



Appeal Decisions

Hearing held on 21 February 2023

Site visit made on 21 February 2023

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal A Ref: APP/U2370/C/22/3298833

Appeal B Ref: APP/U2370/C/22/3298834

Land at Old Quarry Potters Brook, Bay Horse, LANCASTER, LA2 0HQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Nicholas Plummer (Appeal A) and Ms Livia Cvijanovic (Appeal B) against an enforcement notice issued by Wyre Borough Council.
- The notice was issued on 7 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change in the use of the Land from use for the purposes of agriculture to a mixed use comprising use for the purposes of agriculture and use as a dwellinghouse of the building erected as a dwellinghouse on the Land in the approximate location shown shaded yellow on the attached plan ("the Dwellinghouse") and the use of parts of the Land shown shaded pink on the attached plan for purposes ancillary or incidental to the use of the Dwellinghouse as a dwellinghouse.
- The requirements of the notice are to:
 - (a) Cease the use of the Dwellinghouse as a dwellinghouse;
 - (b) Cease the use of the Land shown pink on the attached plan for any purpose ancillary or incidental to the use described in sub-paragraph (a) above; and
 - (c) Remove from the Land all paraphernalia associated with the use described in sub-paragraph (a) above and all paraphernalia associated with the use described in sub-paragraph (b) above.
- The period for compliance with the requirements is nine months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) 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.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act, 1990, as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the formal decision.

Decisions

Appeals A and B

1. It is directed that the enforcement notice be corrected:
 - by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - by the deletion of all the wording in paragraph 3 and substitution with the following words, "Without planning permission the material change in the

use of the Land shown hatched pink on the attached plan from use for the purposes of agricultural to residential use”;

- by the deletion of all the wording in paragraphs 5 (a), (b) and (c) and substitution with “(a) Cease the residential use of the Land; and (b) Remove from the Land all paraphernalia associated with the residential use of the Land.”
2. Subject to the above corrections the appeals are dismissed and 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 Matters

3. I have been provided with correspondence from health professionals in relation to the medical history of Ms Livia Cvijanovic who currently occupies the appeal site. The correspondence includes matters which relate to her protected characteristic. I do not need to refer to the detail of those documents. I am aware that the public sector equality duty (PSED) applies¹.

Background and The Enforcement Notice

4. The enforcement notice identifies a parcel of agricultural land where planning permission has previously been granted for the construction of a stable block². A caravan was brought onto the Land in 2014 and adapted to a building such that it amounted to the construction of a dwellinghouse. This building has been occupied by the appellants for residential use since 2015. Adjacent to the building a small shed has also been erected which is used for domestic storage. The stable block is still under construction and the remainder of the Land is predominantly used to rear pigs. There are some domestic vehicles stored on the Land as well as a polytunnel and a small building where tools are stored.
5. The Council do not dispute that the building has been on the Land for over four years and is therefore immune from enforcement action. It is the residential use of the Land which they are seeking to cease. However, the Council accepted at the hearing that the breach of planning control alleged in the notice would need to be corrected. Following a site visit which took place during the hearing both parties agreed that rather than being in a mixed use, as alleged in the notice, the original planning unit has been subdivided. A new smaller planning unit in residential use has been created on the Land which, as a matter of fact and degree, is physically and functionally separate and distinct from the rest of the Land which remains in agricultural use and includes some stables under construction. The mixed use alleged in the notice is not therefore correct. A new plan was prepared during the hearing to identify the new planning unit and Land where the alleged material change of use to residential has occurred. Furthermore, it was accepted by both main parties that the alleged breach of control should be corrected to read, “*Without planning permission the material change in the use of the Land from use for the purposes of agricultural to residential use.*” The appellants and the Council agreed that there would not be any injustice to either party if I were to correct the notice and plan to that effect. I shall also correct the requirements so that they align with the corrected breach. I am satisfied that those corrections

¹ Section 149 of the Equality Act 2010.

² Local Planning Authority Ref: 09/00152/FUL, dated 23 April 2009.

would not alter the purpose of the notice and the amended requirements are no more onerous than those previously required.

Appeal A on ground (a), deemed planning application

Main Issues

6. The main issues in this case are:

- whether the development is acceptable in principle in this location, having regard to local and national planning policies; and
- the effect on the character and appearance of the area.

Reasons

Suitable Location

7. Wyre Borough Local Plan (2011-2031) (LP) adopts a spatial development strategy which focuses on sustainable extensions to the towns and rural settlements in accordance with an identified settlement hierarchy. Policy SP1 advises that new built development should take place within settlement boundaries defined on the proposals map unless development elsewhere in designated countryside areas is specifically supported by another policy in the Local Plan. Policy SP2 of the LP requires all development in Wyre to be sustainable and contribute to the continuation or creation of sustainable communities in terms of location and accessibility. Sustainable communities will be achieved by, amongst other criteria, maintaining the vitality of all town, district and local centres, facilitate the provision of strategic and local infrastructure and services, ensuring accessible places and minimise the need to travel by car.
8. The appeal site is situated on Potters Brook approximately 1.3km to the north of the settlement of Forton, and in an area defined as countryside in the LP. It lies adjacent to a recently constructed property, Salamander Cottage, and a short row of cottages on Potters Brook.
9. Policy SP4 of the LP seeks to restrict new development in the countryside to that which meets the requirements of the Core Development Management Policies and is for one of several listed purposes. New residential development is restricted to agricultural, forestry or other rural based enterprise workers' dwellings in accordance with Policy HP7, and the conversion of existing buildings where it can be demonstrated that a number of uses, listed in priority order, have been considered.
10. The terms of an appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. Consequently, taking account of the corrected description of the alleged breach, as set out above, the deemed planning application seeks permission for the material change of use of the Land to residential use.
11. The appellant has not suggested that the residential use is required for agricultural, forestry or any other rural enterprise purposes. Furthermore, although a grant of planning permission for a residential use of the Land would permit the existing building on it to be used for residential purposes, the alleged breach of planning control relates to the use of the Land. The notice does not allege the unauthorised conversion of a building. Consequently, the

- residential use of the Land the subject of the deemed planning application would not be a use provided for by Policy SP4 and there would be conflict with the development plan in that regard.
12. The Council is also concerned that the development is in an isolated location due to the lack of immediate, direct and safe access to key community services and infrastructure. Thus, it would result in the use of a dwellinghouse in an unsustainable and socially inaccessible location increasing the need to travel by car and fails to contribute towards creating a sustainable community.
 13. The Council accept that at a time when they did not have a five-year supply of housing land they permitted a new dwelling to be constructed adjacent to the appeal site³. However, they have also drawn my attention to a subsequent application for a new dwelling on the appeal site which was dismissed on appeal in 2017⁴. That decision is a material consideration in this appeal. In that appeal case the Inspector found the appeal site to be remote from services, facilities and public transport, and in his view would constitute an isolated home in the countryside for the purposes of paragraph 55 of the National Planning Policy Framework (the Framework), which states that isolated homes in the countryside should be avoided.
 14. Since the 2017 decision the Framework has been revised (July 2021). Paragraph 80 of the new Framework is generally consistent with the former paragraph 55 and continues to ensure that isolated homes in the countryside are avoided. However, since the Inspector's decision, the Court of Appeal in *Braintree DC v SSCLG, Greyread Ltd & Granville Development Ltd* [2018] EWCA Civ 610 has also found that, "the word 'isolated' in the phrase "isolated homes in the countryside" in the Framework, simply connotes a dwelling that is physically separate or remote from a settlement."
 15. The appeal site forms part of the dispersed settlement of Bay Horse. It is situated adjacent to Salamander Cottage and a small row of cottages on Potters Brook where there is also a farmhouse and other buildings. Considering the finding in "*Braintree*", in my judgement the appeal site is not physically separate from the settlement of Bay Horse and not therefore "isolated".
 16. However, Bay Horse is an undefined rural settlement in the LP and the nearest Main Rural Settlement with a defined boundary is Forton, the settlement edge of which is some 1.3km to the north of the site. Furthermore, I heard at the hearing that Forton currently only has a small post office, with limited hours of opening, and no other shop. The nearest shop is approximately 3km away either at the Esso Garage south of Forton, or within the village of Galgate to the north of the appeal site. The nearest school and community facilities in Forton are at least 1.5km away and occupiers of the appeal site would have to walk in part along a narrow and predominantly unlit road with no pavement to reach them. Whilst I heard from the appellants that it is possible to walk to the shop in Galgate along the canal tow path, I do not consider that route would be used regularly and certainly not in the dark evenings or inclement weather.

³ Appellant's Appendix KS17.b.

⁴ Appeal Ref: APP/U2370/W/16/3161847.

17. I have had regard to the written statement on highway and transportation matters prepared on behalf of the appellant⁵, and I accept that there are some opportunities to cycle, or to catch a regular bus service from the nearby A6 to access shops and other services. I also recognise that the site does not have an unacceptable impact on safety for travel by car and note that there has been no recorded personal Injury Accidents within the last five years. However, I do have concerns over pedestrian safety as there are no footways along Potters Bank, Cockerham Road or Wallace Lane, and much of these routes are not well lit. Those constraints would deter pedestrians from utilising them. From the evidence before me and observations on my site visit, I would agree with the Inspector's 2017 decision that given the location of the site, existing and future occupiers would be unduly reliant on the use of private transport to access shops and services. Moreover, the Council has adopted a spatial development strategy which seeks to direct development to defined settlements where it can support existing services and generate new services to create sustainable communities. Land has been allocated in Forton for such new development. Unplanned residential development in the countryside would conflict with the Council's development strategy which seeks to enhance and maintain the vitality of rural communities.
18. I have had regard to the many other decisions for new dwellings brought to my attention by the appellant. Other than the decision relating to a proposal for a new dwelling on the appeal site, which was refused, only one of those decisions by Wyre Borough Council is for a dwelling on Potters Bank, and thus directly comparable on accessibility matters. However, when that decision was made the Council did not have a 5 year supply of housing land, and since that decision a new development plan has been approved. Thus, when that decision was made, the planning circumstances were not directly comparable to those under consideration in this appeal. Other decisions brought to my attention lie within the City of Lancaster and Sussex. Whilst I appreciate that there may be locational similarities about the accessibility of those sites, that is only one aspect of the site's suitability for residential use. Wyre's overall development strategy also needs to be considered. Thus, whilst I have read all of those decisions, the planning circumstances of each of those is not directly comparable to those in this appeal which I have considered on its own merits.
19. I conclude that the development is not acceptable in principle in this location, having regard to local and national planning policies. The development conflicts with the development plan and in particular with Policies SP1, SP2 and SP4 of the LP the aims of which are set out above. I also find conflict with Policy CDMP6 which seeks to ensure that new development is located to encourage access by foot, by bicycle and public transport and reduce car reliance. There is also conflict with paragraph 79 of the Framework which seeks to ensure that new housing in rural areas is located where it will enhance and maintain the vitality of rural communities.

Character and appearance

20. The Council consider the residential use of the Land to be an unacceptable encroachment into an undeveloped area of the countryside which would be visible from vantage points and diminish the open and rural character of the area.

⁵ Appellant's Appendix KS32

21. The deemed application is for a residential use of the Land. The existing building is lawful and will remain on the Land should this appeal be dismissed, albeit its use for residential purposes would cease.
22. The Land is well screened from Potters Bank by a new wall and gates, which the Council confirmed at the hearing are also now lawful. Furthermore, other than from Potters Bank, there are no other public rights of way close to the site and its residential use is not unduly conspicuous. Indeed, considering the other lawful buildings on the site, the limited amount of domestic paraphernalia, including a domestic storage shed, hot tub and some stored vehicles, its use for residential purposes does not have a significant effect on the overall appearance of the countryside.
23. I appreciate that the use of the Land for residential purposes has some impact on its character, particularly in terms of comings and goings. However, I am mindful that the adjoining Land will remain in use for the rearing of pigs and has some stables being constructed on it. The agricultural use and comings and goings associated with the Land will continue even without the residential use. Overall, the residential use of the Land does not have a significantly harmful effect on the character and appearance of the area.
24. I conclude that the residential use of the Land does not have a harmful effect on the character and appearance of the area. I find no conflict with the development plan, and in particular with the design aims of Policy CDMP3.

Other Considerations

25. The appellant contends that given the lawful use of the site for agriculture, including pig rearing and keeping of horses, there will remain a need for journeys to and from the Land in motor vehicles and for deliveries, which he considers would be greater than if they are able to live on the site.
26. I recognise that the site will remain in agricultural use, and the stables used for the keeping of horses. I heard at the hearing that those uses would necessitate visits to the site twice daily by the appellant's wife plus deliveries of feed and bedding. However, the appellant currently makes journeys to and from the site for work and uses a car to access the train. There will also be other journeys solely associated with the residential use of the property, including outings to the shops, for leisure, domestic deliveries and other visitors, including friends and family. Therefore, it seems to me that a residential use would generate a greater number of vehicular movements than its lawful use. Furthermore, this consideration would not outweigh the harm that I have identified to the Council's settlement strategy which seeks to maintain and create sustainable communities. I therefore give this consideration little weight.
27. It is argued that the Council could not resist the re-use of the building for holiday accommodation and that this therefore forms an available fallback position for the appellant. I have had regard to case law, including that set out in the Appellant's Statement of Case⁶ and that submitted at the hearing (Document 1). However, to use the building for holiday accommodation would require a grant of planning permission. Therefore, I am not persuaded that holiday accommodation is a genuine 'fallback' position. Nevertheless, I am

⁶ Appellant's Appendix KS3.a

- mindful that the deemed planning application is for a residential use, and Section 177(1) (a) of the 1990 Act allows permission to be given under appeal on ground (a) to any part of the matters alleged in the notice. Thus, it is open to me to consider whether planning permission could be granted for a residential use, restricted by condition to use solely for holiday accommodation.
28. Policy SP4 of the LP makes provision within the countryside for holiday accommodation in line with LP Policy EP9, provided it meets the requirements of the Core Development Management Policies. Policy EP9 recognises that tourism is an important element of the local economy in Wyre and holiday accommodation is an important element of the tourism industry. However, it also recognises that often new holiday accommodation within designated countryside areas becomes unviable creating pressures for conversion into residential uses at locations where residential development would not be acceptable.
 29. In line with criteria 1.c) of Policy EP9 the appellant has produced a Business Plan (BP) to support his case that the Land is suitable for holiday use⁷. The BP includes details of the project, market research, marketing strategy, managements and operations, a financial plan and risk assessment.
 30. The BP envisages the proposed use as a 'glamping unit', focused on the small holding and including the existing hot tub and electric vehicle charging point as added extras. However, from observations on my site visit, and taking into account the details provided of local competitors in the BP, it seems to me that considerable expenditure and remodelling of the existing building and site would be required before it could provide accommodation that would be attractive to holiday makers. No precise details of those works, which in themselves would be likely to be dependent on a further grant of planning permission, are before me.
 31. Furthermore, the accommodation adjoins land in use for pig rearing. Whilst I appreciate that there could be a small number of holiday makers that may be attracted to the small holding aspect of the offer, I consider that the location of the unit in such close proximity to land in use for pig rearing would be a real limiting factor in the marketing and future occupancy levels of the accommodation. Furthermore, Ms Cvijanovic made it clear at the hearing that she intended to continue to use the site on a daily basis for shelter and to support the welfare of her animals, including equine activities associated with the stables under construction. In my judgment, glamping sites are attractive to holiday makers who want to experience seclusion and the tranquillity of the countryside with close friends/family. The appeal site would not benefit from those characteristics. The nature of the adjoining land use and the appellants intended continuation of that use is such that I consider it unlikely that the use of the Land for the purposes of holiday accommodation would be attractive to holiday makers and thus unlikely to be viable in the long term.
 32. I am also mindful of my conclusion that the site is in a location where any future occupiers would be reliant on the use of a private motor vehicle. The use of the site as holiday accommodation would be in addition to the appellants' continued use of the adjoining land and would result in a further increase in activity in a rural area away from key service centres. Whilst I appreciate that holiday makers are likely to make some contribution to the

⁷ Appellant's Appendix KS01.e

rural economy through spend in the local area. The accommodation, including its small scale and the limitations of the offer which I have identified in terms of living conditions and location, would mean that those benefits would be limited.

33. I conclude, therefore, on the evidence available to me and for the reasons set out above, the alternative use proposed as holiday use would conflict with Policies SP2 and EP9 of the LP. There would be conflict with the development plan and a grant of planning permission should not succeed for holiday use.
34. I have had due regard to the PSED which sets out the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity for those persons with a protected characteristic, including fostering good relations between them and others. Dismissal of the appeal will not prevent Ms Cvijanovic from continuing to visit and use the Land for agriculture, including animal husbandry. Thus, the health benefits she derives from the Land for those purposes would not be diminished when the residential use ceases. For these reasons and those set out above I therefore conclude that it is proportionate and necessary to dismiss the appeal.
35. I accept that dismissing this appeal would interfere with the appellants' rights under Article 8 of the European Convention on Human Rights as it would deny them the opportunity to establish a home on the site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. I am also mindful that the appellants were aware that they would require planning permission to use the Land for residential purposes but went ahead with the unauthorised development. In this instance such interference would be proportionate given the public aim of creating sustainable communities and the effects on the countryside.

Conclusion on Appeal A, ground (a)

36. Although I have found that there would be no harm to the character and appearance of the countryside, for the reasons given above the development is not acceptable in principle in this location and there is conflict with the development plan when read as a whole. No considerations merit a decision other than in accordance with the development plan. I therefore conclude that the appeal on ground (a) should not succeed and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeals A and B on ground (f)

37. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
38. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second is to remedy any injury to amenity that has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
39. Taking into account the corrections made to the description of the breach, which alleges a material change in the use of the Land to residential use, the

corrected requirements to cease the residential use and remove from the Land all paraphernalia associated with that residential use would not go beyond what is necessary to remedy the breach.

40. The appellants have advanced that planning permission could be granted for the Land to be used for residential purposes and restricted to holiday use. However, the planning merits of such holiday use were considered in Appeal A on ground (a) and found to conflict with the development plan. That alternative proposal is not therefore an option before me.
41. There are no lesser steps that would remedy the breach of planning control, as the purpose behind the notice can only be achieved by complying with its requirements. Therefore, the appeal on ground (f) must fail.

Appeal A and Appeal B – Overall Conclusions

42. For the reasons given above and having taken into account all other matters raised, 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.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Nicholas Kingsley Smith	Kingsley Smith Solicitors LIP
Mr Nicholas Plumber	The Appellant
Ms Livia Cvijanovic	The Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Robert Clewes	Principal Planning Officer
Mrs Carmel White	Council Solicitor

INTERESTED PARTIES

Mrs Beryl Holt	Local Resident
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Documents submitted at the hearing

- 1) *Simpson v Secretary of State for Communities and Local Government and another* [20110 EWHC 283 (Admin).
- 2) APP/D3830/W/20/3246048 including Appendices 1-9 (Pook Barn, Sayers Common).



Plan

by Elizabeth Pleasant DipTP MRTPI

Land at Old Quarry Potters Brook, Bay Horse, LANCASTER, LA2 0HQ

References: APP/U2370/C/22/3298834 & APP/U2370/C/22/3298834

Scale: Not to Scale

