



Appeal Decision

Site visit made on 21 August 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/G1630/C/23/3322207

Part parcel plot 10, Warren Fruit Farm, Evesham Road, Greet GL54 5BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended.
- The appeal is made by Mr Billy-Joe Roper against an enforcement notice issued by Tewkesbury Borough Council.
- The notice was issued on 25 April 2023.
- The breach of planning control as alleged in the notice is 'without planning permission, the material change of use of the Land edged red on the attached plan from agricultural use to use for residential purposes facilitated by the siting of a new residential dwelling thereon as shown hatched blue on the said attached plan'.
- The requirements of the notice are to:
 1. Cease the residential use of the Land and;
 - a. Remove or demolish the timber building and remove the block pillars on which it is supported (shown hatched blue on the attached plan).
 - b. Remove all utility service installations, rainwater goods and water butts attached to the building.
 - c. Remove the septic tank installation.
 - d. Remove the garden shed and all residential paraphernalia associated with the residential use of the land.
 - e. Lift up and remove the scalping's hard standing and paving slab pathway.
 - f. Remove from the land all items and materials resulting from compliance with steps a to e and;
 2. Restore the land to its condition before the breach took place by levelling the ground and reseedling it with grass.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 of Decision: The appeal succeeds in part only and the enforcement notice is upheld with corrections and variations in the terms, including the period for compliance, as set out below in the Formal Decision.

Preliminary Matters and The Notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The wording of the notice is reasonably clear, but there are a few corrections which would improve clarity, without fundamentally changing the notice or its requirements.

2. The allegation sets out that the material change of use has been facilitated by the siting of a 'new residential dwelling'. In the requirements, this is referred to as the 'timber building'. For clarity and consistency, I have corrected the allegation, so it also refers to the 'timber building' and shall use the term 'timber building' throughout this decision. Requirement 2 includes levelling the land and reseedling it with grass. I do not know if the land was level and grassed prior to the breach, so this could be considered to go beyond remedying the breach and hence should not be required.
3. It is evident from their submissions that the appellant understands what needs to be done to comply with the notice. I am therefore satisfied that I can make these corrections to the notice, as set out in the formal decision below, without causing injustice.
4. The breach of planning control alleged in the notice is a material change of use 'facilitated by the siting of' the timber building. The reasons for issuing the notice state that the 'breach has occurred within the last ten years'. The use of the words 'facilitated by the siting of' and reference to the period of immunity for a material change of use, rather than operational development, clearly indicates the timber building is alleged to be part of the material change of use, rather than a separate breach in and of itself. Therefore, within the four corners of the notice, there is a single alleged breach of planning control, which is the material change of use of the land identified on the plan (henceforth referred to as 'the Land') to residential.
5. As established by case law¹, a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, so that the Land is restored to its condition before the change of use took place. This is even if such works on their own might not constitute development, or they would be permitted development, or immune from enforcement action. I have determined this appeal accordingly.
6. The Land is within an area which has been parcelled into small plots, a number of which have timber clad buildings on, purportedly for agricultural use. The Land is part of a wider plot referred to as Plot 10. The Land and the wider area have a long and complex planning history, including enforcement action. I have restricted my considerations in this appeal to just the Land as identified on the plan attached to the notice, and the stated grounds of appeal. Whether any element of the development may be lawful is not for me to determine under this appeal.

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

7. The ground of appeal 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. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought, is a material change of use of the Land, from agricultural use to use for residential purposes, facilitated by the siting of a timber building.

¹ Murfitt v SSE [1980] JPL 598, Somak Travel v SSE [1987] JPL 630, Kestrel Hydro v SSCLG & Spelthorne BC [2016] EWCA Civ 784

Main Issues

8. Having regard to the reasons for issuing the notice, the main issues are:

- Whether the Land is a suitable location for new housing, with regard to relevant development plan policies; and
- The effect of the development on the character and appearance of the Land and the surrounding area.

Reasons – Suitable Location

9. The Land is outside of any settlement boundary defined within the policies map of the Tewksbury Borough Plan (TBP) so is within the open countryside. Therefore, in accordance with Policy RES3 of the TBP, residential development in this location would only be acceptable in specified circumstances.
10. One of the specified circumstances is for the reuse of a redundant or disused permanent building, subject to Policy RES7. The appellant states that this applies to the timber building as it was initially in residential use, but from 2012 was used as agricultural storage, until this was no longer needed, and its use became residential again. No evidence has been provided to explain or substantiate why the timber building became redundant or disused. Evidence presented by the Council shows that the timber building has previously been located elsewhere on the wider site, outside of the Land. The appellant concedes that the timber building has been moved several times around the wider site and that its residential use in its current location, did not start until early 2017. On this basis, I do not consider the timber building to be a permanent building on the Land.
11. Therefore, I have not been provided with substantive evidence that would lead me to conclude that a residential use of the Land, as facilitated by the timber building sited in its current location, could be considered as reuse of a redundant or disused permanent building. Hence the development does not comply with Policy RES3 under that specified circumstance. I have no evidence to suggest that any other circumstance specified under Policy RES3 can be applied.
12. The appellant outlines how they believe the building meets the requirements of Policy RES7 (Reuse of a rural building for residential use), but this would only be relevant if Policy RES3 could be complied with, which is not the case. In addition, the appellant makes reference to Policies RES4, RES5, RES6, RES8 and RES9 but does not explain their relevance. These do not form part of the reasons for issuing the notice and the Council state they are not relevant. I have not been provided with copies of these policies, but compliance with them, or lack of, would not alter the failure to comply with Policy RES3.
13. I conclude that given its location within the countryside, the Land is not a suitable location for new housing, with regard to relevant development plan policies. The siting of the timber building within the Land to facilitate the residential use fails to comply with Policy RES3 of the TBP, which seeks to promote sustainable development in rural areas and restrict new development in the open countryside. Hence the development undermines the integrity of housing location policies for the area.

Reasons – Character and Appearance

14. The Land is located in the countryside and within a Special Landscape Area (SLA). The character and appearance of the surrounding area is rural, with open fields and areas of woodland. Within the immediate context of the wider site, known as Warren Fruit Farm, subdivision into smaller plots has taken place, with several containing modest wooden buildings. At the time of my site visit, a number of these buildings appeared unused and unmaintained. There are a small number of dwellings in the area, some of which are converted agricultural buildings, and these are relatively close to and directly related to the road. The Land is set some distance back from the road, accessed by a long narrow gravelled track.
15. The timber building which has facilitated the residential use of the Land is of a simple wood clad design. It has patio doors and a raised deck area to the front and good sized windows on all elevations. As such it has the appearance of a small residential building rather than something agricultural. It is significantly larger than the modest wooden buildings seen elsewhere in the immediate area. On the Land around the timber building are a range of items which relate to the residential use of the Land, including a garden shed, covered wood stores, storage containers, waste and fresh water containers, gas canisters, a septic tank, waste and recycling bins and a large trampoline. Taken together, the residential appearance of the timber building and the range of residential paraphernalia result in the Land having a domestic character and appearance which is out of keeping with and detrimental to the countryside surroundings. Despite the relative lack of visibility from the road, the development has a harmful impact on the landscape qualities and visual attractiveness of the area.
16. I have no evidence to suggest that the timber building and the associated residential paraphernalia serve any purpose other than residential, and the Land could not be in residential use without them. Therefore, I consider them to be integral to and solely for the purpose of facilitating the residential use and so can be considered as part and parcel of the change of use.
17. I conclude that the change of use of the Land, from agricultural to residential, facilitated by the siting of a timber building, causes unacceptable harm to the character and appearance of the Land and the surrounding area. Consequently, the development does not comply with Policies SD6 of the Gloucester, Cheltenham and Tewksbury Joint Core Strategy 2011-2031 (JCS) and Policies LAN1 and LAN2 of the TBP. Together, these policies seek to ensure that development is appropriate to and integrated into the existing landscape setting and maintains the landscape character and visual attractiveness of the natural environment. Furthermore, it does not accord with the National Planning Policy Framework which recognises the intrinsic character and beauty of the countryside and seeks to conserve and enhance the natural environment.

Conclusion on ground (a) and the deemed planning application

18. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is not granted.

The appeal on ground (g)

19. The ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of four months after the notice takes effect.
20. The appellant states that the current occupant has lived at the site continuously since November 2017, with his partner and 12 year old son also living there from January 2021 to the present, as their sole residence. I have no reason to question this, and the Council does not dispute it.
21. I note the relatively high cost of accommodation in the area. The current occupants will need sufficient time to look for alternative affordable accommodation, which is also located so as to avoid disrupting the education of a child. In considering these factors, along with the relevant elements of the Human Rights Act 1998 and the public sector equality duty, 4 months is insufficient time to comply with the notice, even if the occupants were aware of the possibility that enforcement action would be taken.
22. The appellant has requested a significant extension to 2 years. I consider this to be excessive, bearing in mind the harm and lack of policy compliance I have identified which needs to be addressed without undue delay. The 6 months suggested by the Council in their appeal statement should ground (g) succeed would not be sufficient. However, I note the Council offer of support if the occupants need assistance with finding alternative accommodation. In balancing the harm resulting from the breach of planning control against the needs and rights of the current occupants, I consider it reasonable and proportionate to extend the compliance period to 12 months.
23. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 12 months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly, as set out below in the formal decision.

Other Matters

24. I note the frustration of the appellant at the time period between the first enforcement notice, which was quashed on appeal, and the enforcement notice subject to this appeal. However, the second notice was issued within the period allowable under section 171B(4) of the Act and the reasons for any delay are not for consideration under this appeal.

Conclusion

25. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice, with corrections 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. However, I conclude that the period for compliance with the notice falls short of what is reasonable. Therefore, I shall vary the period for compliance in the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decision

26. It is directed that the enforcement notice is corrected and varied as follows:

- In section 3, delete the words 'new residential dwelling' and substitute the words 'timber building';
- In section 5, at requirement 2., delete the words 'by levelling the ground and reseedling it with grass'; and
- In section 6, delete the words 'Four (4) months' and substitute the words 'Twelve (12) months' as the time for compliance.

27. Subject to these corrections 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.

H Davies MSc MRTPI

INSPECTOR