The Planning Inspectorate

Appeal Decisions

Site visit made on 1 November 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal A Ref: APP/H1840/C/22/3303262
Appeal B Ref: APP/H1840/C/22/3303263
Pumping station 391m, Lying to the North of Astwood Lane, Bromsgrove B60 4BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Mark Towler and Appeal B is made by Ms Michelle Brannan against an enforcement notice issued by Wychavon District Council.
- The notice was issued on 22 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of agricultural and forestry land to a mixed use for agricultural, forestry and residential use of black timber cladded cabin ("the cabin") approximately marked blue on the attached plan, for permanent residential occupation.
- The requirements of the notice are to: 1. Cease the use of the cabin, approximately marked blue on the attached plan, as a permanent residence. 2. Remove the cabin and all domestic paraphernalia from the land.
- The period for compliance with the requirements is: 10 (ten) calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (f) of the Town and Country Planning Act 1990 as amended (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 Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

   i). Deleting section 3 of the notice 'without planning permission, the material change of use of agricultural and forestry land to a mixed use for agricultural, forestry and residential use of black timber cladded cabin ("the cabin")' and replacing it with 'without planning permission, the material change of use of the land from agriculture and forestry to a mixed use of agriculture, forestry and the stationing of a cabin for residential purposes".

   ii). Deleting step 1 of paragraph 5 'What you are required to do' from the notice and replacing it with 'cease the residential use of the land'.

2. 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.

Matters concerning the notice

1. As served, the breach of planning control specified in the notice includes the material change of use of the land for mixed use purposes which includes the

residential use of the cabin. The 'Land' is identified on the plan attached to the notice as being the entire plot edged red with the cabin identified within the plot. However, the requirements do not include cessation of the mixed use of the land as alleged by the notice. There are wide-ranging powers to correct or vary the notice subject, of course, to the essential test of injustice. The matters that appear to the council as constituting a breach of planning control are generally stated. The notice has been interpreted on the basis that a residential use is alleged, which has been facilitated by the use of the cabin for human habitation.

2. Given the way and manner which arguments have been advanced by the appeal parties, it is clear the notice was correctly interpreted, and it has not caused significant confusion. The recipient could reasonably tell from the four corners of the issued document what had gone wrong and what needed to be put right. I consider that correcting the notice makes it clearer and better reflects the breach of planning control alleged and doing so would not cause injustice to either party. Therefore, the notice shall be corrected accordingly.

Preliminary Matters

3. I am aware that a planning application reference 22/01653/CU for the proposal 'Change of use of agricultural live/work unit to residential (retrospective)' was submitted to the council 20 July 2022.

The Appeals on Ground (d)

4. In an appeal on ground (d), the onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control.

5. Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed (section 171B(1) of the 1990 Act).

6. The immunity period is also 4 years for a breach of planning control consisting in the change of use of any building to use as a single dwelling house (section 171B(2)). For all other breaches, including a material change of use to a mixed use, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach of planning control (section 171B(3)).

7. The notice was issued on 22 June 2022 for a material change of use from agricultural and forestry land to a mixed use for agricultural, forestry and residential use. It is not disputed that the cabin is a chattel and not a building. Accordingly, the siting of the cabin on the land is a use of the land rather than operational development as defined by section 55 of the 1990 Act and the use of the cabin has facilitated the residential use of the land. Under section 171B(3) of the 1990 Act, for the appellants to succeed on ground (d), they must show that the material change of use from agricultural and forestry land to a mixed use for agricultural, forestry and residential had occurred by no later than 22 June 2012.

8. In determining when the change of use took place, regard should be had to when the cabin provided viable facilities for living, and when the use actually commenced. It is also necessary for the appellants to show that the use of the land for agricultural, forestry and residential took place for a continuous ten year period, within which the council could have taken enforcement action at any time.

The evidence

9. The appellants' grounds of appeal are limited describing that the cabin was brought on to the land over twelve years ago, purportedly for the purposes of using it as a live work unit. The appellants say that this was agreed with a council enforcement officer. There is no evidence to support this statement. Nevertheless, such development would have required express planning permission and I am not aware that any was forthcoming.

10. The appellants' submissions claim Mr Towler 'started staying in the cabin' in 2017, mainly to provide security following thefts of equipment and livestock from the site. It is stated that Ms Brannon joined Mr Towler living on site in 2020 following financial difficulties which lead to the sale of their home.

11. While the cabin may have been sited on the land for more than 10 years, the breach of planning control alleged is the material change of use of the land which occurred when the cabin started to be used for residential purposes in 2017. Consequently, the evidence provided falls short of demonstrating that the residential use of the cabin has been occurring for 10 years without significant interruption in accordance with Section 171B(3) of the 1990 Act. The siting of the cabin for residential purposes is not therefore lawful.

12. Accordingly, the appeal on ground (d) must fail.

Appeal A on ground (a) and the deemed planning application

13. The terms of the deemed application are circumscribed by the matters alleged in the corrected allegation. Planning permission is therefore sought for the material change of use of the land from agriculture and forestry to a mixed use of agriculture, forestry and the stationing of a cabin for residential purposes.

Main Issues

14. The main issues in this appeal are focused on the residential component of the mixed use and hence they are:

- whether the residential use of the site is inappropriate development within the Green Belt, including any impact on openness, having regard to the National Planning Policy Framework (the Framework)[1] and any relevant development plan policies
- whether the location of the site is acceptable for the residential use of the land
- if the development is inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly

[1] National Planning Policy Framework 2021 published by the Ministry of Housing, Communities and Local Government

outweighed by other considerations and if so, whether very special circumstances exist to justify the development.

Background

15. The appeal site totals some 2.3 acres. It has a planning history which, according to the council, commenced in 2009 with a retrospective application approved for the erection of a polytunnel, chicken shed and the stationing of a touring caravan for non-residential purposes. A further application in 2021 allowed for a storage shed for agricultural and horticultural equipment, the conversion of a static caravan to an incubator unit and polytunnels for trees.

16. At my visit it was apparent the land was being used for growing plants, keeping chickens and an alpaca, and the static caravan was being used for incubating chicks. The timber clad cabin, along with the static caravan and a steel portal framed agricultural building were positioned along the rear boundary. The timber cabin provides fully functioning residential accommodation for the appellants who wish to continue to establish their rural business on the land.

Reasons

Whether inappropriate development in the Green Belt

17. The appeal site is within the Green Belt where Policy SWDP2 of the South Worcestershire Development Plan (SWDP)(2016) aims to maintain its openness and consider any development proposed in accordance with national policy as set out in the Framework.

18. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Framework outlines that certain forms of development, other than in connection with a small number of exceptions, should be regarded as inappropriate in the Green Belt. Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved, except in very special circumstances.

19. Paragraph 150 of the Framework sets out forms of development that are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. These are:

    a) mineral extraction;

    b) engineering operations;

    c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

    d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

    e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

    f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

20. The material change of use of the land is capable of falling within (e). The question is whether the development preserves the openness of the Green Belt and the purposes of including land within it. A residential use of what is agricultural land in the open countryside will inevitably erode the openness of the Green Belt. Where previously the site was used for agricultural and forestry purposes, there is now an urbanising feature which, along with domestic living equipment that naturally accompanies a residential use, encroaches on the countryside. I accept that the cabin sits among other structures, however, these are used for agricultural purposes and do not constitute inappropriate development within the Green Belt as listed under Paragraph 149 of the Framework. Even with the use of screening, potentially through planting which would take time to grow, and the siting of the cabin against the boundary amongst agricultural buildings, the fact remains that uncontrolled domestication of the land erodes the openness of the Green Belt and conflicts with the purpose of safeguarding the countryside from encroachment. As such, the residential use of the land is considered to be inappropriate development within the Green Belt.

Acceptable location for the residential use of the land

21. Policy SWDP2 of the SWDP establishes the development strategy and settlement hierarchy for the area. One of the broad aims of the policy is to create a sustainable pattern of development by focussing development into areas with good access to services and facilities. To this end, the majority of development is focussed on urban areas. Further aims are to safeguard or enhance the quality of the open countryside and maintain the openness of the Green Belt.

22. The appeal site is located on land beyond any development boundary which Criterion C of the policy describes as open countryside where development will be strictly controlled and limited to a small number of categories, including dwellings for rural workers. This accords with the Framework which states that there should be special circumstances to allow for rural workers to live permanently at their place of work in the countryside. Such need should be evidenced both functionally and through the economic viability of the rural enterprise.

23. The Planning Practice Guidance provides further considerations that are relevant to assessing the need for rural worker accommodation[2]. For example, whether there is a need for 24-hour a day presence on site and the risks of this not being provided.

24. The appellant has provided a 'Business Plan 2022-2023' (BP) for his appeal on ground (a). The BP describes the enterprise as a Micro Farm which is 'profitable', 'sustainable' and 'ecological' with animals and crops along with horticulture. The BP lists the various projects undertaken on the site which include rearing chickens, selling eggs, growing trees and micro greens, and provide an income for the appellants. The appellant states that the land sustains two full-time workers (the appellants) and will likely provide a part-time vacancy in the near future.

25. There are undoubtably growing activities occurring at the site from both chickens and plants. However, considering that the business has been

[2] Planning Practice Guidance Reference ID: 67-010-20190722

operating from the site for a few years, no accounts have been provided to demonstrate its economic viability or growth to date. Furthermore, there is no record of who sales have been made to or any example of sales merchandising or advertising.

26. Notwithstanding any additional tests to be satisfied under SWDP19 relating to rural worker dwellings, and although I acknowledge the appellant's desire to live on the land to reduce travelling, support the creation of the business and provide security, it has not been demonstrated that there is an economically viable business operating from the site. Although there is no evidence of thefts from the site, for instance in the form of police reports, I acknowledge that these may have happened. However, security in these circumstances is not a sufficient reason to allow for a residential use of the land when other measures such as CCTV and securing existing buildings could be used. Furthermore, while the provision of welfare for animals on the site is important, I would question whether one alpaca and a flock of chickens would require a 24/7 presence.

27. Overall, there is insufficient evidence before me to demonstrate an essential need for rural worker accommodation. The site lies within the open countryside where new development beyond any development boundary is strictly controlled. For the above reasons, the use of the cabin for residential purposes is in conflict with national planning policies and Policy SWDP2 of the SWDP.

Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations and if so, whether very special circumstances exist to justify the development.

28. The need to house a rural worker on the site is capable of being a matter to which significant weight could be attached to determine whether very special circumstances exist which clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and the effect on openness. However, I have determined above that there is an absence of evidence to support a case for the land to accommodate a rural worker. Without evidence of financial accounts or other supporting information, there is no certainty as to whether the business is or would become viable and there appears to be no sound reason why there needs to be a permanent on-site presence.

29. Drawing this altogether, I have found that the residential use of the site causes harm to the openness of the Green Belt and constitutes inappropriate development. This is a matter to which substantial weight is given. The development represents encroachment through the unconstrained domestication of the agricultural land conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection.

30. There are no considerations advanced in support of the development which clearly outweigh the substantial weight to Green Belt harm and there is conflict with the development plan. The very special circumstances necessary to justify inappropriate development in the Green Belt do not exist in this case.

31. I have also considered the matter of the occupiers' human rights in the context of Article 8 of the First Protocol of the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998, but I do not consider that the effect on the occupiers of upholding the notice would be disproportionate in the light of the legitimate aims of the national and local

settlement policies designed to maintain strict control over development in the countryside.

Conclusion on ground (a)

32. The appeal on ground (a) fails and I shall refuse to grant planning permission on the deemed planning application.

The Appeals on ground (f)

33. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach. For the appeals on ground (f) to succeed, the appellants would need to propose alternative steps which would remedy the breach.

34. No lesser steps have been identified that would overcome the breach of planning control. The requirements of the notice are not excessive but are the minimum necessary to remedy the breach of planning control that has occurred. there is nothing short of ceasing the notice land's residential use that would achieve the purpose behind the requirement.

35. The appeals on ground (f) fail.

Conclusion

36. For the reasons given above, and taking all other matters into consideration, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and (in respect of Appeal A) refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended

S A Hanson

INSPECTOR