued siting of a caravan for residential purposes in this specific rural location, and in the absence of any evidence demonstrating that there is an essential functional need for the caravan, represents an unjustified and unsustainable form of residential development. This is claimed to be contrary to Policy RA3 – (Herefordshire’s countryside) of the Herefordshire Local Plan Core Strategy 2011 - 2031 (the CS). No additional policies are provided to support the Council’s case.
10. Policy RA3 of the CS aims to restrict unsustainable patterns of development in rural areas outside of settlements, strictly limiting proposals to those which meet the criteria listed within the policy. There is agreement between the parties that the site is not within a defined settlement and is within the open

¹ For both domestic and agricultural purposes

² The appellants’ appeal statement and the appeal decision APP/W1850/X/3250401 for the stationing of a single residential caravan

countryside, although the appellant considers the site to not be classified as isolated. At my site visit I noted that although the site is situated amongst a few other dwellings, which are dotted along the narrow country lanes, it is mostly surrounded by rolling countryside. As a matter of fact and planning judgment, I do consider it to be an 'isolated location' and the exceptions set out in Paragraph 79 of the National Planning Policy Framework (the Framework) are applicable. Nevertheless, to support her case, examples of additional policies have been provided which are considered most relevant to the case. I will address these in the following paragraphs.

11. Policy SS1 of the CS provides that the Council should take a positive approach to sustainable development by approving proposals that accord with the policies contained within the CS unless material considerations indicate otherwise. Policy RA5 of the CS and Policy WG11 of the Whitchurch and Ganarew Neighbourhood Development Plan 2011 - 2031 (NDP) support the re-use of redundant rural buildings. However, it was evident at my site visit that the buildings are neither redundant or of permanent and substantial construction that would enable conversion without major or complete reconstruction, which is a requirement of Policy RA5.
12. Furthermore, although Policy WG11 supports the re-use of rural buildings, it specifies those buildings should "enable rural business or enterprise, including live/work units". Unfortunately, I have not been provided with the necessary information to consider whether or not the small holding is a business which justifies associated residential accommodation on site. Notwithstanding this, the appellant confirms that the development does not conform to any of the exceptions set out under Policy RA3, which includes the need for residential development to meet a need for a worker to live at or near their place of work, or is necessary to the establishment or growth of a rural enterprise.
13. The appellant considers that given the location of her employment in nearby Monmouth, reliance upon the use of the private car would be no greater than if they were to reside elsewhere. Although this is unsubstantiated, the use of the private car is only one factor which determines whether a location is deemed 'unsustainable'. The concept of sustainability is based upon a range of social, economic and environmental factors which includes the presence of employment, market and affordable housing, facilities and services as well as access to sustainable transport. From my observations, the site is situated a distance from facilities and local services, and I find that the site's location would contribute to an unsustainable pattern of development.
14. Planning law requires that applications for planning permission (or in this case, appeals) be determined in accordance with the development plan, unless material considerations indicate otherwise³. Overall, and even in the absence of any stated objection to the mixed use of the land in terms of landscape, highway or residential amenity, the development fails to satisfy the requirements of Policies RA3 and RA5 of the CS and Policies WG2 and WG11 of the NDP. In this respect there would also be conflict with Policy SS1 of the CS. Amongst other things, the development plan policies collectively seek to strictly control residential development in the countryside, maintain and strengthen locally sustainable communities across the rural parts of Herefordshire and prevent unsustainable patterns of development. Overall, the development

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

would be contrary to the development plan as a whole and the Framework which seeks to avoid the development of isolated homes in the countryside.

Other considerations

15. I acknowledge that there are a number of comments in support of the appellants and the development from local residents indicating that, amongst other things, the character of the site has been improved by the development and that the minor scale of the residential use is of limited overall consequence. However, these supportive comments are not unanimous and neither do they alter my views on the main issue.
16. The appellant argues that the Council has a “persistent and serious shortfall” in deliverable housing sites. As such, and in line with the provisions of paragraph 11(d) the policies most important for determining the application are out-of-date. Consequently, because of the provisions of footnote 7, paragraph 11 d) ii. of the Framework should be applied. This is that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.
17. The countryside is not protected for its own sake by the Framework, but its intrinsic character and beauty is recognised. This also indicates that isolated homes in the countryside such as the proposal should be avoided. Development in rural areas is not precluded but the Framework indicates that great weight should be given to the benefits of using suitable sites within settlements for homes and therefore supports the general thrust of the development plan in terms of the location of housing.
18. The additional dwelling in this context would be of very limited benefit. The adverse impacts derived from conflict with the spatial strategy for the pattern of development that I have identified would be at a level that would significantly and demonstrably outweigh the benefits. As such, the presumption in favour of sustainable development at Paragraph 11 of the Framework does not apply and therefore the deemed application should be determined in accordance with the development plan.
19. My attention has been drawn to the personal circumstances of the appellant and her husband and the length of time they have been present on the appeal site. I note the appellant suggests in view of the current pandemic crisis and her husband’s vulnerability, that a continued occupation of the site for a further 3 years would enable alternative accommodation to be found. However, a temporary permission would perpetuate an unsustainable form of development in this location. Whilst a case has been made in respect of personal circumstances, the information presented does not carry sufficient weight to outweigh the conflict with the development plan policies or national guidance.

Conclusion on Ground (a)

20. For the reasons given above, I therefore conclude that allowing the continued residential use of the site either on a permanent or temporary basis would not be acceptable. The development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. The appeal on ground (a) should not succeed and the deemed planning application under s177(1) of the 1990 Act should be refused.

Appeals A and B – Ground (f)

21. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control⁴ or to remedy injury to amenity⁵. In this regard the notice requires the residential use of the caravan and the ancillary building to cease and for the caravan to be removed from the land. The purpose of the notice is to remedy the breach of planning control.
22. The ground (f) appeal is made upon the basis that the notice could have required the appellants to cease the residential use of the land after a further 3 years. This matter has been addressed in relation to the ground (a) appeal above. In this case, to allow the residential occupation of the land would fail to achieve the objectives of the notice to address the breach of planning control.
23. For these reasons the ground (f) appeal fails.

Appeals A and B – Ground (g)

24. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The Council is of the opinion that 180 days to cease the residential use, and 240 days to remove the caravan is a sufficient period of time in which to achieve compliance with the terms of the notice.
25. The appellant has expressed that there is a need for the accommodation for a further 3 years and that leaving the site would cause personal hardship. In addition to the pandemic and financial restraints I understand that the current situation has also had a negative effect on Mr Hughes health and that he is classed as 'vulnerable'. In such circumstances, finding alternative accommodation which would entail visiting properties could increase the risk of being exposed to Coronavirus.
26. In itself, 180 days (approximately 6 months) is not an unreasonable period of time in which to look for alternative accommodation in normal circumstances. However, I have taken account of the appellants' personal circumstances and I sympathise with their position. In these uncertain times, I consider extending the compliance periods to 12 months to cease the residential use of the Land and 14 months to remove the caravan from the Land should be an adequate period for complying fully with the requirements of the notice. In the absence of further information to support the appellants' position regarding financial restraints and personal health, I consider this extended period to be reasonable.
27. I shall vary the notice to that effect and the appeal on ground (g) succeeds.

S A Hanson

INSPECTOR

⁴ s173(4)(a)

⁵ s173(4)(b)