



Appeal Decision

Site visit made on 26 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/D3125/C/22/3302353

Land at Netherby Farm, Banbury Road, Swerford, Oxon OX7 4AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jeremy Sealey against an enforcement notice issued by West Oxfordshire District Council.
 - The notice was issued on 30 May 2022.
 - The breach of planning control as alleged in the notice is the change of use of land from agriculture to a mixed use of agriculture and residential by the siting and residential occupation of a mobile home on the land.
 - The requirement of the notice is to: Permanently cease the residential occupation of the mobile home on the land.
 - The period for compliance with the requirement is: 6 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.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 3 inserting the word "material" between the words "the" and "change".
 - In section 3 the deletion of the words "siting and" substituting instead the word "permanent".
 - In section 5 the deletion of the words "permanently cease the" and substituting instead the words "cease the permanent".

It is directed that the enforcement notice is varied by:

 - In section 5 the deletion of "6 months" and the substitution of the words "nine months"
2. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by Mr Jeremy Sealey against West Oxfordshire District Council. This application is the subject of a separate decision.

The Notice

4. The alleged unauthorised use of the land as set out in the notice is a “mixed use of agriculture and residential by the siting and residential occupation of a mobile home on the land”. However, planning permission¹ was granted on the 18 March 2019 for the siting of the mobile home on the land. The permission allows the residential occupation of the mobile home for four months of the year during the lambing and turkey seasons.
5. The siting of the mobile home therefore benefits from planning permission and the breach of planning control relates to the permanent residential occupation of the mobile home throughout the year. I shall therefore correct the notice by removing reference to the mobile homes “siting” and by making clear that the alleged breach relates to the permanent residential occupation of the mobile home. I shall also correct the notice to clarify that there has been a “material” change of use, since it is that which amounts to development for which planning permission is required.
6. The requirements of the notice should match the stated breach, and therefore in view of the above paragraph I shall correct the requirements so that they require the permanent residential occupation of the mobile home to cease. I can undertake these corrections using the broad powers available to me under the provision of section 176(1) of the Act, without causing injustice to the parties.

Preliminary Matters

7. The appellant submitted late new evidence which related to a planning permission² granted at the appeal site on 13 January 2023 for the ‘*Change of use of land to allow for two bell tents and an amenity block for glamping (part retrospective)*’. This new evidence included a short statement along with the decision notice, officers report, and additional financial evidence that was submitted with the application. As the evidence was of relevance and could not have been submitted at an earlier stage in the appeal process, I accepted this and gave the Council an opportunity to comment. Comments made are taken into account in my decision.

Ground (a) and the deemed planning application

Main Issue

8. The main issue is whether the residential occupation of the mobile home is justified by an essential need for a rural worker to live permanently at his place of work in the countryside.

Reasons

9. The appeal site is located to the north of Banbury Road and covers an area of around 34 acres, consisting of three fields. Both the middle and most western fields are predominately used as grazing land, with the field to the east containing the recently approved glamping use and associated bell tents. In addition to the mobile home the site also includes a steel framed barn and a polytunnel. It is common ground between the parties that the site is located outside of any settlement and is within the open countryside. Given its very

¹ Council Ref: 18/03198/FUL

² Council Ref: 22/02330/FUL

clear physical and visual separation from the nearest dwellings and settlement, I find that the mobile home represents an isolated home in the countryside.

10. Policy H2 of the West Oxfordshire Local Plan 2031 (adopted September 2018) (LP) states that new dwellings will only be permitted in small villages, hamlets, and the open countryside where they comply with the general principles set out in Policy OS2 of the LP and in specified circumstances. The only criterion of relevance to this development is where there is an essential operational need or other specific local need that cannot be met in any other way, including the use of existing buildings. This is broadly consistent with the National Planning Policy Framework (the Framework) which states at paragraph 80 that planning policies and decisions should avoid the development of isolated new homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
11. Netherby Farm is a working agricultural farm which includes the appeal site as well as an additional 500 acres of arable land. This additional land is located around 10 miles from the appeal site and is rented by the appellant. Although the exact numbers provided by the appellant differ, the farm typically now has around 275 breeding ewes, 10 calves, and 100 turkeys to rear for the Christmas season. Though given the time of year there were no turkeys present, these figures broadly align with what I saw during my site visit. The appeal site is used for the whole flock during the lambing season, the calves, and the turkeys during the relevant seasons, with the additional 500 acres of land used for sheep grazing.
12. By virtue of the 2019 planning permission the residential occupation of the mobile home is permitted during the months of March, April, May, and December in association with the lambing season and the rearing of Christmas turkeys. The appellant states however that he has lived in the mobile home since 2018, and that there is an essential need for a full-time worker to be present on site for the care and welfare of the animals and to provide security.
13. I understand that there may be critical periods and situations where emergency attention may be needed during the lambing season, which as detailed on the submitted 'Gantt Chart' extends through March, April, and May each year. As the residential occupation of the mobile home is already permitted during these months the necessary on-site presence during this period is available.
14. The appellant has also identified that throughout the year ewes may become cast, which can result in the ewes dying if they are not put back on their feet. It is also stated that lambs may get ill and need monitoring to ensure, amongst other things, that they are taking milk. While there is no reason to doubt these points, no evidence has been provided about the likelihood or frequency of such events, or the nature of any monitoring and why that could only be achieved by a permanent residential presence on the site.
15. Reference has also been made to the need to feed the flock hay daily when grass is non-existent such as during periods of drought, along with a constant requirement to check boundary security to ensure the flock stays within the site. Nevertheless, periods of drought are relatively infrequent occurrences that do not justify the permanent occupation of the mobile home. I also see no reason why the checking of the site's boundaries could not take place during the normal working day.

16. Calving occurs throughout the year and is on an 18-month year on year cycle. Supervision is said to be required frequently including for temperature monitoring, and a milk feed every 6 hours for calves which are between six and fourteen weeks old. However, it has not been sufficiently demonstrated that the checking and feeding must take place throughout the night or that the farm has a sufficient number of calves to require supervision all year round and justify a permanent residential presence on the site.
17. Turkeys are also reared on the farm, with the 2019 permission allowing the residential occupation of the mobile home in December of each year for this purpose. The appellant now states that the turkeys generally arrive on site in mid-August, with the submitted Gantt Chart showing the turkey rearing season now runs from August to December. The number of turkeys reared at the farm remains at 100, which is the same as when the farming enterprise was established. Given that the number of turkeys reared has not increased, it is unclear why an on-site presence for an additional four months per year is now necessary.
18. The appellant considers that during the turkey rearing season an on-site presence is required for several reasons. These include a need for inspections to check that their drinking water has not frozen, that the water and chemical levels in fluid buckets are sufficient to reduce the risk of Avian Flu, and to provide treatment to any turkeys with Blackhead Disease. I see no compelling reason why the checking of fluid buckets could not take place during daytime hours, or alternative arrangements made in relation to the drinking water during times of freezing temperatures. Whilst I acknowledge that Blackhead Disease is a potential risk, no evidence has been provided to demonstrate the likelihood of the disease or any information on the number of turkeys which have caught the disease on site during previous years.
19. I have also given careful consideration to the letter from the appellant's vets which states that, in his opinion, the required level of animal care and husbandry can only be provided by the existence of full-time residency on the farm. This level of care will have included that required during the lambing season and for which permission for onsite accommodation already exists. It is therefore not clear to me which other activities take place on site that demand a day and night presence. Whilst I understand that at particular times it may be desirable to be present on site for animal care and husbandry reasons, I have little evidence of the frequency of times when a presence is actually needed or whether such a presence is merely desirable.
20. The Council also consider that with modern technology on-site monitoring systems and surveillance are both possible and could be monitored remotely. These would alert the appellant to any emergencies or issues on site and any dwelling within a 10 minute drive of the site would provide an adequate response time. The appellant states that this would be inappropriate to provide the necessary care required for a farming enterprise but fails to provide any substantive evidence to detail why this would be the case, or demonstrate that such technologies have been fully explored.
21. Similarly, whilst I have not been alerted to any specific instances of crime at the site, I also consider that site security could be provided by CCTV or alarms which could be monitored remotely. Accordingly, the need for site security does not in itself justify a permanent residential presence on the site.

22. It has also not been demonstrated that there is an absence of suitable housing within reasonable distance of the appeal site. The appellant states that during the previous four years no suitable or affordable properties to buy in the locality have been found, although no details of the search area or price range of properties have been disclosed.
23. The Council however has undertaken a desktop search of properties available to let within a 10-mile radius of the site, which revealed a significant number of properties to rent including in nearby Chipping Norton, Hook Norton, and Deddington. The search revealed that 2-bedroom properties were available to rent from between around £800 and £1,850 per month, with 3 and 4-bedroom properties available from between around £1,050 and £2,000 per month. The appellant has not indicated that the rental cost of these properties is unreasonable or unaffordable and, other than reiterating a desire to be on site 24-hours a day for the reasons already discussed, no reason is provided as to why these rental properties would not provide appropriate accommodation.
24. The farm also produces hay bales during the summer months, and planning permission has recently been granted for the use of the eastern field for glamping. The appellant acknowledges that, whilst it would be helpful, it is not essential for there to be a 24-hour presence on the site in relation to the glamping use. The production of hay bales also provides no justification for a permanent residential occupation of the site.
25. The Council accept that the farming enterprise is now an established and viable business, and the appellant has aspirational ambitions to grow the scale of the business over the next five years. This includes increasing the number of breeding ewes held to around 500, the number of turkeys reared to 250, and the number of calves reared each year. There are though very limited details before me to demonstrate how and when any scaling up would occur.
26. The appellant's '5 year plan' amounts to a single page typed document, the author of which is unknown. The document indicates that most of the planned earnings over the next five years would come from expanding the glamping use and the number of breeding ewes held at the farm. For the reasons already highlighted these matters do not necessarily require residential presence on site outside of the lambing season. In any event, I do not have a conclusive business plan before me covering the next five years and detailing predicted income and expenditure, and crucially why this would necessitate a presence on site all-year round.
27. I therefore conclude that it has not been shown that there is an essential need for a rural worker to live permanently on the site, and to justify making an exception to the policies which restrict residential development outside of the settlement limits. Accordingly, the development is contrary to Policies H2 and OS2 of the LP, and guidance contained within the Framework.

Planning Balance

28. The Council accepts that it cannot currently display a five-year housing land supply, and therefore paragraph 11d) of the Framework is engaged. Consequently, according to paragraph 11d) ii) of the Framework, consideration must be had as to whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

29. I have found that an essential need for a rural worker to live permanently on the site has not been demonstrated, with the associated harm primarily centring on the isolated and unsustainable location of the site. I ascribe substantial weight to this harm as it would be long lasting. It would be contrary to the aims of the Framework which is clear that housing should be located where it will enhance or maintain the vitality of rural communities, and that new isolated homes in the countryside should be avoided except in specified circumstances.
30. There would be economic and social benefits through the contributions of permanent occupiers of the mobile home to the local economy, and the provision of permanent accommodation on the site would obviate the need for the appellant to travel to work. The mobile home would also make a small contribution to the supply of housing and the Council's shortfall. Given the scale of the benefits however, contributions would be modest. They are therefore worthy of limited weight.
31. With that in mind, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not represent sustainable development for which the presumption in favour applies.

Conclusion on ground (a)

32. For the reasons given above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Ground (g)

33. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The period for compliance is 6 months.
34. The appeal on ground (g) is made primarily on the basis that it would take a significant amount of organisation and time for the appellant to find alternative accommodation. As the requirements of the Notice would have effect on the appellant's home and place of work, I find that a period of 9 months would be more reasonable. This would allow time to plan and implement alternative living and working arrangements.
35. A period of 12 months as suggested by the appellant, however, would be tantamount to a temporary planning permission. It would not provide the necessary balance between the public interest in securing expeditious compliance with the Notice and the private interest bound up in the development, which has persisted for some time.
36. On this basis, the appeal on ground (g) is successful and I consider it would be reasonable to extend the compliance period to 9 months. The appeal under ground (g) therefore succeeds and the enforcement notice is varied accordingly.

Conclusion

37. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have therefore upheld the enforcement notice with corrections and variations.

David Jones

INSPECTOR