



Appeal Decision

Site visit made on 2 December 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/Y3940/C/21/3273316

The land at the Old Mink Farm, Salisbury Road, Netheravon, Salisbury, Wiltshire SP4 9QL

- 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 Charles Oliver against an enforcement notice issued by Wiltshire Council.
- The enforcement notice was issued on 17 March 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of land from agriculture to a mixed use of agriculture and residential, including the residential occupation of part of the building shown hatched on the attached plan and the siting of a mobile home for residential purposes as well as the siting of a porta-cabin ancillary to the residential occupation of the Land. In the interest of clarity, the mobile home and the porta-cabin are shown as identified on the photograph attached to the Notice labelled 'Notice Photograph'.
- The requirements of the notice are: 5.1 Permanently cease the residential occupation of the Land, including the part of the building shown hatched on the attached plan as well as the occupation of the mobile home; 5.2 Permanently remove from the land all the timber partitions that facilitate the residential occupation of the part of the building shown hatched on the attached plan as well as all residential paraphernalia ancillary to the residential use of the Land contained within the buildings and on the wider Land. 5.3 Permanently remove the mobile home from the Land. 5.4 Permanently remove the porta-cabin from the Land.
- 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 (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. The National Planning Policy Framework was revised in July 2021 (Revised Framework). The parties were given an opportunity to comment upon the Revised Framework but no submissions were received.
2. The notice makes reference to residential 'occupation'/'purposes' but I shall amend such references to 'residential use' to reflect the definition of development requiring planning permission as contained in Section 55 of the Town and Country Planning Act 1990 as amended (1990 Act). The word 'land' in requirement 5.2 should be replaced with 'Land', since this is a defined term. I consider that I can make these changes without injustice to either party since

these are for clarity and as there does not appear to be any confusion as to what was intended in these regards.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

3. The appeal on this ground is that planning permission should be granted for what is alleged in the notice. The appellant has confirmed in this case that the DPA is only in respect of the residential use of the caravan, and not in respect of the residential use of part of the barn shown hatched on the plan attached to the notice, nor of the portacabin or other land on site.

Main Issues

4. I consider that the main issues are: whether there is an essential need for an agricultural worker to live at the site; the effect on the character and appearance of the area; and the effect on highway safety in the vicinity of the appeal site, and whether the site is in an accessible location.

Reasons

Whether an essential need for agricultural worker to live on site

Planning policy

5. Core Policy 1 of the Wiltshire Core Strategy 2015 (CS) sets out the Council's settlement strategy, and the supporting text to this indicates that there is a presumption against development in the open countryside. Core Policy 2 of the CS confirms that other than in circumstances permitted in the CS, development will not be permitted outside of the limits of development shown on the policies map. The nearest settlement to the appeal site is Netheravon, which is a 'large village' for the purposes of the CS, forming part of the Tidworth Community Area (as set out in Core Policy 26).
6. Core Policy 48 of the CS sets out that, outside defined settlement limits, proposals for residential development will be supported where they 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/forestry/other employment essential to the countryside. Such proposals should be supported by functional and financial evidence. Supporting text advises that such applications will be scrutinised thoroughly and that opportunities for accommodation within nearby settlements must be considered initially.
7. National policy in paragraph 80 of the Revised Framework indicates that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more specified circumstances apply. One such circumstance is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

The appeal site and relevant planning history

8. The site is an area of agricultural land of some 1.5 hectares which sits outside defined development limits and so in the open countryside for planning policy purposes. The land is in part hard surfaced, partly covered by buildings, some of which are fairly dilapidated, and in part grassed. The mobile home and portacabin referred to in the notice are located towards the south western part of the site, with the grassed area to the east, and buildings to the west of the

grassed area. A public footpath runs roughly parallel to the site, beyond its eastern boundary.

9. I shall not repeat the full planning history of the site here, but this includes enforcement action previously taken against the unauthorised stationing of a mobile home and an application for a certificate of lawfulness for existing use of a mobile home as a separate residential unit, which was refused.

Functional evidence

10. At the time of my site visit, I saw a very small number of equine and cattle on the land, along with a larger number of goats, which were being kept within a structure towards the eastern side of the site. The Council states that Council officers were previously advised by the appellant that the cattle on site are not connected to the appellant's use of the site. The Council also highlights that only chickens and geese are referred to in the appellant's response to a Planning Contravention Notice dating from December 2020.
11. The appellant submits that the appeal site is a working farm and that an agricultural worker is required to live on the site to manage the farm and attend to cows, horses, goats and geese. It is stated that the absence of an agricultural worker living on the site would be detrimental to the farm business and that the retention of the mobile home is essential to the agricultural operation.
12. I acknowledge that the goats kept on site are intended for breeding. No detailed submissions are put forward though as to why any of the animals referred to would render it essential for an agricultural worker to live on the site in terms of the scale of the livestock kept on site, nor in terms of any particular health or welfare risks/requirements associated with keeping the livestock. No detail or reference is given to justify the comment that the stated numbers of livestock would require 'at least' one full time equivalent worker.
13. I acknowledge the stated value of the livestock, and of the goats in particular. However, no explanation is given as to whether some security measures might be adequate to protect against theft of livestock, and nor why it would not be sufficient for an agricultural worker to live in a nearby settlement, perhaps with an alarm system in place if necessary. Indeed, no detailed evidence is submitted as to whether there are any opportunities for accommodation in nearby settlements.
14. On the available evidence, I do not therefore consider that a functional need for a worker to live on the appeal site has been demonstrated.

Financial evidence

15. In terms of financial evidence, the appellant has produced a business plan, which is significantly lacking in detail. This sets out that the business objective is to produce pedigree goats and geese to supply speciality niche meats through social media platforms, farmers markets, websites and local farm shops. The business plan outlines an investment of £24,000 in the first year of the business accounting for start-up costs related to the purchase of 50 boer goats and 100 geese. It appears from the business plan that all livestock referred to is to be purchased/owned by the appellant, whereas the Council has indicated that this was not its understanding of the ownership position.

16. The projected profit and loss statement gives no detailed breakdown of the costs involved in running the business, including as regards feeding costs for the livestock and any pollution control measures/accommodation/machinery which may be required. As such, I consider that, on the evidence before me, the appellant has failed to show that the agricultural business is planned on a sound financial basis.
17. Comments from the appellant's agricultural consultant have not added any substantive evidence in support of either the functional or financial position. For the reasons set out above, I therefore find on the first main issue that it has not been demonstrated that there is an essential need for an agricultural worker to live at the site. The material change of use of the land by means of the stationing of a mobile home on the land for residential use conflicts with the Council's settlement strategy as outlined in Core Policies 1, 2, 26 above and would not fall within the exception contained in Core Policy 48 of the CS as already detailed.

Character and appearance

18. The appeal site lies within the open countryside and within an obviously rural setting, with the immediate surrounding area comprising of a network of fields. Leaving aside the presence of the mobile home, the appeal site sits comfortably within this rural environment with the existing structures on site having an obviously agricultural, if somewhat dilapidated, appearance.
19. The mobile home is positioned relatively close to, but is set down from, the road. However, it is on significantly higher ground than that of the public footpath which runs roughly parallel to the site beyond the eastern boundary. In view of its elevated positioning, non-agricultural design and external materials, it represents a visually intrusive feature in this rural environment.
20. I therefore find on the second main issue that the mobile home has a materially harmful effect on the character and appearance of the area. It conflicts in this regard with Core Policies 51 and 57 which seek to ensure that development is sensitive to its landscape setting.

Highway safety/accessibility

21. Access to the appeal site is from the A345 Salisbury Road which has a speed limit of 50 mph. From what I saw at my site visit, this road sees relatively high levels of traffic in both directions, although I appreciate that this was only a snapshot of traffic levels over the course of a typical day.
22. Visibility from this access, particularly in a northerly direction, is very poor due to the presence of a wall and hedging. The Council states that the visibility splays fall significantly short of the required 2.4m by 160m in each direction. No detailed information is before me as to the likely increase in vehicle movements that result from the residential use of the mobile home. I do not consider though that these would be insignificant. As such, and in view of the very poor visibility from this access, on the evidence available, I consider that anything more than a de minimis increase in the use of the access results in highway safety concerns. Thus, the residential use of the mobile home is harmful as regards highway safety.
23. As outlined above, the A345 road appears to see relatively high levels of fast moving traffic and is unlit in the immediate vicinity of the appeal site. As such,

it does not represent a suitable route for pedestrians to walk to facilities in Netheravon. The public footpath running parallel to the appeal site gives access to village facilities, but would not be a convenient route after or during inclement weather, nor after dark.

24. For the reasons given I find that, on the available evidence, the residential occupation of the mobile home results in a harmful effect in terms of highway safety and that the site is not in an accessible location for travel other than by private car. I find conflict in these respects with Core Policies 60 and 61 of the CS which seek, amongst other things, to ensure that new development is located in a sustainable location and is served by a safe access to the highway.

Other Matters

Intentional unauthorised development

25. It is government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. It highlights concerns over the harm caused where development is undertaken in advance of obtaining planning permission. It notes that in such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place and local planning authorities can have to take expensive and time consuming enforcement action.
26. The appellant commented that they felt intimidated by Council investigations but has acknowledged that the residential use of the site was deliberately concealed. It follows thus that there has been intentional unauthorised development. I have found harm caused including related to the character and appearance of the area and as regards highway safety. Conflict with this government planning policy adds some moderate additional weight to that overall harm.

Other aspects

27. The appellant cites in their submissions under ground (f) a fall-back position, being that a mobile home could be stationed on site for purposes ancillary to the agricultural use. However, such a fallback is due only very limited weight since it would not result in an in principle objection to a new dwelling in the countryside, would not be likely to result in additional residential paraphernalia on site and would not result in additional vehicle movements over and above those associated with agricultural use.
28. Potential for employment opportunities from the business are due only little weight in view of the lack of evidence that the business has been financially planned in a sound manner such as to realistically be able to offer or sustain employment.
29. The appellant makes reference in its appeal statement to the neutral effect on neighbouring residential amenity. However, the reference to living conditions within the reasons for the Council issuing the notice appear to relate to living conditions of the occupant living in part of the barn. I have not therefore included this as a main issue above since the DPA relates only to the use of the mobile home. Concerns as to the Council's handling of the enforcement process are not for me in dealing with this appeal.

Human Rights

30. The mobile home is apparently home to an agricultural worker. The effect of the notice is that they will lose their home. The enforcement notice, if upheld, will interfere with rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, subject to proportionality. In enforcement appeals, human rights considerations come into play under ground (a) as the decision maker has some discretion.
31. The Council's decision to enforce was legitimate and in the public interest, given the harm caused. In these circumstances, some interference with Article 8 rights is permissible, and I consider that the protection of the public interest cannot be achieved by means which interfere any less with the occupier's rights. They are proportionate and necessary and so would not result in a violation of rights under Article 8.

Conclusion on Ground (a) and the DPA

32. For the reasons given and with regard to all other matters raised, I find that the appeal development under the DPA conflicts with the development plan, read as a whole. No material considerations have been advanced which outweigh the development plan conflict and harm found. Thus, I conclude that the appeal on ground (a) should fail and planning permission should be refused on the DPA.

The Appeal on Ground (f)

33. This ground of appeal is that the requirements of the notice exceed what is necessary.
34. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice requires the cessation of the residential use, and the removal of the mobile home, portacabin, along with partitions and paraphernalia related to the residential use of part of the barn, clearly suggests that its purpose is to remedy the breach rather than to remedy any consequent injury to amenity.
35. The appellant has confirmed their intention to comply in part with the requirements of the notice, namely by ceasing the residential use of part of the barn and removing all fixtures and fittings associated with such use. The portacabin and other residential paraphernalia are also to be removed. Thus, the appellant's ground (f) appeal relates to retention of the mobile home only.
36. As I understand it, the appellant's case in this regard is that to require the removal of the mobile home is excessive on the basis that, it could be used for ancillary agricultural use, which would not require planning permission. Thus, the appellant effectively suggests that a requirement to cease the residential use of the caravan would be enough to remedy the breach.
37. However, since the caravan was, on the evidence before me, brought onto the site for residential purposes, it is appropriate and not excessive to require its removal to remedy the breach of planning control. Indeed, since the appellant

has accepted that they have deceived the Council in their past investigations, I can understand the Council's concern that to leave the caravan on site would be to invite further breaches of planning control.

38. For the reasons stated, the appeal on ground (f) fails.

Overall Conclusion

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

Formal Decision

40. It is directed that the enforcement notice is corrected by:

- in both lines 2 and 4 of paragraph 3.1, deletion of the wording 'residential occupation' and substitution of 'residential use';
- in paragraph 3.1, deletion of the wording 'residential purposes' and substitution of 'residential use';
- in line 1 of paragraph 5.1, deletion of the wording 'residential occupation' and substitution of 'residential use';
- in line 2 of paragraph 5.1, deletion of the word 'occupation' and substitution of 'residential use';
- in paragraph 5.2, deletion of the wording 'residential occupation' and substitution of 'residential use'; and
- in paragraph 5.2, deletion of the word 'land' and substitution of 'Land'.

41. Subject to the corrections, 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.

V Bond

INSPECTOR