



Appeal Decisions

Site visit made on 9 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15/12/2021

Appeal Ref: APP/W1850/C/21/3272274

Land on the West side of Newton Cottages, Middlewood, Dorstone, Hereford, HR3 5SX

- 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 Graham Powell against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN/2021/003208/ZZ, was issued on 16 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission unauthorised material change of use of land from agricultural use to a mixed use for agricultural use and to site a caravan for a residential purpose.
 - The requirements of the notice are:
 - (1) Permanently cease the residential occupation of the caravan and the Land; and
 - (2) Permanently remove the caravan from the Land; and
 - (3) Remove from the Land all building materials and rubble arising from compliance with requirements (1) and (2) above.
 - The period for compliance with the requirements is 360 days from the date that the notice takes effect for requirement (1); 390 days from the date that the notice takes effect for requirement (2); and 470 days from the date that the notice takes effect for requirement (3).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/W1850/W/21/3269264

Land at Derry View, Newton Lane, Dorstone, Herefordshire HR3 5SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Graham Powell against the decision of Herefordshire Council.
 - The application Ref 193347, dated 19 September 2019, was refused by notice dated 12 February 2021.
 - The development proposed is: Retention of caravan for residential occupation by Graham Powell for a temporary period.
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Summary Decision: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Graham Powell against Herefordshire Council. This application is the subject of a separate Decision.

Procedural Matters

2. On the application form the address of the site is given as Derry View, Newton Lane, and in the enforcement notice the address is given as land on the West side of Newton Cottages, Middlewood. Nevertheless, I am satisfied that the land identified outlined in red on the site location plan submitted with the application and the plan attached to the enforcement notice are one and the same. Notwithstanding this, I have concerns with regard to the land to which the notice relates, as identified in part 2 of the notice, which I will come to later in this decision.
3. The description of the development given in the application forms relevant to Appeal B is 'Retention of caravan for residential occupation by Graham Powell for a temporary period'. This differs from that on the Council's decision notice, which excludes the appellant's name. I note that the appellant has confirmed that they did not agree to the change of the description. Notwithstanding this, neither of these descriptions match the breach of planning control alleged in the notice, which is given as a 'material change of use of land from agricultural use to a mixed use for agricultural use and to site a caravan for a residential purpose'. As such, I am left to consider two planning applications (the deemed planning application under Appeal A and the application in Appeal B) that are for different developments.
4. Common to both descriptions is the residential use. The notice alleges that this residential use occurs alongside an agricultural use, as part of a mixed use. The appellant has not made the case that this alleged mixed use has not occurred. Indeed, whilst I have a duty to consider whether or not the notice contains any errors or misdescriptions, I have no concerns with the description of the alleged breach of planning control in this case. The appellant has made his ground (a) appeal seeking permission for the mixed use alleged. Added to this, having considered the evidence submitted, the application that is the subject of Appeal B clearly intended to obtain permission for the appellant's occupation of the site, as it currently occurs.
5. Having regard to the above, and in the interests of consistency, I have considered Appeal B on the basis of the development described as a material change of use of land from an agricultural use to a mixed use for an agricultural use and to site a caravan for a residential purpose. In doing so, I acknowledge that the description does not include the appellant's name or mention of the temporary period. I have, however, considered both appeals on the basis of the appellant's proposal for a temporary and personal permission. I also acknowledge that this change of description includes an agricultural use as part of a mixed use of the planning unit, rather than a single residential use of the site. The views of the parties were sought with regard to this change, but no comments were received. Nevertheless, I can see no reason why such a change would cause injustice to any party.
6. In amending the description of the development for Appeal B, I have considered the Appeal A and Appeal B applications on the basis that these are for the same development, and that both seek permission for the development that has occurred on site. In doing so I acknowledge that the caravan subject of the notice is not in the location shown on the plan submitted with the Appeal B planning application. I will come to this later in my decision.

7. Having regard to the medical information provided by the appellant, I advised the parties of the Public Sector Equality Duty contained in the Equality Act 2010 that falls upon me in reaching my decision. I sought the parties' views on this and have had regard to the comments received in reaching my decision.
8. The revised National Planning Policy Framework was published after the appeals had been submitted and initial statements made. As such, the written comments of the parties were sought with regard to the National Planning Policy Framework dated 20 July 2021 (the Framework). All comments received have been taken into account in determining these appeals.

The Notice

9. The enforcement notice plan identifies a wider area outlined in red and a point on the plan marked with an 'x'. Part 2 of the notice identifies the land to which the notice relates (and, therefore, subject of the allegation) as being in the approximate location marked 'x'. As such, the notice alleges that the mixed use is only taking place on the 'x' point in the site. This is clearly not the Council's intention. The notice does not, therefore, correctly identify the area of land upon which the alleged use is taking place.
10. Accordingly, I sought the parties' views with regard to a possible correction of the notice to make the identification of the land that is the subject of the alleged breach of planning control more precise, by identifying the whole of the land outlined in red as the land to which the notice relates. In response, the appellant agrees that the notice is incorrect in this regard, but has confirmed that they understood the intention of the notice. From this response I am satisfied that injustice would not be caused were I to correct the notice by removing reference to the location marked 'x' on the plan. Whilst I note the amended plan submitted by the Council and the suggested variations to the requirements of the notice, these do not assist, partly because the caravan on site was not in the location indicated on the amended plan.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

Main Issues

11. I have had regard to the Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice. In addition, I note that much of the appellant's case relates to his personal circumstances. This matter is a material consideration in this case and I have considered this as a main issue. Accordingly, the main issues are:
 - i. whether or not the location of the development is acceptable, having regard to access by the occupier to everyday services and facilities, as well as local planning policy on the location of such development and any exceptions to this policy that would allow for the development in this case; and
 - ii. whether or not the appellant's personal circumstances are sufficient, either alone or considered together with any other material considerations, to outweigh any harm identified.

Reasons

Location and Exceptions

12. Policies SS1 (Presumption in favour of sustainable development), SS2 (Delivering new homes), RA2 (Housing in settlements outside Hereford and the Market Towns) and RA3 (Herefordshire's Countryside) of the Hereford Local Plan Core Strategy 2011-2031 Adopted October 2015 (HLPCS) work together to form the Council's strategy for housing and development. They direct new development to the principal settlement of Hereford or other settlements that have a range of services and can accommodate growth, while limiting the type of development permitted in open countryside. The appeals site is on a single track rural lane close to the dwelling at Newton Cottage and opposite a complex of farm buildings. It is not within or adjoining a settlement identified in the Council's strategy. As such, the site's location does not accord with the strategy.
13. With regard to access to everyday services and facilities, my attention has not been drawn to any in the close vicinity of the appeals site. As such, the occupier of the site is reliant on the services and facilities in nearby settlements. The Council identify these as Dorstone and Priory Wood, which are some 2 to 3 miles from the appeals site. I have not been advised of the availability of public transport options in the location of the appeals site that provides adequate access to these settlements. Accordingly, the occupier of the site is reliant on less sustainable transport modes to access everyday services and facilities.
14. Notwithstanding the above, Policy RA3 of the HLPCS makes provision for residential development outside of settlements, provided it satisfies one or more of the criteria set out in the Policy. This includes where it would meet an agricultural or forestry need, or where it is necessary to establish or grow a rural enterprise. Policy RA4 (Agricultural, forestry and rural enterprise dwellings) sets out in more detail the circumstances where permission would be granted for such development. Whilst I acknowledge that the mixed use of the appeals site includes a use for agriculture, the appellant has not made the case that the residential element of the mixed use satisfies any of the circumstances set out in policies RA3 or RA4.
15. My attention has been drawn to the guidance in paragraph 79 of the previous National Planning Policy Framework, which is now at paragraph 80 of the Framework. This advises that decisions should avoid the development of isolated homes in the countryside unless any of the listed circumstances apply. Having regard to the proximity of the cluster of dwellings comprising Newton Cottages and the dwelling and other buildings on the opposite side of the road, I cannot regard the site as isolated in terms of paragraph 80 of the Framework. The development is not, therefore, an isolated home for the purposes of paragraph 80 of the Framework. Nevertheless, the Framework does not suggest that this alone is a determinative factor in cases such as this, or that weight should be given to new housing in a rural location that is not considered to be isolated. The development must be considered in the context of the Framework as a whole.
16. Having regard to all of the above, I cannot conclude that the development, which includes a residential use of land, is in an acceptable location in relation to access to everyday services and facilities. The occupiers of the site are

reliant on less sustainable transport modes to access those services and facilities. For this reason the development does not accord with policies SS7 (Addressing climate change) and MT1 (Traffic management, highway safety and promoting active travel) of the HLPCS that require new development to mitigate its impact on climate change and encourage active travel behaviour.

17. The development's location is also unacceptable as it causes harm to the Council's housing strategy. Accordingly, the development does not comply with the HLPCS policies SS1, SS2 and RA2 that direct housing development to locations where there are most opportunities for employment, services and transport accessibility. It also fails to comply with exceptions set out in policies RA3 and RA4.
18. Whilst I have not identified conflict with paragraph 80 of the Framework, in view of my conclusions above I cannot conclude that the development complies with the Framework as a whole.

Personal Circumstances

19. The development that is the subject of Appeal B is proposed for the benefit of the appellant only and for a temporary period. The appellant has approached his ground (a) on Appeal A in a similar way, relying on his personal circumstances as material considerations in favour of the grant of planning permission. In this regard the appellant has put forward a case with regard to the Human Rights Act 1998 (the HRA). He has referred in particular to Article 8 which deals with the right to respect for family life and the home. I have had regard to the caselaw¹ referred to by both parties on this matter.
20. The appellant says that he owns only the appeals site and does not own alternative accommodation elsewhere. He has also provided details of his income and the cost of private rented accommodation in Herefordshire. He suggests that his income is not sufficient for him to afford to privately rent even a single room. Whilst this evidence is not disputed by the Council, it is suggested that the relevant housing authority's duty to re-house the appellant would be an increased priority for them, should they be made aware of the current situation. However, the appellant suggests that he would not necessarily fall within the criteria where a housing duty would be engaged, even for temporary accommodation. His case in this regard is supported by correspondence from the Council's Home Point Lead².
21. In addition, the appellant points to the correspondence from the Home Point Lead officer who says that, whilst the appellant would be able to bid on the Council's Home Point properties, the waiting time would be between 6 months and 2 years.
22. Having regard to the above, whilst I acknowledge that little weight should be given to the appellant's preference for the appeals site as his home, I have little evidence to suggest that he has any other alternative that would be immediately available to him, should his appeals fail. This matter weighs in favour of the grant of planning permission. The operation of Article 8 of the HRA is engaged and the outcome of these appeals could result in the interference with rights afforded under Article 8(1).

¹ Quoted as *Chapman v UK* 18/01/2001 and *Buckley v United Kingdom* [1996] JPL 386 (ECHR).

² Appendix 4 of the appellant's statement of case relating to Appeal A.

23. In addition to the above, the appellant has provided particular details regarding his health, which is supported by evidence from his medical practitioner. Having regard to this evidence, the appellant is regarded as having a disability³ and as being a person sharing a protected characteristic⁴, both of which are relevant to my decision. Accordingly, under the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it
24. It is suggested that, as a result of the appellant's particular health difficulties, he is disadvantaged in his ability to work and earn extra income. Again, this is not disputed by the Council. I can see how this would hamper his ability to afford alternative accommodation. Furthermore, I have concluded that the appellant is likely to be made homeless, at least in the short term, in the event that the appeals are dismissed. Accordingly, this has a serious detrimental effect on a person who shares a protected characteristic. All of this adds further weight in favour of the grant of permission in this case.
25. If I am to attribute the weight I have to the appellant's personal circumstances, it must be that only he has the benefit of the permissions granted and that the permissions are only for the necessary period. Indeed, the evidence indicates that the appellant's lack of alternative accommodation is likely to be temporary, and he has approached both of his appeals on this basis. Although the duration of the permission was not specified in the application documents (for Appeal B), the appellant has suggested under his ground (f) appeal (Appeal A) that, having regard to the correspondence from the Home Point Lead officer, at least 2 years is needed for him to find a new home. However, he goes on to state that given that he is not accustomed to living in a town or city, a longer period of at least five years would be appropriate to find accommodation within the vicinity of the appeals site.
26. Paragraph 014 of the Planning Practice Guidance on the Use of Planning Conditions (the PPG) provides examples of some of the circumstances where temporary permissions may be appropriate. This includes where it is expected that the planning circumstances will change in a particular way at the end of the temporary period. This would apply to the case before me, as in the future the appellant is likely to have alternative accommodation, provided he applies for properties on Home Point⁵.
27. Whilst I have identified harm with regard to the location of the development, such harm would be reduced if the permission were granted for the development for a temporary period; the degree of harm would, of course, be less for the shorter 2 year period than would be the case for the longer 5 year period. In reaching my conclusions on the appellant's personal circumstances considered within the context of Article 8 and the HRA, I have attributed weight to his apparent lack of **any** alternative accommodation at present, rather than a lack of an alternative that is preferred by him. The lack of any alternative provides significant justification for a temporary permission for a period during which it is likely that an alternative could be found (i.e. up to two years).

³ As defined in section 6(1) of the Equality Act 2010.

⁴ As defined in section 149(7) of the Equality Act 2010.

⁵ Appendix 4 of the appellant's statement of case relating to Appeal A.

Furthermore, the harm caused by the development would only be for the period of that permission.

28. Whilst I acknowledge the appellant's reasons for preferring accommodation within the vicinity of the appeals site, this carries less weight as a material consideration and provides limited justification for a 5 year period over which a greater degree of harm would be caused.
29. As for the ability to limit the benefit of the permission to the appellant alone, I have had regard to the PPG on this and the Council's comments. Whilst I have concluded that the appellant does not benefit from the provisions of policies RA3 and RA4, paragraph 015 of the PPG gives residential accommodation in the open countryside for agricultural or forestry workers as an example, rather than a closed list of the exceptional occasions where a personal permission may be granted. The personal circumstances put forward by the appellant are exceptional and a permission limiting its benefit to only him would mean that the harm caused by the development would not be permanent, as any harm would only be for the duration of the appellant's need of it. I have no other reason to conclude that granting a personal permission in this case would not comply with the PPG.

Other Material Considerations

30. It is common ground that the Council is unable to demonstrate that it has a 5 year supply of housing land, as required by paragraph 68 of the Framework. I have, therefore, had regard to paragraph 11 d) and footnote 7 of the Framework.
31. I have concluded that policies SS1, SS2, SS7, MT1 and RA2 of the HLPCS stand in the way of the development subject of these appeals. Whilst policies SS2 and RA2 might accord with the framework, they relate specifically to housing development. For this reason they are out of date for the purposes of paragraph 11. These policies are important to my decision, however I am mindful that the development in this case involves a residential use of land and is not a housing development contributing to the supply of housing in Herefordshire. Policies SS1, SS7 and MT1 of the HLPCS promote development that achieves the overarching aim of sustainable development; reduces the impact of climate change and encourage active travel behaviour. These policies are consistent with the Framework and are not considered to be out of date as a result of the housing land supply position in the Herefordshire plan area.
32. In view of the above, I do not regard the most important policies in this decision, when taken as a whole, as being out of date for the purposes of paragraph 11(d) of the Framework. The presumption in favour of sustainable development is not, therefore, engaged.

Conditions

33. I have already considered the use of a condition limiting the benefit of both permissions to the appellant alone, as well as a condition to limit the grant of the permissions to a temporary period. Both conditions are necessary in order for me to attribute the weight I have to the appellant's personal circumstances. They are also necessary to limit the harm caused by the development. I have been given no reason to conclude that such conditions

would not otherwise comply with the PPG. For the same reasons, a condition is necessary to require the removal from the land of the caravan and other items connected with the use at the end of the temporary period or cessation of occupation, whichever is sooner.

34. The appellant's suggested condition regarding the caravan stationed on the site is necessary in order to limit the nature of the development permitted, as is the condition limiting the number of caravans on the site to one.
35. I note the condition suggested by the Council seeking to limit the use of the caravan to residential occupation and for no other purpose falling within 'Class C'. Firstly, there is no Class C in Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended. Furthermore, the mixed use that is the subject of the appeals before me does not fall within any of the classes of use in Part C of Schedule 1. Permission would, therefore, be required to use the land (or part thereof) for any of the uses falling within Part C. I do not, therefore, consider this condition to be sufficiently precise or necessary.
36. With regard to a plans condition, I have noted that the caravan on the submitted plan (drawing reference 19-027 01) is not in the same location as I observed on site. Nevertheless, a permission granted under Appeal B with a condition referring to the submitted plan is necessary in the interests of clarity with regard to the extent of the land to which the permission relates.

Planning Balance

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
38. I have found that the development fails to accord with the development plan as it is development that does not accord with the Council's development strategy. The location of the development is also unacceptable in relation to access to everyday services and facilities. However, I have attributed significant weight to the appellant's personal circumstances in this case, including a lack of alternative accommodation at present. These lead me to conclude that the determination of the appeals should, on balance, be made otherwise than in accordance with the development plan. I only reach this conclusion on the basis that the use permitted would occur for a period no longer than 2 years; during which time the evidence suggests that the appellant's personal circumstances are likely to change. Only in these circumstances do I consider that the harm identified, being limited in duration, would be outweighed.
39. Consequently, I consider that a temporary planning permission for a period of 2 years, limited only to benefit the appellant, is appropriate. The protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of his rights under Article 8 of the European Convention on Human Rights.

Conclusion

40. Having regard to my findings above and all matters raised, I conclude that Appeal B should be allowed and that Appeal A succeeds on ground (a). I shall grant planning permission for a material change of use of land from agricultural use to a mixed use for agricultural use and to site a caravan for a residential purpose as described in the notice as corrected.
41. The appeal on ground (f) and (g) for Appeal A do not fall to be considered.

Formal Decision - Appeal A

42. It is directed that the enforcement notice is corrected by the deletion in part 2 of the words "in the approximate location marked 'x'".
43. Subject to the correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of land from agricultural use to a mixed use for agricultural use and to site a caravan for a residential purpose on land at the west side of Newton Cottages, Middlewood, Dorstone, Hereford, HR3 5SX as shown on the plan attached to the notice and subject to the following conditions:
- 1) The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision.
 - 2) The use hereby permitted shall be carried on only by Mr Graham Powell.
 - 3) When the land ceases to be occupied by Mr Graham Powell or at the end of the period of 2 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and the caravan, all materials and equipment brought on to the land in connection with the use shall be removed.
 - 4) No more than one caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.

Formal Decision - Appeal B

44. The appeal is allowed, and planning permission is granted for the material change of use of land from an agricultural use to a mixed use for an agricultural use and to site a caravan for a residential purpose on Land at Derry View, Newton Lane, Dorstone, Herefordshire HR3 5SX, in accordance with the terms of the application 193347, dated 19 September 2019, subject to the following conditions:
- 1) The use hereby permitted is limited to the land identified on plan number 19-027 01 entitled 'Location and Site Plan', but the location of the caravan is not restricted to that indicated on the 'Site Plan' section of that plan.
 - 2) The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision.
 - 3) The use hereby permitted shall be carried on only by Mr Graham Powell.

- 4) When the land ceases to be occupied by Mr Graham Powell or at the end of the period of 2 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and the caravan, all materials and equipment brought on to the land in connection with the use shall be removed.
- 5) No more than one caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.

J Moss

INSPECTOR