



Appeal Decision

Site visit made on 10 January 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/P2935/C/22/3301165

Land South West of Closehead, Otterburn, Northumberland

- 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 1990 Act as amended).
- The appeal is made by Mr Ryan O'Kane against an enforcement notice issued by Northumberland County Council.
- The notice was issued on 18 May 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of part of the Land from agricultural use for the siting of a shepherd hut for use as holiday let accommodation.
- The requirements of the notice are to: (i) Cease to use the Land for the siting of a shepherd hut; (ii) Remove the shepherd hut for use as holiday let accommodation from the Land; and (iii) Reinstate the Land to the condition it was before the breach took place.
- The periods for compliance with the requirements are: (i) 4 weeks; (ii) 8 weeks; and (iii) 16 weeks.
- 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. 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.

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

Procedural Matters

1. Following the refusal of application refs: 19/02281/FUL and 20/03882/FUL relating to the appeal site (the site) and prior to serving the enforcement notice (the notice) which is the subject of this appeal, Northumberland County Council adopted the Northumberland Local Plan 2016-2036 in March 2022 (the NLP). This replaced the Tynedale Local Development Framework Core Strategy, 2007 and the Tynedale Local Plan, 2000 (Saved Policies 2007). For the avoidance of doubt, I have determined the appeal against the relevant policies within the NLP. I am satisfied that no parties' interests are prejudiced by this approach.
2. At Paragraph 5 the notice includes three requirements and at Paragraph 6 includes three times for compliance. However, there is an ambiguity in the numbering of the times for compliance, with the second and third times both referenced with the numeral (ii). This matter has not been raised by the Appellant. I am satisfied that it is merely an error on the Council's part and that the third time for compliance is meant to relate to the third requirement.

Therefore, I will correct the notice with the third time for compliance to be referenced by the numeral '(iii)'.

3. The power under section 176(1) of the 1990 Act as amended provides that a notice may be corrected provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting the notice in the above respect.
4. The breach of planning control as alleged in the notice is 'a material change of use of part of the land'. The Appellant states that, although the shepherd's hut (the hut) is on wheels, it is permanently sited in this location. 'Permanence' is one of the three primary factors identified in caselaw as being decisive as to what is a building¹. This matter has not been raised by the Appellant. Nonetheless, for the avoidance of doubt, from the submitted evidence and as a matter of fact and degree, I consider that the alleged breach of planning control is properly described as being a material change of use, not a building. I have therefore determined the appeal on this basis. I am satisfied that no injustice would be caused by me taking this approach.

Background

5. The appeal concerns the material change of use of the site from agricultural use for the siting of the hut for the purposes of holiday let accommodation. In responding to a Planning Contravention Notice (the PCN)², the Appellant confirmed that the hut was positioned on the land on 10 October 2018, although this is contradicted by the supporting statement which submits that it has been in situ since 5 May 2019. The PCN also confirmed that its use as self-catering holiday let accommodation began on 9 August 2019.
6. A retrospective application for planning permission for 'the siting of 1no. Shepherds Hut' on the site was refused by the Council in October 2019³, and a subsequent application for planning permission for the 'change of use of land to site shepherd's hut for holiday let use including additional landscaping, details of parking area and colour' was also refused by the Council in January 2021⁴. In both instances, the singular reason for refusal concerned the proposal's 'negative impact on the character of the landscape'.

The appeal on ground (a)

7. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main issue

8. The Council acknowledges that, of themselves, the diversification of agricultural and other land-based rural businesses such as Closehead Farm (the Farm) and the provision of accommodation for the purposes of tourism, are in line with local and national policy provisions and acceptable in principle. Furthermore, that the form, style and materials of the hut are acceptable within a rural context. The crux of the dispute between the parties concerns the change of

¹ *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.

² Served on 23 September 2020.

³ Application Ref: 19/02281/FUL.

⁴ Application Ref: 20/03882/FUL.

use of this parcel of land in this location for the siting of the hut as holiday let accommodation, and its effect on the character of the landscape.

9. In the context of the above, the main issue is the effect of the change of use of the land to site the hut for holiday let accommodation on the character of the landscape.

Reasons – character of the landscape

10. The site and hut are located about 100m south west of the Farm, with the proposal being stated by the Appellant to be part of a farm diversification project. The site is within land of agricultural classification and the open countryside. The hut is modest in size, accommodating two people with a kitchen area and bathroom included. The hut is on wheels and as such elevated above ground level. It is also connected to a septic tank which was installed at the same time that the hut was positioned on the land. The site and hut are accessed via a spur off the existing track which leads from the B6341 that serves the Farm.
11. The landscape that surrounds the site and hut is predominantly characterised by gently sloping, open, agrarian fields, which are delineated by boundaries including drystone walls, hedges or post and wire fences, and punctuated by farmsteads and modestly sized tree plantations. The land rises gently up from the B6341 towards the site and hut. It has no landscape, nature conservation or historic environment designations.
12. The location of the site and hut provides visitors with peaceful solitude along with outstanding views of the countryside and Northumberland's dark skies, but also allows the Appellant to view and manage the accommodation from the Farm while maintaining their own privacy. However, in doing so, the site and hut are conspicuously detached from the main Farm complex; and their topographically prominent position on the rising slope, combined with the absence of any existing natural screening, results in the development appearing as an isolated, exposed and unduly obvious feature within this intrinsically open and largely undeveloped pastoral landscape.
13. Furthermore, the use of the site and hut for holiday-let purposes has resulted in the introduction of a gravelled area for car parking and outdoor seating. These areas not only formalise the space and diminish the verdant pastoral nature of the land but inevitably, also bring additional elements such as cars, tables and chairs and other paraphernalia, which emphasise the tourist use of the site and hut and exacerbate their prominence within this rural landscape.
14. Having regard to the Appellant's Landscape Assessment (the LA)⁵, while the continuous rising land, the tree plantation to the north and the tree belt to the west mean that the hut does not break the skyline when viewed from the B6341 or the A696, this does not mean that the change in use of the land or the hut's presence is any less obvious in the landscape, nor does it justify their location. Moreover, even though the few controlled views in the LA show that from specific points the hut is partially screened by existing trees, my site visit confirmed that there are many view points along both of these public routes from which the site and hut are markedly perceptible in the landscape.

⁵ Section 6 – Supporting Statement Ground A Enforcement Appeal, dated June 2022.

15. For all of these reasons, the change in use of the land and the siting of the hut for the purposes of holiday let accommodation appears as a physical incursion and visually intrusive feature within this agrarian context. It disrupts, detracts from and harms the area's intrinsic and identified positive characteristics and does not assimilate well into the landscape. That the land has no formal designations does not mitigate nor justify the harm.
16. I have had regard to the Appellant's comments that visibility does not necessarily cause landscape harm and have considered the measures they suggest aimed at mitigating any perceived harmful effects of the proposal on the character of the landscape, along with their willingness to accept appropriately worded conditions to control these measures. These include painting/staining of the hut and the incorporation of additional landscaping.
17. However, I am not persuaded that these measures would enable the proposal to be easily absorbed into the landscape. Crucially, they would not overcome the fundamental objections to the location of the change of use of the land and the presence of the hut within such an open and agrarian landscape. Moreover, any screening provided by additional planting of native hedgerows and new trees would take time to become established and there is no guarantee that, when mature, they would satisfactorily mitigate the proposal's physical and visual prominence. Besides, given the location of the proposed screening to the west and south of the site, it would not mitigate the proposal's prominence when viewed from the east. In all of the above respects the suggested measures and any associated conditions would not overcome the harm.
18. While I note the 'major investment' made by the Appellant on the hut, no substantive evidence has been provided which demonstrates the contribution made by the hut or its importance either to the diversification of the Farm or to the local economy. Similarly, no information has been presented which corroborates the Appellant's declaration that the proposal is providing much needed accommodation in the area. These deficiencies severely reduce the weight I attach to these matters in support of the appeal.
19. The Appellant asserts that the proposal is no more intrusive than any other buildings which might appear in this landscape under agricultural permitted development rights. Moreover, that if the Farm cannot continue with the hut business, it may need to diversify in other ways, or intensify livestock production, possibly resulting in the Appellant constructing significantly larger buildings than the hut under agricultural permitted development rights.
20. Again, no robust or compelling evidence has been provided which supports these contentions. Even if the Appellant is correct in their assessment of the permitted development position, in the absence of details of any additional diversification or intensification of the Farm business, I cannot evaluate its effects in comparison to the proposal before me. Furthermore, there is no evidence that there is any greater than a theoretical possibility that such developments might occur. As such, this fallback position carries little weight in favour of the appeal.
21. In coming to my decision I have had regard to the local and national policy support within the NLP⁶ and the National Planning Policy Framework (the

⁶ Policies STP1 Spatial Strategy (Strategic Policy); ECN14 Farm/rural diversification; and ECN15 Tourism and Visitor Development of the NLP.

Framework)⁷ for the diversification of farm businesses and rural tourism, as highlighted by the Appellant. Part i. of Policy STP1 of the NLP states that 'Development in the open countryside should be sensitive to its surroundings', which I have concluded that this proposal is not. Additionally, there is no information before me which confirms that the scale, nature and detailed location of the proposal would not prejudice the long (or short term) operational needs of the host farm or other rural operations, as required by Policy ECN14 of the NLP. Moreover, Part f. of Policy ECN15 of the NLP requires that new sites for caravans or chalets are adequately screened, which for the proposal is not the case at the present time and I cannot be certain that this would be the case in the future. In addition, the Framework is clear that planning decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, which I have found that the proposal does not.

22. Drawing all of the above together, I find that the change of use of the land to site the hut for holiday let accommodation has a harmful effect on the character of the landscape. As such, it conflicts with Policies QOP1, ENV1 and ENV3 of the NLP in so far as they seek development proposals to make a positive contribution to local character and distinctiveness; and to conserve and enhance Northumberland's distinctive and valued natural environment, including the character of the landscape. It also does not comply with the provisions within the Framework which seek to conserve and enhance the natural environment.

Other Matters

23. Updated guidance from Natural England advises that a number of designated European habitats sites located within the boundary of Northumberland County Council are in an unfavourable conservation status due to nutrient enrichment that is polluting the protected area⁸, and which may be worsened by certain types of development, including those which involve overnight stays, such as the appeal proposal.
24. Regulation 63 of the Conservation of Habitats and Species Regulations 2017, requires the 'Competent Authority', before granting consent for a plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), to carry out an Appropriate Assessment of the implications of the plan or project for that site in view of that site's conservation objectives. In determining this appeal on behalf of the Secretary of State, I am the 'Competent Authority'. I am therefore required to have regard to this matter.
25. No information has been provided by either party as to whether the site is located within the boundary or catchment area of any of the designated European sites in the Council's area. However, given my conclusions on the main issue I have not pursued this matter with the parties, because the development is unacceptable for other reasons.
26. That there have been no complaints made by anyone at any point since the hut was built does not denote a lack of harm and this matter weighs neither for nor against the appeal.

⁷ Paragraph 84 of the Framework (referred to as Paragraph 83 by the Appellant in the Supporting Statement).

⁸ Dated 16 March 2022.

Conclusion on the appeal on ground (a)

27. I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

28. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
29. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act as amended sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
30. In this case, the requirements of the notice are to (i) cease to use the Land for the siting of a shepherd hut; (ii) remove the shepherd hut for use as holiday let accommodation from the Land; and (iii) reinstate the Land to the condition it was before the breach took place.
31. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred by discontinuing the use of the land for the purposes stated in the notice, as well as restoring it to its condition before the breach took place.
32. The Appellant highlights the Council's acceptance in principle of the diversification of the Farm, the provision of holiday accommodation and the form of the hut. Bearing this in mind, they submit that the Council's perceived harmful effects of the proposal on the character of the landscape could be resolved by lesser steps, including the painting/staining of the hut a different colour and the incorporation of additional, higher quality landscaping within the site. In their opinion, both would serve to mitigate the visual prominence of the hut in the landscape.
33. However, it is the material change of use of this land in this specific location from agricultural use for the siting of the hut for the purposes of holiday let accommodation which form the development and constitute the breach. The lesser steps put forward by the Appellant would potentially moderate the resultant identified harmful effects. Although as outlined above, I am not satisfied that they would adequately resolve them. Moreover and more importantly, it is clear that neither of these options would remedy the breach by discontinuing the use of the land for the purposes stated in the notice and restore the land to its condition before the breach took place.
34. I have had regard to the Appellant's comments that they rely on this income to support themselves and their family and note their contention that it contributes to other businesses and tourism in the local area. These matters relate to the planning merits of the case and are considered in the appeal on ground (a). As set out above, the Appellant has not demonstrated the contribution made by the hut or its importance either to the diversification of

the Farm or to the local economy. Moreover, there is nothing before me that confirms that the Farm and the local businesses which are stated to benefit from the holiday accommodation would be in jeopardy or would cease if the requirements as stated in the notice were upheld.

35. I therefore conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control, but are proportionate given the purpose of the notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

36. The appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) of the 1990 Act as amended falls short of what should reasonably be allowed. In this instance, the times for compliance of the notice's three requirements are stated to be (i) 4 weeks; (ii) 8 weeks; and (ii) 16 weeks. Having regard to the error by the Council in referencing the times for compliance, I have considered this ground of appeal on the basis that the three times for compliance each relate to the three requirements.
37. The Appellant asserts that the times for compliance are unreasonable and that they need more time to secure an alternative employment/income stream to cover the loss of that generated through the hut; fulfil existing bookings which have been taken up to six months in advance; and inform employed staff who clean the hut and local businesses who supply goods. They submit that a minimum of 6 months should be given for the use of the land to cease, with a further 4 months given for the removal of the building, which includes pipework and a septic tank, and to reinstate the land, which has now been taken out of the stewardship scheme.
38. Conversely, the Council contends that, given the extended planning history relating to the site and hut, the Appellant has had sufficient time to put arrangements in place to address the matters raised by the notice's requirements.
39. In considering this ground of appeal, there is a need to balance the public interest in securing the expeditious compliance with the notice against the private interest bound up in the development subject to the notice.
40. In relation to timescale (i), no corroborative evidence has been provided to verify any of the assertions made by the Appellant. That said, I am persuaded that a greater period of notice is required to inform those who may have already booked and individuals/businesses who provide goods and services. On this basis, I consider the period of 4 weeks stated by the Council to be unreasonable, although consider the 6 months suggested by the Appellant to be excessive. I therefore judge that a compromise between the two of 20 weeks would be a more reasonable lead in time to cease the use of the land for the siting of the hut.
41. With regard to timescales (ii) and (iii), while I appreciate the Appellant's comments concerning the connected pipework and the septic tank, there is nothing which proves that these cannot be easily disconnected and the hut moved prior to restoring the land to the condition it was before the breach took place. In this respect, I am satisfied that the additional periods of 4 weeks and 12 weeks respectively as stated by the Council following the cease of use of the

land/hut are acceptable. As such, times (ii) and (iii) would then be 24 weeks and 32 weeks, respectively.

42. Taking the submissions of both parties into account, I am satisfied that the times of (i) 20 weeks; (ii) 24 weeks; and (iii) 32 weeks for compliance of the three requirements of the notice is a reasonable and proportionate response to the breach of planning control that has occurred.
43. Consequently, I conclude that the times for compliance specified in the notice fall short of what should reasonably be allowed. The appeal on ground (g) succeeds to that extent and I will vary the notice accordingly. Having regard to section 176(1) of the 1990 Act as amended, I am satisfied that no injustice would be caused by varying the notice in this respect.

Conclusion

44. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations 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

45. It is directed that the enforcement notice is corrected by:
- in paragraph 6 of the notice, delete the numeral '(ii)' before the third time for compliance and insert the numeral '(iii)'.
46. It is directed that the enforcement notice is varied by:
- in paragraph 6(i) of the notice delete the number and word '4 weeks' and insert the number and word '20 weeks'.
 - in paragraph 6(ii) of the notice delete the number and word '8 weeks' and insert the number and word '24 weeks'.
 - in paragraph 6(iii) of the notice delete the number and word '16 weeks' and insert the number and word '32 weeks'.
47. Subject to the correction and variations, 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.

F Cullen

INSPECTOR