



Appeal Decision

Hearing Held on 31 October 2023

Site visit made on 31 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2023

Appeal Ref: APP/Y1138/C/22/3307629

Land at Culm Springs, Cullompton, Devon EX15 1GY

- 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 Mr Roshan Sivlal against an enforcement notice issued by Mid Devon District Council ('the Notice').
 - The enforcement notice, numbered ENF/20/00259/RURAL, was issued on 30 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey building ("the Development") in the approximate position shown shaded blue on the attached plan. The building looks like and appears to have been designed as a dwelling house.
 - The requirements of the notice are: a) Permanently disconnect and remove all the building's plumbing and pipes, and arrange for all main services connected to the building to be disconnected and removed; b) Permanently demolish and remove the entire building from the land; c) Permanently remove all the materials and debris resulting from the act of demolition. This includes but not limited to the removal of all walls, floors and roof, and foundations; d) Permanently remove from the land all paraphernalia associated with this residential use; and e) Restore the land to its condition before the breach.
 - The period for compliance with the requirements is Nine (9) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is varied by the deletion of "9 months" and the substitution of "12 months" as the period for compliance. Subject to the 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 1990 Act as amended.

Reasons

The Appeal Site and its Environs

2. Culm Springs lies to the southeast of the town of Cullompton, to which it is linked by a minor road, Old Hill. Notwithstanding that the town is fairly close-by, the site is located in the open countryside.
3. Access to Culm Springs from Old Hill is via a track that initially runs very steeply downhill. This leads to a range of buildings that appeared to be in a commercial use, with a large amount of storage being carried on outside. At

this point, the track turns to the southwest and levels as it follows the contours of the land. Three caravans were sited on the south side of the track here. One was sited away from the other two, which were set together at right angles to one another. These latter two were sited very close to the building that is the subject of the Notice.

4. The caravans were in a poor state externally, with weeds and rubbish around them. They appeared unoccupied when I visited. I did not enter them; nor did I enter the dwelling. As the dwelling's curtains were drawn, I did not look inside. I was, however, told that it was occupied.
5. The land behind the caravans and building, that is to say to their southeast, rises steeply, and has been excavated for a distance of about 8-10 metres from the rear of the dwelling. The excavated area was very muddy when I visited, with what appeared to be the foul drainage pipes from the dwelling exposed in their trenches.
6. Beyond the dwelling, the track led to a further large building with what appeared to be a scaffolding storage yard adjacent to it.

Relevant Planning History

7. It is not necessary to rehearse the whole of the site's planning history, only those elements that have direct relevance to the appeal.
8. Planning permission was refused for the Retention of an equestrian manager's dwelling (Council Reference 19/01356/FULL) on 18 November 2020. This is the building that is the subject of the Notice.
9. A certificate of lawful existing use (Council Reference 21/01490/CLU) was issued by the Council on 30 September 2021. This certified that the existing use of land for the purposes of siting two caravans for human habitation, associated garden area, vehicular access for a period in excess of 10 years was lawful. I saw that the land covered by the certificate includes that on which both the dwelling had been built and where the three caravans were sited.
10. On 8 March 2021, the Council issued an enforcement notice against the building that is the subject of the Notice before me. It required, amongst other things, demolition of the building. An appeal was lodged against that notice, and the appointed Inspector quashed the Notice as it incorrectly referred to 10-years, rather than 4-years, as the time limit for enforcement action.
11. The Notice before me, which attacks essentially the same breach of planning control, was issued within the time limit set out in section 171B(4) of the Act.

Ground (e)

12. This ground of appeal is that copies of the Notice were not served correctly. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
13. Section 172(2) of the Act states that "A copy of an enforcement notice shall be served—(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice". Section 329 of the Act sets out how any notice or other document required or authorised to be served under the Act may be served.

14. The Appellant makes the case that since 2021 a “male known as ‘Vigual’” has occupied the bungalow. He says that the Council was aware of this, as it was set out in the completed Planning Contravention Notice (‘PCN’) that he sent to the Council on 5 August 2022. The Appellant further makes the case that at the time of the earlier enforcement notice appeal, the Council was aware that a Mr Shaun Gladwin occupied the bungalow. He states that Mr Gladwin continues to reside at the property.
15. His case is that neither ‘Vigual’ nor Mr Gladwin were aware of the issuing of the Notice and had, therefore, been denied an opportunity to lodge an appeal. As a result, the Notice should be quashed.
16. The Council points to the difficulties in reading what was written in the PCN. The response to its question 2.2 ‘All tenants/lessees of the land’, appears to me to read “Bungalow tenant Viguil”, rather than ‘Vigual’, with another word beneath that is difficult to decipher. That word might be ‘Shaun’, but, if so, no surname is given. Overall, the evidence shows that the Council did make reasonable efforts to find out who lived in the bungalow.
17. Photographs¹ show that the Council served a copy of the Notice on, amongst others, ‘The Owner/Occupier’ in an envelope that had the property’s correct address, and that this was hand delivered at the bungalow. Furthermore, a copy of the Notice was attached to the gate², where the track to the bungalow leaves the public highway. At the Hearing, the Appellant did not contest that these occurred.
18. On the basis of the evidence before me, I find that the Notice was served in accordance with the requirements of sections 172 and 329 of the Act. Those persons occupying the bungalow were not denied the opportunity to lodge an appeal, had they so wished, and no prejudice arises from the Council’s actions. As such, the Ground (e) case fails.

Ground (d)

19. An appeal under Ground (d) is that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control it alleges. As the Notice was issued in respect of operational development to erect a building, rather than against its use, it correctly refers to a 4-year time limit³ in which enforcement action might be taken.
20. The Appellant took the position that, as the earlier Notice was quashed, the “immunity clock was not stopped” and time towards immunity “continued to accrue”. This is not a correct reading of the ‘second bite’ provisions of the Act. A Ground (d) case must be considered on the basis of whether the development was lawful on the date of the first notice, or when the Council first purported to take action.
21. Section 171B(1) sets out that the time limit is 4 years from the date that the development was substantially complete. As the date of issue of the earlier notice was 8 March 2021, the Appellant needs to demonstrate that the erection of the building was substantially complete by 8 March 2017 (the ‘relevant date’).

¹ Appendix 16 to the Council’s Statement

² Appendix 14 to the Council’s Statement

³ Section 171B of the Act

22. Although the terms of the second bite provisions came as something of a surprise to the Appellant at the Hearing, he continued with his Ground (d) case. At the Hearing, he produced an aerial photograph of the site from the 'Devon Environment Viewer', ('DEV') an online resource that I was told is hosted by Devon County Council. In good faith, he stated that this dated from 2015. Subsequent investigations showed that it actually dated from 2019, so he withdrew this by email⁴.
23. His written statement included a Google Earth image, which he says was dated 22 June 2018 and that this showed the building to be substantially complete. It shows the dwelling has its roof tiled and its chimney is in place. Given its vertical vantage point, the walls, windows and interior of the building are not seen. Therefore, the photograph does not provide compelling evidence to show that the dwelling was substantially complete at the time that the photograph was taken. I am also aware that the image post-dates the relevant date.
24. The Appellant drew my attention to the recent High Court decision in *Caldwell v SoSHLUC and Buckinghamshire Council* [2023] EWHC 2053 (Admin) in support of his case. The parties set out in the Statement of Common Ground that they disagreed to the extent of the relevance of the case. That case addressed the question of whether and when operational development becomes immune from enforcement action that is directed against a material change of use. That is not the issue here, where the Notice is directed against operational development and so it is not relevant to the matter before me. It is the time limits I have set out that need to be met.
25. The evidence of the occupation of the bungalow which was submitted does not take matters forward. The evidence shows, on the balance of probability, that Messrs Withers and Gladwin were its first occupants. No dates have been given for Mr Withers, but the evidence shows that Mr Gladwin was probably in residence in February 2020. This is, of course, later than the relevant date. Notwithstanding this, whether a building is occupied is a quite different matter from whether it is substantially complete.
26. To my mind, the most important submission on the question of substantial completion are the photographs submitted by the Council in Appendix 4 to its Statement of Case. These are dated 15 October 2019, which is to say in the order of two-and-a-half years after the relevant date. Those taken externally show its shell to be largely complete, with the tiled roof in place, chimney erected and windows and doors installed. There is, however, a bare wire hanging down the front wall and there are no rainwater goods in place. Notwithstanding the lack of these last two features, the photographs indicate the exterior of the building as substantially complete at the time they were taken.
27. However, as set out in *Sage*⁵, an holistic approach to whether a building is substantially complete has to be taken. Photograph 10 is a view of the interior of the building, that the Council says was taken on 15 October 2019. As this is not countered by the Appellant, I take it to be the case. The photograph shows that a considerable part of the interior was incomplete at

⁴ Dated 3 November 2023

⁵ *Sage v SSETR & Maidstone BC* [2003] UKHL 22:

the time it was taken. It shows that the walls of the room in question had not been plastered, an internal window cill had not been installed, a 'first fix' of electrical wiring had taken place but sockets remained open, the floor had not wholly been installed, and a wheelbarrow is present as is a considerable amount of building 3307629 materials.

28. I acknowledge that what is seen in the photograph is only part of the building's interior. However, even had the remainder of the building been substantially completed, and I have not been provided with substantive evidence to show that this was the case on the balance of probability, I find that the photograph shows that, taken holistically, the building was not substantially complete at that time.
29. The Council suggested that the Appellant had deliberately concealed the dwelling, citing the *Fidler*⁶ case. Whether there has been positive deception in the circumstances of any case will always be a highly fact-sensitive question. Deliberate concealment can occur even where a development can be seen; the act of concealment does not have to be a visual one. In this case, the dwelling was readily visible from public vantage points to the north close to the Culm Valley Sports Centre. I did not find it as a matter of "fact" to be "clearly hidden", as claimed by the Council, neither did I find it to be "very well concealed". The parties accompanied me to Meadow Lane, adjacent to the Sports Centre, following the Hearing. Here, the Council agreed that the entirety of the red roof of the bungalow was clearly seen.
30. On the basis of the evidence before me, including the site visit, I find that there has not been an act of deliberate concealment.
31. Notwithstanding this last finding, the Appellant has not been able to establish, on the balance of probability, that the dwelling was substantially complete for a period of 4 years from the date of the issue of the earlier Notice. Therefore, the Ground (d) case fails.

Ground (a)

32. In essence, an appeal made under this Ground is that planning permission should be granted for the development alleged in the Notice.
33. The main issues to be considered here are:
- 1) Whether the bungalow lies in an appropriate location for residential development;
 - 2) The effect of the development on the character and appearance of the area; and
 - 3) If the dwelling is to be allowed on the basis of the removal of one of the caravans from the land, how might this removal be achieved.

Location of the development

34. Although I was not given a copy of a plan showing this, the parties agree that the site lies outside the development boundary for Cullompton, in a location in the open countryside. They also agreed that the principal policies relating to the location of the development were Policies S14 and DM10 of the Mid

⁶ *Robert Fidler v SSCLG and Reigate and Banstead Borough Council* [2010] EWHC 143 (Admin)

Devon Local Plan 2013-2033 ('MDLP'). The parties further agreed at the Hearing that the Council has a 5-year housing land supply.

35. Policy S14 relates to development in the countryside and only supports new isolated homes where there are special circumstances. Amongst these is where a dwelling is related to agricultural or equestrian development. Policy DM8 also refers to dwellings for rural workers. When it was originally erected, the dwelling was designed to be used as a house for a worker on the holding where equestrian and farming activities took place. However, the covid pandemic led to a cessation of those activities and there is no longer any animal husbandry on the land. Whilst a building on the land was reportedly being readied for use by cattle, the Appellant was not pursuing a case on the basis of an agricultural or equestrian need for the dwelling.
36. Policy DM10 relates to replacement dwellings in rural areas, and the Appellant states that this supports his case for the replacement of a caravan by the dwelling. In support of its argument that the policy does not apply to caravans, the Council provided definitions of both caravan and dwelling in its statement. It does not say where these came from, though that given for caravan is not the statutory one from the Caravan Sites and Control of Development Act 1960 ('the 1960 Act'), as amended by the Caravan Sites Act 1968 ('the 1968 Act'). The text accompanying Policy DM10 does not refer to 'dwellinghouses', nor does it restrict its terms to dwellings created in buildings. As a caravan used for residential purposes serves as a dwelling to its occupants, I therefore find that Policy DM10 can relate to the replacement of a caravan with a dwelling.
37. The policy has a caveat in that the replacement dwelling's floorspace will be no greater than that of the existing dwelling. The Council states that the caravans have a floor area of 95 square metres, and this was not countered. The Appellant's case in this regard is that one or other, or both, of the two caravans on the land might lawfully be replaced with another that accords with the maximum dimensions set out in the 1968 Act. This allows for a caravan that has a maximum floor area of 136 square metres. The parties agree that the floorspace of the bungalow is 128 square metres.
38. However, the existing caravans are not of the maximum dimensions in the 1968 Act. Policy DM10 requires the dwelling that is to be replaced to be "existing". Therefore, given that the building is larger than either of the caravans, Policy DM10 does not support the replacement of one of them with the bungalow.
39. In his Hearing Statement, the Appellant states that he "could substitute the existing lawful caravans that are on site for two (2) x replacement caravans up the maximum dimensions as detailed..." [within the 1968 Act] and these would have a greater effect on the landscape than the building. I take this to be a fallback argument, which is a material consideration in my assessment.
40. A copy of the Site Location Plan on which the application for the certificate of lawfulness was based was submitted at the Hearing. The red line delineating the site ran along the track from Old Hill before widening. This widened area is where the dwelling and the caravans are presently sited. The 'Culm Springs Block Plan', at a scale of 1:500, that was submitted with application 19/01356/FULL has also been submitted. From these, and from what I saw at

my site visit, I find that were the dwelling to be demolished the land would accommodate two caravans of the maximum dimensions in the 1968 Act.

41. The question to be addressed here is whether there is a real possibility of the fallback actually happening? Save for questioning whether the land on which the two larger caravans might be sited would accommodate them, the Council does not put forward any arguments in terms of the likelihood of the change occurring. Notwithstanding this, the Appellant goes no further than saying that he could replace the caravans on site. This is merely a theoretical prospect and does not show that there is a realistic likelihood of the caravans being replaced in the manner suggested. In the circumstances, I give this little weight in my deliberations.
42. Whilst I find that caravans are synonymous with dwellings in terms of MDLP Policy DM10, that policy refers to the replacement of existing dwellings with dwellings that do not have a greater floorspace. The evidence shows that the replacement dwelling does have greater floorspace than the caravan that it is proposed to replace. The proposal does not, therefore, accord with Policy DM10. I further find that there is not a realistic likelihood of the caravans being replaced with caravans that accord with the maximum dimensions set out in the 1968 Act. Overall on this main issue, for the reasons given above, I find that the dwelling is not in an appropriate location for residential development and that the proposal also conflicts with MDLP Policy S14.

Character and appearance

43. The dwelling is of a simple design and form that is appropriate to its location. However, as the dwelling is contrary to the terms of MDLP policies for housing in rural areas, it is an unnecessary development in the countryside.
44. Its pitched roof is clearly visible above the earth bund in views from the north, particularly along Meadow Lane in the area close to the Culm Valley Sports Centre. Its effect is exacerbated by its roof being clad in red tiles that draw the eye. Had the dwelling been justified by housing policies, this would have outweighed the harm to the appearance of the rural landscape that it causes. However, this is not the case. The unauthorised and unjustified development has not created a visually attractive place that is well integrated with its surrounding landscape, as required by MDLP Policy DM1.
45. Given my finding on the likelihood of replacing the caravans with those that accord with the maximum dimensions in the 1968 Act, I address the character and appearance arguments related to replacing a caravan with the dwelling, on the basis of those that are presently on the site.
46. They cannot be seen from the public vantage points to the north that I refer to, above. Their height is significantly less than that of the dwelling that has been built and, as a result, they are screened by the bund on the north side of the yard.
47. The caravans and their immediate environs are poorly maintained and they detract from the visual quality of the land. However, this effect is very localised. Thus, whilst the removal of one of these caravans would result in an improvement to the appearance of the yard area, this benefit would not outweigh the adverse effects on the wider landscape arising from the retention of the dwelling.

48. In conclusion on this issue, whilst I find the design of the dwelling to be appropriate to this rural location, for the above reasons it has an adverse effect on the character and appearance of the area. It is, therefore, contrary to the terms of MDLP DM1 and the terms of chapter 15 of the National Planning Policy Framework.

How the replacement of a caravan might be achieved

49. As I have found against the development on the first of the two main issues, there is no need for me to take this one any further.

Conclusion on the Ground (a) Appeal

50. For the reasons I give above, in respect of the first of the two main issues, I find that the Ground (a) appeal fails and planning permission is refused for the erection of a single storey building.

Ground (g)

51. An appeal made under Ground (g) is that the period for compliance specified in the Notice falls short of what should reasonably be allowed.
52. The period given for compliance in the Notice is 9 months. The Appellant's position in his written submissions was that, as a result of the financial and emotional impacts arising from the Covid pandemic, and the increased costs related to equestrian activities, a much longer period is required to allow him to adjust to new trading conditions. This had changed in the Hearing, where he set out the difficulties that would arise from finding alternative accommodation for the dwelling's occupants, and in complying with the terms of the Notice to demolish the building.
53. The Council stated a short-term tenancy agreement would only provide a short period for tenants to leave a property and, overall, the 9 months is reasonable for compliance.
54. Although there are longer-term emotional and financial effects arising from the Covid pandemic, as the restrictions were lifted some considerable time ago I can see no reason for extending the period for compliance for this reasoning. As the Appellant stated in the Hearing that he was not pursuing an argument based on an equestrian or agricultural need, I go no further on the matter.
55. Whilst I was given no information as to any personal circumstances of the occupants of the dwelling, I have sympathy with the argument relating to the difficulties with finding alternative accommodation. These difficulties are well-documented and this argument was acknowledged by the Council at the Hearing. Extending the period for compliance in the manner requested by the Appellant would result in an unduly long period that would undermine the expediency of taking enforcement action in the first place. I will, however, extend the period to 12 months, which will allow reasonable time for the occupants to find alternative accommodation and for compliance with the requirements of the Notice.
56. Even though the case was not made, I have to have regard to the terms of Article 8(1) of the Human Rights Act 1998 ('HRA') that provides that everyone has the right to respect for their private and family life, their home and their correspondence.

57. Article 8(2) of the HRA states that there shall be no interference by a public authority with the exercise of this right (under Article 8(1)) except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
58. As the occupants of the dwelling would lose their home, their Article 8(1) rights would be interfered with. However, the planning system is necessary in a democratic society in the interest of preventing disorder and the rights and freedoms of others. Here, weighing the interference with the right to a home against the legitimate rights of wider society, clearly expressed through national and local planning policies, I find the varied time for compliance to be proportionate.
59. To the extent that I set out, above, the Ground (g) succeeds.

Conclusion

60. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

J Clarke	XL Planning
L Rasch	XL Planning
L Hodgson	XL Planning

FOR MID DEVON DISTRICT COUNCIL:

J Millar	Team Leader
J Choules	Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

- Enforcement Notice dated 8 March 2021
- *Ian Caldwell and Timberstore Limited v SSLUHC and Buckinghamshire Council* [2023] EWHC 2053 (Admin)
- Application Form and Location Plan for planning application 19/01356/FULL
- '2015' Aerial Photograph from Devon Environment Viewer