
Appeal Decision

Site visit made on 6 February 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2023

Appeal ref: APP/R1845/C/21/3286802

Land adjoining Hurtle Hill Farm, Heightington, Worcestershire DY12 2YH

- 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 Ms Pauline Freeman against an enforcement notice issued by Wyre Forest District Council.
 - The notice was issued on 8 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of land from agricultural to a mixed-use comprising agriculture and the stationing of a caravan for residential occupation, construction and installation of associated stable building, solar panels and septic tank.
 - The requirements of the notice are:
 1. cease the use of the land for a mixed use comprising agriculture and the stationing of a caravan for residential occupation and return the land to solely agricultural use.
 2. remove the caravan, stable building, solar panels, septic tank and all other residential paraphernalia from the land.
 - The period for compliance with the requirements is 6 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Formal Decision

1. The enforcement notice is corrected by:
 - in the alleged breach delete 'associated stable building' and replace with the wording 'associated timber building'.
 - in requirement (2) delete 'stable building' and replace with the wording 'timber building'.
2. Subject to these 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.

Preliminary Matter

3. For completeness, the postcode set out above has been provided by the appellant as none is stated on the enforcement notice.

Reasons

The appeal on ground (d)

4. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.

5. Section 171B(3) of the Act provides that, in respect to the alleged material change of use targeted by the notice issued on 8 November 2021, no enforcement action would have been possible after the end of the period of 10 years beginning with the date of the breach.
6. Therefore, if the alleged material change of use had already occurred before 8 November 2011 and that use had been continuous since that time (and possible for the Council to have taken action in respect to it) then the appeal should succeed under ground (d), providing that the use had not been superseded by a new chapter in the land's planning history.
7. The planning unit is the land edged red. The Council state that the land's primary use, as it existed ten years before the notice was issued, was agriculture. I have no reason to doubt this, nor does the appellant dispute it. The precise nature of agricultural activities which took place on the land is not clear, but the appellant confirmed in the Planning Contravention Notice (PCN) response signed 15 December 2019 that she uses the land as an orchard. Further PCN responses, signed 15 September 2020 and 8 September 2021 point to the appellant's intention to bring animals onto the land. There is no evidence before me to suggest that animals have been brought on the land at any point. Nevertheless, the appellant has tended to the land over recent years, and on the balance of probabilities, I consider that the land has continued in an agricultural use since 8 November 2011, or at the least as part of a mixed use, which is what the notice alleges.
8. Alongside the agricultural use, the notice alleges that the land has been used for residential occupation with the stationing of a caravan, and the construction and installation of an associated stable building, solar panels and septic tank. Whether or not the land is in a mixed use, rests on whether there has been a significant difference in the character of the activities from what has gone on before. This will be a matter of fact and degree.
9. There is no suggestion that 10 years prior to the notice being issued, that the primary agricultural use involved or required residential occupation on or close to the land whether permanently or intermittently on an incidental basis.
10. The static caravan on the land is positioned on an area of hardstanding at the bottom of the access. Both the hardstanding and the access have been granted planning permission. The appellant says that the static caravan is used in connection with the use of the land as they work and tend to the land.
11. The caravan is raised up off the ground on blocks. Utility connections for sewage and electricity exist. It is unclear if there is a water connection, but even if there is, the caravan is capable of being detached with ease and moved. As such, it is not a building.
12. The appellant is unsure when the land was first used to station the caravan, but based on the PCN response, signed 15 September 2020 and the Council's photograph taken on 30 October 2019, it seems that it was sometime after 30 October 2019 and before the winter finished in 2020.
13. The caravan may have been used to make food and drink and as a toilet, but it has also been used by the appellant to stay overnight on at least nine separate occasions in 2020 and 2021, lasting between two and six nights at a time. Therefore, the caravan has been stationed for human habitation when the notice was issued as it has afforded those who have used it the facilities required for day-to-day private domestic existence.

14. An area of land next to the caravan is fenced off from the remainder of the appeal site. To enter and leave the caravan, persons need to go through a gate into the fenced area of land. The timber fence is low, but it encloses land containing a seating area on a raised deck, a gas BBQ, storage units, and further seats. It has a character and function associated with the residential occupation of the caravan. It is akin to a domestic garden.
15. In terms of the associated stable building, the Council's photograph, taken on 30 October 2019, shows that there was timber structure on the land at that point. That is the same timber structure that I saw on site, which is of a design, style, layout and finish consistent with a field shelter used for horses.
16. The purpose of the structure, however, according to the PCN signed 15 December 2019, is "for machinery to keep the ground in good order and safe with storage for the orchard" and that the structure "has tools equipment, on to look after the land." Therefore, the structure has not been used by horses, so reference to it as a 'stable building' in the notice is not accurate.
17. As the allegation refers to a 'building', I have had regard to the three primary factors relating to whether a moveable structure is a building. The structure could have either been brought onto the site partially completed or constructed on site. The structure lies on top of an area of hardstanding next to a small number of trees, before the land slopes away. Given the topography of the land around the structure, along with its use to store equipment and machinery, I consider that the appellant's intention is for the structure to be permanently sited in this location. While the appellant says that the structure has been moved back and forth, I am not satisfied, on the balance of probabilities, that this was the case when the Council issued the notice. Taking these matters in the round, I consider that the alleged stable building is a building, but one that is used predominantly in connection with the agricultural use.
18. Nevertheless, the notice can be corrected so that it is referred to as a 'timber building' without causing injustice to the parties.
19. The PCN signed 8 September 2021 confirms that the solar panels were sited on the land "about a month ago". This would be around August 2021. The appellant says that the septic tank was installed, but later taken out at the Council's request and left on the land. However, it is confirmed within the PCN signed 8 September 2021, that "the septic tank was installed about 2 or 3 years ago". The latter would only support sewage from the use of the land to station the caravan. Given the caravan has been used for human habitation, on the balance of probabilities, the septic tank could have only carried out its intended function since the caravan was stationed on the land. This would be under any time period for immunity from enforcement action.
20. I am unclear how electricity generated from the solar panels is used, but they are not immune from enforcement action as they were sited on the land less than four years ago.
21. Due to the use of the land to station a caravan for residential occupation, the installation of a septic tank and the character and function of the land next to the caravan, I consider that there is a significant difference in the character of the activities on the land from what has gone on before. Furthermore, the residential use, based on the appellant's case, is integral to or part and parcel of the primary agricultural use. It is not therefore incidental to the primary use of the site, and there has been a significant change to the character of that use. The appeal site was therefore in the mixed use alleged when the notice

was issued because the land is put to two or more activities, and it is not possible to say that one is incidental to another.

22. The precise date when the change of use to a mixed use took place seems likely to have been at some point in 2018 or 2019. The precise date is not, however, determinative, as it still falls some way short of the time limit of ten years required to be immune from enforcement action. However, in any event, the septic tank, solar panels and timber building would all, on the balance of probabilities, not have been on the land for four years or more. They are not immune from enforcement action.
23. For all the reasons given above, I am not satisfied on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. Thus, the appeal on ground (d) does not succeed.

The appeal on ground (a) / the deemed planning application

24. The main issues are: whether the proposal accords with local planning policies in respect of the location of the site; and the effect of the proposal on the landscape character of the countryside.

Location of the site

25. The appeal site lies outside of locations identified for residential development in Policy SAL.DPL1 of the Site Allocations and Policies Local Plan 2006 – 2026 (Local Plan). There is also no substantive evidence to demonstrate that the orchard or any agricultural activity on the land requires a full-time worker or that this agricultural activity is a means of employment. As such, it has not been clearly demonstrated that there is an established existing functional need for a rural worker dwelling on the land on a permanent basis having regard to the exceptions listed in Local Plan Policy SAL.DPL2.
26. That said, Local Plan Policy SAL.DPL7 permits the use of caravans and mobile homes for residential purposes for temporary periods to meet specific short term needs listed within the policy. A specific short-term need could be to meet a temporary or seasonal agricultural or forestry need.
27. Fruit trees on the appeal site are not abundant, though the appellant says that the land is used as an orchard with fruit stored in the timber building. Also, despite the appellant's intentions, there is no evidence of any animals on the land, no suggestion that have been on the land at any point, and no indication of what animals would be brought onto the land in the future.
28. As such, there is not a need for a constant presence of person(s) on the land and on that basis a specific short term need does not exist nor has a case been made that there will be a specific short term need in the future.
29. I conclude that the proposal does not accord with local planning policies in respect of the location of the site. Conflict is caused with Local Plan Policies SAL.DPL1, SAL.DPL2 and SAL.DPL7. Jointly, these policies do not permit residential development outside of identified locations unless they accord with one of the listed exceptions, such as to meet an established existing functional need; or for temporary periods to meet specific short term needs. The proposal also conflicts with emerging Policy 8C of the Wyre Forest District Local Plan 2016 – 2036 Submission Document, as a clear and established functional need has not been proven. I give limited weight to the emerging policy due to its stage of preparation and as the extent of any unresolved objections is unclear.

Landscape character

30. The appeal site relates to a parcel of land spread across a steep slope in an elevated position in the landscape. The land sits behind a group of buildings that front the road. Much of the land consists of rough grassland with a few trees dotted around the site. A line of trees along the site's flank boundary lead into the valley below. An access track extends from a field gate in the north-eastern corner of the site to an area of hardstanding upon which the caravan and timber shelter are sited. Both have been granted planning permission.
31. The use of the land, timber building and associated paraphernalia has introduced development into an open field bound by an unspoiled landscape. The development is largely isolated within the centre of the field on a plateau. An area, with a character typical of a domestic garden, is fenced off next to the land on which the caravan is sited. The domestic character created by using the land for the caravan and the associated garden area do not contribute to local distinctiveness. Moreover, the timber building and solar panels, whilst relatively modest in scale and massing, are inappropriate features in the landscape.
32. As a result, the proposal harms the character of the landscape when viewed from near and afar. The proposal conflicts with Local Plan Policy SAL.UP7 and Policy CP12 of the Core Strategy (2006 – 2026) which jointly seek, development to be of the highest design quality, to contribute to local distinctiveness and contribute positively to the district's green infrastructure.

Other matter

33. Local Plan Policy SAL.DPL2 requires the submission of appropriate arrangements for sewage treatment in addition to satisfactory drainage measures, to protect the water environment. I do not have details of the septic tank. Even if I were to consider that this was an appropriate arrangement to treat sewage, it would not alter or outweigh my findings on either main issue.

Conclusion on ground (a)

34. Having regard to my conclusion on the main issues and all other matters raised, I am satisfied that ground (a) should fail and the deemed application for planning permission should be dismissed.

Conclusion

35. 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.

Andrew McGlone

INSPECTOR