



Appeal Decision

Site visit made on 3 October 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2022

Appeal Ref: APP/D1265/C/21/3285974

Land East of Sandhills, Cattistock, Dorset, Land Registry Title Number DT177111

- 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 Mrs Tracy Chisholm against an enforcement notice issued by Dorset Council.
 - The enforcement notice was issued on 27 September 2021.
 - The breach of planning control as alleged in the notice is: The unauthorised change of use of the land from use for agriculture to a mixed use for agriculture and residential by the stationing of a mobile home thereon for residential use.
 - The requirements of the notice are: i. Cease the use of the land for residential purposes. ii. Permanently remove from the land the mobile home. iii. Permanently remove from the land any hardstanding, utility pipes, portaloo and other paraphernalia used in association with residential use of 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) of the Town and Country Planning Act 1990 as amended. 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 Act.
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Summary of Decision

1. The appeal is dismissed.

The Enforcement Notice

2. The appellant contends the notice is a nullity because no local or national policies are cited in the reasons for issuing the notice. However, a notice will unlikely be null simply because it fails to specify the relevant development plan policies as there should otherwise be sufficient information to appeal. This was the case here because a reason for issuing the notice was included on the face of the notice. This enabled a ground (a) appeal to be lodged. Accordingly, the policies can then be provided during the appeal process and opportunity given to respond, as has also been the case here. It is however then not appropriate for me to correct the notice merely to repeat those policies.
3. The test¹ is thus whether the notice tells the recipient fairly what they have done wrong and must do to remedy it. This notice is therefore not hopelessly ambiguous and uncertain and so injustice to the appellant does not arise. This however does not present the Council with an opportunity to introduce policies

¹ Miller Mead v MHLG [1963] 1 All ER 459

with potential objections wider than those given in the reasons for issuing the notice. I will therefore only consider the policies relevant to the reason cited as this would otherwise lead to injustice.

The ground (a) appeal

Main Issue

4. The main issue is whether or not the site is in a suitable location for a residential use having regard to local and national planning policy.

Reasons

5. The site is located in rural surroundings in the Dorset AONB and comprises rough pasture of approximately 1.7ha.
6. The deemed planning application before me relates to the mixed use of the site for agricultural and residential purposes facilitated by means of the stationing of a residential caravan (mobile home).
7. For the purposes of the West Dorset, Weymouth and Portland Local Plan 2011-2031, October 2015 (the LP), the site is located outside a defined development boundary and therefore in the countryside. Policy SUS2 of the LP identifies that development will be distributed according to a settlement hierarchy, with a greater proportion of development at the larger and more sustainable settlements. Outside of defined development boundaries, development will be strictly controlled, having particular regard to the need for the protection of the countryside.
8. Policy HOUS6 of the LP then identifies the limited scope for housing in such locations, including new housing for rural workers where it can be demonstrated that there is an essential need for a worker to live at or near their place of work. Policy INT1 of the LP is then concerned with the presumption in favour of sustainable development.
9. The Council's approach to residential development is therefore broadly consistent with the housing approach and objectives set out in the National Planning Policy Framework (the Framework).
10. The site is occupied by the appellant's son and his partner. They previously lived with a family relative, but circumstances dictated that the property had to be sold, which is said to have rendered them homeless.
11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires 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 made in accordance with the plan unless material considerations indicate otherwise.
12. However, the appellant accepts the residential use is contrary to Policy HOUS6 of the LP as there is no full-time engagement in agriculture as a small holding is yet to be established. Indeed, it is said that to even enable a viable small holding significant work has to be undertaken to improve the land.
13. There is then only limited evidence of works having been undertaken, and which have in any event ceased pending the outcome of this appeal. I however

do not accept that any such preparatory work would require an on-site presence, even though plant machinery may be expensive.

14. The Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, a residential mobile home only brings moderate benefits to the economy and limited benefits to the social well-being of the local community.
15. The site is a rural one, accessed by means of a narrow network of lanes which are unlit and without footways. There is therefore an absence of proximate services and facilities with reliance placed on the private car. The need to travel is therefore not minimised, which contravenes Policy COM7 of the LP which seeks to create a safe and efficient transport network. I am therefore not persuaded on the evidence before me, including that of my site visit, that the site is in a sustainable location. It is therefore not a location where a new residential use would normally be considered acceptable.
16. I conclude the site is not in a suitable location for a residential use having regard to local and national planning policy. The use of the site for residential purposes therefore conflicts with Policies SUS2, HOUS6, INT1 and COM7 of the LP and the housing objectives of the Framework. This is a planning harm to which I attach significant weight.

Other Considerations

17. I appreciate there are intentions to establish a small holding. However, given significant works to the land are first required, and there is only very limited evidence of the proposed small holding before me, and no details such as a business plan, I afford this prospect only very limited weight. I therefore do not accept there is a sensitive formative process, or a business plan could not have been put forwards if there had been an essential need for a worker. For the same reasons, a temporary planning permission would not be appropriate.
18. There is also only very limited evidence that there is no established alternative accommodation for the occupiers of the mobile home or to persuade me that they would become homeless or that there are other health or welfare implications. Dismissing the appeal would therefore result in a legitimate and proportionate interference in the private rights of the occupiers, in accordance with the law. I therefore only afford limited weight to the personal circumstances of the occupiers based on the evidence before me.
19. It is accepted that the site is currently in a poor condition owing to drainage issues. Some limited remedial works have been undertaken. However, there are no details of the proposed works before me which leads me to find conflict with Policies ENV5 and COM10 of the LP which seek to avoid the risk of flooding. This is a matter to which I attach moderate weight.
20. I appreciate the site is within the Dorset AONB, but as the Council did not cite this as an objection in the reasons for issuing the notice, and as I am dismissing the appeal on other grounds, I need not consider this matter further.

Planning Balance

21. I have found the residential use contrary to the LP and Framework, which is a planning harm that attracts significant weight. Whilst I recognise there are intentions for the site, based upon the evidence before me these only attract very limited weight, and the personal circumstances of the occupiers only limited weight.
22. Consequently, the planning harms I have identified are not outweighed and so material considerations do not indicate that a decision should be made otherwise contrary to the development plan.

Conclusion

23. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

Overall Conclusion

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

25. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR