



Appeal Decisions

Site visit made on 11 August 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2021

Appeal A Ref: APP/Y3940/C/20/3247225

Land at Follywood Farm, Brinkworth Road, Royal Wootton Bassett, Wiltshire SN4 8DT

- 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 Jeremy Taylor against an enforcement notice issued by Wiltshire Council.
- The enforcement notice was issued on 14 January 2020.
- The breach of planning control as alleged in the notice:
Breach of Condition 1 of the planning permission referenced N/09/01452/FUL shown in the attached document entitled "Notification of Planning Decision" dated 29th of January 2010.

On the 29th of January 2010 planning permission was granted under planning permission reference N/09/01452/FUL for the "Siting of Mobile Home as Temporary Accommodation for Essential Worker and Change of Use of Agricultural Land and Buildings to Equestrian Use for Stud Farm and Training Liveries".

Condition 1 of this permission states:

The building hereby permitted shall be removed and the use hereby permitted shall be discontinued and the land restored to its former condition on or before 30th of January 2013 in accordance with the scheme of work submitted to and approved in writing by the local planning authority.

- The requirements of the notice are:
As owner of "The Land" you are required to ensure that the condition 1 referred to in paragraph 3 above is complied with by:
 - 1) *Cease the residential occupation of "The Land".*
 - 2) *Remove the mobile home from "The Land" (as identified as being cross hatched on the attached plan).*
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/Y3940/X/19/3243397

Follywood, Brinkworth Road, Royal Wootton Bassett, Swindon SN4 8DT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Jeremy Taylor against the decision of Wiltshire Council.
- The application Ref 19/06418/CLE, dated 4 July 2019, was refused by notice dated 27 November 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is use of existing structure as self-contained dwellinghouse (Class C3).

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of the words "As owner of the Land" in the requirements of the notice. Subject to the variation, 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.

Appeal B

2. The appeal is dismissed.

Appeal A – the enforcement notice

Procedural matter

3. I have a duty to get the notice in order, if I can do so without prejudice to any of the parties. The requirements of the notice are directed solely at the owner of the land, when s.179 of the Act provides that an enforcement notice has a wider effect, and can be enforced against the owner and a person who has control of or an interest in the land to which the notice relates (other than the owner). I shall therefore vary the wording of the requirements to delete reference to the owner; as there is no suggestion that those with an interest in the land have not been served with a copy of the notice, I consider that no-one would be prejudiced by my varying the notice.

Appeal on ground (b) – that the matters alleged in the notice have not occurred

4. The appellant argues that a caravan was sited on the land in 2010 pursuant to the planning permission referred to in the notice. However, that caravan was removed in 2011 and replaced with a new structure (the one currently on site)
5. The appellant argues that a breach of condition has not occurred because the structure currently on the site is not a caravan, but is a building which falls outside of the definition of a caravan in the Caravan Sites and Control of Development Act 1960 and The Caravans Act 1968, and is not subject to the conditions imposed on the previous grant of planning permission.
6. The home complies with the technical dimensions for a twin-unit caravan as defined in s.13(2) of the 1968 Act. There is no dispute on this matter. In order to qualify as a caravan it also needs to comply with the criteria of s.13(1) of the Act, which says that a structure designed or adapted for human habitation which—
 - (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
 - (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and

Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

7. The appellant says that the annex was brought to the site and assembled in two parts, which were joined together, but the assembled structure is not now physically capable of being moved by road from one place to another.
8. The annex rests on a number of concrete blocks which have been placed under the edges of the home, and a skirt of wooden panels has been added to enclose the cavity under the home. Straw has been placed under the home.
9. There are three main tests, none of them being determinative on their own, which the Courts have consistently applied in distinguishing uses of land from building operations; they are size, degree of attachment to the land and permanence. In terms of size, I accept that a twin-unit home is of a size which could amount to a building, being not dissimilar to a large garage or small bungalow. In respect of the degree of attachment, the home largely rests on the concrete blocks by virtue of its own weight, which is considerable. The skirt surrounding the base is not a structural element and plays little role in terms of attachment to the land.
10. Linked with this test is that of permanence; the essence of being a caravan is that it is capable of being moved. The home was brought to the site in two parts and assembled to create the whole. There have been no changes made to the structure other than the towing bracket has been removed. The wheels remain, but the structure does not rely on them for support. I consider that the removal of the towing bracket is immaterial.
11. The appellant has submitted a structural engineer's opinion which confirms that in his view, the structure cannot be moved. However, this does not appear to be based on any structural calculations of loadings on any part of the structure, or if it is, no such evidence has been provided.
12. Even so, it seems to me that there is nothing in the innate physical composition of the structure that would prevent it from being moved when it was assembled. It was designed to be moved, and nothing has changed to its structural elements that would prevent it being moved again. If there has been weakening in the structural stability of the home since it was assembled as a result of age and natural deterioration, this would not bring it outside of the definition of a caravan, as the appropriate test is "when assembled" rather than its current state.
13. On the balance of probabilities, and as a matter of judgement, I consider that the home is capable of being moved, and falls within the definition of a caravan. Thus, the caravan has a limited degree of permanence, and notwithstanding that it has been in situ for some years, I consider that the caravan is not a building, and that its siting for residential purposes amounts to a material change in the use of the land. Accordingly the breach as described in the notice occurred, and the appeal on ground (b) fails.

Appeal on ground (a) – that planning permission should be granted

Main issues

14. The main issues are:

- a) whether there is a rural business need which justifies making an exception to policies which seek to limit residential development outside of settlement limits and in areas not served well by public transport, and
- b) the effect of the development on the character and appearance of the surrounding area.

Reasons

Need

15. The site lies amongst a small group of dwellings and other buildings to the west of the small hamlet of Ballards Ash. It lies outside of any settlement boundary limit as defined in the Wiltshire Core Strategy (CS), Policy CP2 of which says that other than in specified circumstances, development outside of settlement boundaries will not be permitted. One of the specified circumstances relates to supporting rural life, to which CS Policy CP48 applies. That says that proposals for residential development will be supported where these meet the accommodation needs required to enable workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside.
16. The policy also says that proposals for accommodation to meet the needs of employment essential to the countryside should be supported by functional and financial evidence. However, the financial test is no longer required by the National Planning Policy Framework, and to this extent the policy is not consistent with the Framework.
17. The mobile home is sited on the west side of a group of stable buildings which are used by the appellant as part of a commercial stabling business. In granting a temporary planning permission for a mobile home, the Council has previously accepted that there was a need for someone to live on the site to provide care for the horses. Since that time, the stables have remained in business, and at the time of my site visit, some 11 horses were stabled, with capacity for several more. I consider that it is necessary for someone to be on hand to provide care for the horses at all times, and the relatively remote position of the site gives rise to a security need which bolsters the main requirement for someone to be able to provide for the care and welfare of the horses. It seems to me that the circumstances in respect of need have not changed from the time of the previous approval.
18. The appellant's arguments were made on the basis that the proprietor of the stables occupied the mobile home and would continue to do so. However, the Council's undisputed evidence is that the mobile home is occupied by an employee. That in itself makes no difference to the question of the need, or whether that person could satisfy the need. However, the Council say that the proprietor lives in a dwelling known as Vale View, about 300m or so to the west of the site. Again, this is not disputed by the appellant. In my judgement, living in such close proximity to the site is sufficiently close to be on hand to provide any necessary care and welfare for the horses.
19. I accept that the dwelling is not within sight or sound of the stables, but it is close enough to allow regular checks to be made on the horses, and remote surveillance and alarms can alert the occupier of the dwelling to any matters

which might require her presence on site. I therefore consider that although there is a need for someone to be on hand at all times to care for the horses, that need can be met by the proprietor who lives nearby. I therefore find that there is insufficient justification for the continued siting of the mobile home, and that it would be contrary to Wiltshire Local Plan Policy CP2.

Character and appearance

20. The mobile home is screened from Brinkworth Road by mature hedging and it lies just to the west of much larger stable buildings. Whilst the mobile home can be glimpsed from the M4 motorway to the south, its position amongst other buildings ensures that it is not conspicuous. Nevertheless it contributes to the spread of development in the countryside, and thus I find that it has a small adverse impact on the character and appearance of the countryside, and that there is a degree of conflict with Policy CS Policies 51 and 57, which respectively deal with landscape and high-quality design and place shaping.

Other matters

21. The requirements of the notice engage with the occupier's right to respect for her family life and her home under Article 8, as well as the right to respect for property, under Article 1 of the First Protocol, which are Convention rights enshrined into UK law by the Human Rights Act 1998. I have not been told anything about the occupier's circumstances, and whether she would be made homeless as a result of having to comply with the enforcement notice. However, I have to consider that this is a real possibility.
22. The Convention rights in this case are not absolute, and interference may be justified in the public interest. In this case, the planning system exists to regulate the use of land in the public interest, and in doing so interferes with a landowner's rights. In this case, upholding national and local planning policy, and the importance of protecting the character and appearance of the countryside are matters of legitimate public interest.
23. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the occupier's and appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Conclusion on the ground (a) appeal

24. For the reasons given above, I conclude that the appeal on this ground must be dismissed. I shall uphold the notice subject to variation and refuse to grant planning permission for the deemed application made under section 177(5) of the 1990 Act as amended.

Overall conclusion

25. For the reasons given above, I conclude that the appeal should be dismissed and that the deemed planning application made under Section 177 of the Act should be refused.

Appeal B – the Lawful Development Certificate

26. An appeal under section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if

begun at the time of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me. The main issue is whether the Council's refusal of the application was well-founded.

27. The application seeks to certify that the use of an existing structure as a self-contained dwellinghouse (Class C3) is lawful. The appellant argues that the structure is a building used as a dwellinghouse and that the time for taking enforcement action, in this case four years, has passed, whilst the Council contends that the structure is a caravan, and that the use is the siting of a caravan used for residential purposes.
28. My findings in relation to the appeal on ground (b) in respect of Appeal A, also apply to this appeal. When assessed against the tests of size, degree of attachment to the land and permanence, I found that the structure did not amount to the erection of a building. On the balance of probabilities, I find that the structure is not a building operation to provide a self-contained dwellinghouse but a use of the land for the siting of a mobile home used for residential purposes.
29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the existing structure as self-contained dwellinghouse (Class C3) was well-founded and that the appeal should fail. I will accordingly exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

JP Roberts

INSPECTOR