
Appeal Decision

Hearing Held on 18 May 2023

Site visit made on 18 May 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/L3245/C/22/3299687

Land at Rear of the Birches, Hatton Road, Hinstock, Shropshire TF9 2TX

- 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 Simon Wragg against an enforcement notice issued by Shropshire Council.
- The enforcement notice was issued on 4 April 2022.
- The breach of planning control as alleged in the notice is:
 - i. Material change of use of agricultural land to mixed use agricultural and residential use following the erection of a structure in part used for human habitation in the approximate location marked with an 'X' on the attached plan.
 - ii. Operational development on the land consisting of the erection of a building to facilitate agricultural storage and residential accommodation.
- The requirements of the notice are:
 - i. Cease the residential use;
 - ii. Demolish/dismantle and remove from the land, the structure located thereon in the approximate position marked with an 'X' on the attached plan and all equipment and paraphernalia in connection with the residential use of the structure;
 - iii. Reinstate the land to its former condition.
- The period for compliance with the requirements is:
 - i. 14 days to comply with 5(i).
 - ii. 2 months to comply with 5(ii) and 5(iii).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

1. At the Hearing the appellant requested that additional written evidence should be submitted in support of his appeal. However, following an adjournment and consideration of the evidence it was determined that it constituted background information which was not material to the grounds of appeal being determined. Consequently, his request was rejected and the written evidence was returned to him.
2. The appellant also stated that whilst he does not wish to apply for costs against the Council with respect to the current appeal, he does wish to recover the planning fee associated with a recent application. The Inspector explained that this is a matter that should be discussed with the Council rather than being dealt with through the appeal process.

Background

3. The appeal site comprises approximately 6.5 hectares of agricultural land which is situated approximately 1.25 miles west of Hinstock. To the immediate north east of the site is mature woodland and the south-eastern boundary is mainly situated adjacent to large gardens of residential properties along Hatton Road.
4. A temporary structure has been installed close to the north east boundary of adjacent residential properties to the south east. The structure and land are accessed from an existing track and gateway which runs parallel to the boundary with a paddock connected with The Birches. There is an alternative gated vehicular access via the narrow rural lane which runs along the south western boundary of the site.
5. The appellant has a lifetime tenancy for the appeal site and wishes to secure a base from which he can operate and develop his agricultural business. On 17 January 2022 the Council determined that prior approval was not required for a proposed building for the storage of machinery and fodder at the appeal site. This has not yet been constructed, but it is my understanding that some of the building materials seen on site are for its construction.

The appeal on ground (b)

6. The ground of appeal is that the breach alleged on the notice had not occurred as a matter of fact. In order to succeed on this ground, it would need to be demonstrated that at the time the notice was served no material change of use of the land had occurred nor had the operational development taken place. The appellant's arguments are restricted to the operational development; namely the erection of a building to facilitate agricultural storage and residential accommodation. At the hearing the appellant confirmed that his main argument in this case is that the operational development is not intended to be permanent, but rather is a temporary measure to store agricultural machinery and provide residential accommodation for a maximum of three years. However, to fully address the arguments made in writing I shall also determine the matter of whether the structure is a building or otherwise.
7. Part of his argument is also that the structure is on wheels and is not permanently sited and is therefore a chattel. Whether or not the structure on site constitutes a building falls on three criteria which stem from widely accepted case law¹; namely size, permanence and physical attachment to the ground. The Council's initial assessment in October 2021 concluded that the structure was not a building given the fact that it could apparently be moved and the limited time it had been present on site. However, further later investigations showed that there had been some physical alterations to the structure, including the insertion of windows and a flue, and different conclusions were reached.
8. The structure comprises two main lorry trailers on wheels with an attached roof linking them. It is of a substantial size and it is clear to me that it was constructed on site rather than being brought onto the site in a ready-made condition. It is my understanding from the evidence presented that the structure has remained in the same position as the Council's first site visit in September 2021 which indicates that it is not actually moveable in its current

¹ Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keens [1949] 1 KB 385 and Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2) [2000] JPL 1025

form. In my judgement the roof would itself have to be dismantled to allow for the structure to be moved. The lorry trailers are on wheels and appear to be the only parts of the structure touching the ground. As such it is not physically attached to the ground.

9. I have taken account of the appellant's concerns relating to the application of case law in a rigid and stringent way to different cases. However, the case law to which I have referred sets out the general principles to be applied to cases such as this where there is a dispute relating to whether or not a structure constitutes a building for the purposes of s55 of the Act.
10. In the light of the above I conclude that due to the size of the structure, method of construction and the fact that in its current form it cannot be moved, the operational development has occurred as a matter of fact. Therefore, the appeal on ground (b) cannot succeed.

The appeal on ground (c)

11. The ground of appeal is that the matter alleged does not constitute a breach of planning control. In this case the appellant's key argument is restricted to the operational development and that the development is for agricultural purposes only, including the storage of machinery, spares, and a facility for rest, first aid and farm administration.
12. The Council has confirmed that the structure was originally used for agricultural storage purposes and therefore following their initial investigations it was found to not be expedient to taken enforcement action. Only when residential use of the structure commenced, did a material change of use of the land to mixed use agricultural and residential use occur. There is no dispute between the main parties that the use of the land for residential purposes is not seasonal and therefore the development as a whole requires planning permission.
13. The appellant agrees that there is no planning permission in place and given the Council's oral representations at the Hearing he had no objection to their version of events and their point of view that planning permission is required for the unauthorised development. The appeal on ground (c) cannot succeed.

The appeal on ground (d)

14. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In support of his appeal the appellant has not submitted any evidence relating to the immunity periods regarding the alleged material change of use of the land and the operational development. The appellant confirmed orally that there is no suggestion that the immunity periods have been met and he has no dispute with the Council on that matter.
15. Consequently, the appeal on ground (d) cannot succeed.

The appeal on ground (a)

16. The ground of appeal is that planning permission should be granted. The main issues as agreed at the Hearing are:
 - i. Whether the principle of the new development is acceptable in the open countryside;
 - ii. The effect on the character and appearance of the area; and

- iii. Whether the development provides a suitable standard of living accommodation for occupants with particular reference to the layout and facilities provided.

Principle

17. The appellant's key argument with reference to the principle of the development is that there is a need for an essential worker's dwelling on the appeal site. It is my understanding from the evidence presented that there is no other residential accommodation associated with the agricultural activity other than that which I observed on site which is described clearly in the enforcement notice. His argument is that the structure is needed to provide living accommodation, welfare facilities and agricultural related storage.
18. The Council recognises that in principle agricultural enterprises often need to be supported by residential accommodation and indeed this is supported by both local and national policies and guidance. However, evidence of need is required to be demonstrated. The National Planning Policy Framework (the Framework) is quite clear that the development of isolated new homes in the countryside should be avoided unless, among other circumstances, there is an essential need for a rural worker, including those taking majority control over a farm business, to live permanently at or near their place of work in the countryside. Policy CS5 of the Shropshire Council Local Development Framework – Adopted Core Strategy March 2011 (the CS) requires applications to demonstrate the local need and benefit for the development proposed in line with the Framework and Policies CS11 and CS12 of the CS, which relate to the type and affordability of housing land and gypsy and traveller provision, respectively.
19. Policy MD7a of Shropshire Council Site Allocations and Management of Development Adopted Plan 17/12/2015 (SAMDev) builds on Policies CS5 and CS12, confirming that the need for the dwelling for a rural worker can only be permitted if both financial and functional tests are met. There is no dispute that the appellant is a tenant farmer for the land the subject of the enforcement notice. Neither is there any doubt that a farm enterprise may require some kind of living accommodation, storage space and welfare or rest facilities in order to successfully operate that enterprise. However, to show that the specific accommodation provided is required there needs to be a demonstrated and clearly evidenced need and also the financial means to support the accommodation.
20. The appellant has provided some written evidence of the farming activities taking place on the land and in oral evidence set out in broad terms how he farms the land for what he describes as a grass-based farm business. However, the level of detail is severely limited and as such it is difficult to actually determine that there is a clear functional need for the accommodation based on the evidence submitted. I understand that farming is a time-consuming activity but that is not sufficient to justify why the required evidence has not been formulated. Relying on what has and can now be seen on site is inadequate as evidence that the appellant needs to be on site for animal welfare and husbandry. I also understand that the operation is not seasonal, but it is a year round activity with different cycles of work required at different times of the year.

21. I also noted at the site visit that there were 11 sheep, 62 hens and 12 beef cattle on the land, but that is insufficient evidence for me to determine that there is a functional need for the residential and other accommodation provided.
22. With regard to financial viability, I have seen no cash flow, business plan or profit and loss accounts. I understand that unforeseen events such as the outbreak of avian flu may have delayed the production of some financial evidence, but I cannot make assumptions or presume that the farming enterprise of financially sound and can support the development that has occurred. When asked about financial evidence the appellant stated that he had not provided financial data because none is available. However, he did then go on to state that the farm is approximately 40 acres in size and he receives support payments. In addition, he revealed that his net profit for the 2022/2023 financial year was only very small.
23. There is evidence of the financial challenges faced by the appellant, illustrated by his need to arrange a staged payment of the planning fee with the Council and delays in erecting the buildings for which the prior approval of the Council has been granted. It is also clear that the appellant carries out some agricultural contracting work when time allows and some of these activities are done on a barter basis. However, based on the evidence before me I am unable to conclude that there is a need for the accommodation or the financial means to support it.
24. Therefore, in the open countryside outside an identified community hub or cluster, where new rural housing should be focussed, there is insufficient demonstrable need and benefits to meet the functional and financial tests to meet the essential rural workers exception. As such there is clear conflict with Policies CS5 and CS7 of the CS, Policies MD1 and MD7a of the SAMDev and the Framework.

Character and appearance

25. The building in question is situated in a slightly elevated position within an open field, close to a backdrop of mature hedges and trees which form the boundary with adjacent residential properties to the south-west. The site overlooks open countryside to the west from where there are some partly-screened and some clear and uninterrupted views of the site in question. Although the site has a very rural context, it is somewhat disrupted by existing sporadic development, including agricultural, residential and commercial buildings in the area, comprising different sizes, designs and materials. Many of these are located close to the frontages of the local road network and some including the residential development to the south-west of the appeal site are in a ribbon development form.
26. The building is formed of two lorry trailers joined together with box profile sheet roofing. The trailers are parallel to each other and approximately 5.2 metres apart. The area between them is used to store farm machinery and other agricultural paraphernalia. The roof incorporates drainage to enable rainwater to be captured.
27. Parts of the building have been painted matt green in a relatively successful attempt to mitigate the impact of the development on long distance views. In addition, timber panels have been used at lower levels to screen the trailer

wheels from views from the south-west. The appellant has stated that to prevent potential theft, he does not want the building to be visually conspicuous. It is my understanding that the building has been sited so it cannot be seen from the nearby road.

28. The siting of the building as a sporadic structure in an open field in the countryside, poorly related to the road infrastructure and other development in the locality is very much at odds with the pattern of development and the character of the area, generally. In addition, its appearance as a rather contrived and patched together building shows to me that there has been little consideration of its design within this rural context. I can see that some efforts have been made to mitigate its potential effect on the character and appearance of the area by painting it green and by adding some timber boarding, but overall it represents poor design. Its materials are inappropriate for its setting and its appearance as a relatively large and ramshackle building is wholly at odds with the countryside location in which it is set.
29. As a consequence of the distance between buildings, the green coloured paint used, the presence of well-established trees and landscaping and the topography of the land, the structure is relatively well screened from neighbouring residential properties along Hatton Road and from other residential properties.
30. However, for the reasons set out above on this main issue I conclude that the development has a significant harmful effect on the character and appearance of the area and conflicts with Policies CS6 and CS17 of the CS, SAMDev Policies MD2 and the Framework.

Standard of Accommodation

31. At my site visit I noted that the living accommodation is served by a window in the end elevation and another one facing inwards to the covered storage area in between the two trailers. I found the accommodation to be relatively poorly served by natural light giving dark and dingey living and sleeping space. Furthermore, as a consequence of the lack of windows the accommodation is poorly ventilated. Solar lights are provided on-site and additional clear sheets could be added to the roof between the trailers, but there is insufficient evidence for me to conclude that these would mitigate the concerns regarding the provision of light and ventilation. I am also aware that there are smoke and carbon monoxide alarms but those do not satisfactorily mitigate the concerns I have with reference to light and ventilation.
32. Furthermore, I am concerned regarding the provisions for the disposal of sewage from a portable toilet which is emptied into a tank situated on-site. The methods for emptying the tank seem to be rather informal comprising someone using a forklift truck to move the storage tank and providing a means of transporting off site as and when required. This ad-hoc arrangement does not seem satisfactory given the potential risk of ground contamination and ground water quality. It is my understanding that grey water was previously disposed of on the agricultural land, but is now collected separately in another tank.
33. The appellant has stated that he intends to provide permanent toilet, washing and water disposal facilities on site, but in the absence of further detailed

evidence I am concerned that the above arrangements are not satisfactory and illustrate the lack of adequate facilities on site to serve residential needs.

34. Therefore, on this issue I conclude that the development fails to provide a suitable standard of living accommodation for occupants with particular reference to the layout and facilities provided. Therefore, it conflicts with Policies CS6 of the CS and SAMDev Policy MD2 and the Framework.

Other matters

35. Local residents have raised a number of other concerns; notably the potential for the development to give rise to additional traffic, including that which may be generated by the mini shop. The specific concerns appear to be that there is limited visibility from the access close to the Fairways and vehicles parking close to the mini shop close to that access and nearby junctions cause obstruction to the highway. In addition, there are weight restrictions on a nearby rural road which shows the limited accessibility in the locality.
36. I can understand that any increase in traffic levels in the locality and any potential hindrance to vehicle and other highways movements in the locality may be hazardous. However, the use of the accesses into the appeal site are unlikely to be significant at all given the levels of agricultural activity and occupancy arising from the development. In addition, the use of the access points is also unlikely to be at a level likely to cause highways problems. There are ample places for vehicles using the mini shop to stop and park without causing an obstruction to highway users. I have noted that the Council has not identified highways concerns in their reasons for serving the enforcement notice. Consequently, the development does not cause harm to the safe and efficient movement of highway users.
37. I have given detailed consideration to whether or not a temporary planning permission could be granted for the mixed use of the land and the structure that has been erected on the site or whether limiting occupancy of the building could mitigate the harm I have identified. However, given the degree of ongoing harm with respect to the character and appearance of the area, the poor living conditions provided and the notable absence of evidence to support the financial and functional viability of the agricultural business, I do not consider this to be a suitable way forward in this case.
38. Therefore, taking account the above matters and all other evidence presented, the development conflicts with the development plan as a whole and the application deemed to have been made should be refused.

The appeal on ground (f)

39. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity. Since the notice requires the residential use to cease, the demolition/dismantling and removal from the land, the structure and all equipment and paraphernalia in connection with the residential use of the structure and reinstatement of the land to its former condition, the purpose is to remedy the breach. Allowing the use to remain or leaving the structure in place would not achieve that purpose.

40. I have taken account of the appellant's written representations regarding his appeal on ground (f) but his main concerns appear to relate to his unwillingness to accept that the Council is entitled to take enforcement action against a development which it deems to be a breach of planning control. No lesser steps have been suggested in his written or oral evidence and it is not for me to find or suggest alternative lesser steps. Therefore, the appeal on ground (f) cannot succeed.

The appeal on ground (g)

41. The ground of appeal is that the time given to comply with the requirements is too short. The 14 days would be sufficient to cease the residential use, but I can understand that it would be difficult for the appellant to find alternative accommodation within that period. The appellant stated that 6 weeks would be more workable and therefore, in this case, I agree that the longer period as suggested by the appellant would be appropriate.
42. The 2 month period for demolishing and removing from the land the structure is sufficient, but the appellant expressed his concern that such period may clash with harvesting and may be weather-dependent. In these particular circumstances if the time period given is proving difficult to achieve the appellant could liaise with the Council over an extension, if necessary.
43. To the extent that the time period given to cease the residential use should be extended from 14 days to 6 weeks, the appeal on ground (g) succeeds.

Formal Decision

44. The enforcement notice is varied by the deletion from paragraph 6(i) of "14 days" and the substitution therefore of "6 weeks".
45. Subject to this variation 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 Act as amended.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Wragg
Margaret Wragg

FOR THE LOCAL PLANNING AUTHORITY:

Emma Green

INTERESTED PERSONS:

Cllr C A Cadden
Darren Millington
Marcus Mackay
R James
Evelyn Hollins
Michelle Fulford
Ryan Fulford