



Appeal Decisions

Hearing held on 14 May 2024

Site visit made on 21 February 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Appeal A Ref: APP/J9497/C/22/3311609

Appeal B Ref: APP/J9497/C/22/3311610

Land at Roberts Acre Farm, Bridford, Exeter EX6 7HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jonathan Roberts (Appeal A) and Ms Michelle Sablon-Roberts (Appeal B) against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice was issued on 20 October 2022.
 - The breach of planning control as alleged in the notice is: Material change of use of the Land (following the erection of a new building) to use as a dwellinghouse known as The Old Parlour shown edged red and marked "P" on the Plan ("The Old Parlour").
 - The requirements of the notice are:
Permanently cease the residential use of The Old Parlour, and
Demolish The Old Parlour.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Additionally, Appeal B is also proceeding on ground (a) and 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 C Ref: APP/J9497/C/22/3311959

Appeal D Ref: APP/J9497/C/22/3311960

Land at Robertsacre Farm, Bridford, Exeter, Devon EX6 7HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Jonathan Roberts (Appeal C) and Ms Michelle Sablon-Roberts (Appeal D) against an enforcement notice issued by Dartmoor National Park Authority.
 - The notice was issued on 20 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission: Material change of use of the Land to residential use (following the erection of a new building on the Land, such building known as The Sheepshed and shown edged red and marked "S" on the Plan ("The Sheepshed").
 - The requirements of the notice are to:
 - Permanently cease the residential use of The Sheepshed, and
 - Demolish The Sheepshed.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.
-

Appeal A and B Decisions

1. It is directed that the enforcement notice is corrected by:

The deletion of paragraph 5.2 under heading 5 “What you are required to do”.

Subject to the correction appeal B 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.

Appeals C and D Decision

2. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

3. These appeals were originally being determined by the written representations procedure. Following my site visit, it was decided that due to some of the matters raised, a hearing was necessary. A virtual hearing was therefore organised. It was agreed at the hearing that there is no need for another visit.
4. I issued a pre-hearing note when the procedure was changed making it clear why it was necessary to do so. A further opportunity was given to both main parties to provide hearing statements. Helpfully as well, a Statement of Common Ground (SOCG) was also agreed prior to the hearing.
5. It was confirmed that the appellant’s first name was spelled incorrectly on the appeal form for appeal C. I have used the correct spelling above.
6. During the hearing, there was confusion about the National Park Authority’s (NPA) appendix 14 and the plans included within it. I refused to consider the plan that the NPA were displaying on the basis that it was different from that provided to me and the appellants. However, after I closed the hearing, the NPA submitted an email which showed that they had previously submitted the plans prior to the hearing and they had been accepted by the Planning Inspectorate after the deadline, to replace those previously submitted. The appellants had been copied into that previous correspondence. I therefore allowed the NPA to make the point in writing. I also gave the appellants an opportunity to make final comments about that matter alone.

Application for costs

7. Applications for costs were made by Mr Jonathan Roberts and Ms Michelle Sablon-Roberts against the NPA. These applications are the subject of separate Decisions.

Appeals C and D on ground (b)

8. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact.
9. The appellants do not dispute that residential use of the Sheep Shed has occurred in the past and this had taken place by way of using accommodation within what is now part of the adjoining holiday accommodation. They have stopped the active residential occupation of the building and I saw that the access to the adjoining holiday accommodation has been removed.
10. This ground of appeal as set out in s174(2)(b) of the Act requires the appellant to demonstrate that “those matters have not occurred”. It can be legitimate to issue an enforcement notice against a use that had occurred, which has

stopped but where there are concerns that it has not completely ceased. It can be prudent to do so for example where minimal effort is required to re-institute the use in order to prevent subsequent claims that the time-limits for the breach have been exceeded. In that respect, where there is some doubt based upon evidence available, on the balance of probabilities, it is understandable that a notice may be issued as a precautionary step.

11. The notice does not allege that the Sheep Shed is a "dwelling" in the sense of the well established and settled *Gravesham*¹ case. That held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day to day private domestic existence. It is possible for residential use to be occurring in a building that is something less than or different from a dwellinghouse. It is not clear from the plan provided of all of the adjoining buildings including internal arrangements whether the Sheep Shed was a self-contained dwellinghouse in the *Gravesham* sense because some facilities such as a kitchen, appear to have been shared.
12. By the time the notice was issued, the residential accommodation had changed. It is a matter of fact and degree whether the loss of the accommodation when the physical separation took place and the residents left the building, is sufficient for the use to have ceased in the sense that it would not count towards any subsequent claim of immunity from enforcement action and therefore lawfulness. The building was not residentially occupied, it is agreed by the NPA, by May 2021, over a year prior to the issuing of the notice.
13. The appellants say that the building has since been used for agricultural purposes. What I saw when I visited included bathroom facilities but also some domestic items such as a side-board which could relate to residential use but there were no beds present. It also contained, at that time, things that can be used for an office or residential use such as a desk, computer, and a bookshelf with files. There was also a large 'dumpy-bag' with fleece amongst other paraphernalia including a spinning-wheel. It is unclear whether or not these items are here solely in relation to the business or whether some may be domestic adjuncts of the Old Parlour or a mixture of purposes. Mr Roberts did mention at the hearing that some of his tools are kept in this building and they are, as was discussed, partly at least used for his contracting business.
14. It appears to me on the balance of probabilities that whilst the current use of the building is not agricultural or even only used for purposes ancillary to agriculture, the residential use appears to have ceased. It would have been difficult in the circumstance to claim a continuous use for the purposes of immunity particularly when the physical condition of the building along with statements made by the Appellants in writing are considered. As a matter of fact and degree, when the stud-work wall separated the Sheep Shed from the adjoining property, and those shared facilities were no longer available, the residential use seems to have ceased and that was prior to the notice being issued. However, it would also not have been difficult to occasionally make up for the lack of cooking facilities in particular by use of temporary facilities or even bringing food from outside. Residential occupation may have been possible with relatively little effort but I have no evidence that it did occur. I can however understand why, where there is some doubt, the NPA acted cautiously in these circumstances.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

15. The appeal on ground (b) succeeds. I will quash the notice and the appeals against this notice on ground (f) do not need to be considered.

Appeals A and B on ground (f)

16. The appeals on this ground are that the steps required exceed what is necessary to achieve the purpose of the notice. The purpose of the notice is to remedy the alleged breach of planning control.
17. The enforcement notice is targeted at a material change of use of land but that also involves the use of the building known as the Old Parlour. The notice requires the demolition of that building.
18. The basis of whether or not in such circumstances operational development can be removed where there has been a material change of use are set out in various legal authorities. This arises because of the differential time limits for taking enforcement action within s171B(1) for operational development and s171(B)(3) of the Act for other breaches including material changes of use other than those to which s171(B)(2) applies². The 'Murfitt'³ case established a principle that when enforcing against material changes of use, a notice may require that 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied. As clarified in other cases, a limitation of the Murfitt principle is where the operational development is itself the source of or fundamental to the change of use as opposed to being ancillary or incidental to it.
19. A further case, 'Caldwell'⁴, usefully clarifies the extent of these limitations. At the time of my pre-hearing note, the high court judgement relating to that case involving another appeal against an enforcement notice, had been challenged in the Court of Appeal but the judgement had not been issued. That has now been issued and the main parties had considered this before the hearing took place. In Caldwell, the Court of Appeal held that the Murfitt principle did not apply in circumstances where the operational development is itself the source of or fundamental to the relevant change of use. In particular, the principle does not extend to works that are fundamental to or causative of the change of use itself. Operational development carried out in its own right is not ancillary-to or secondary-to, associated with or facilitative only of that change of use, so falls outside the principle in Murfitt.
20. In relation to this case, an appeal against the refusal of a Lawful Development Certificate (APP/J9497/X/21/3286589 – the LDC appeal) seeking to establish the lawfulness of the Old Parlour as a dwelling was dismissed in 2022. Whilst that appeal was dismissed, the Inspector had reasoned that the building works had existed for sufficient time for them to become immune from enforcement action (4 years). However, the use as a dwelling he found arose from the construction of the new building. The relevant 10 year immunity period had not been achieved on the basis of what was in front of that Inspector. That case had proceeded by way of public inquiry with evidence given on oath and so I give substantial weight to the conclusions of that Inspector. Indeed, there

² The Levelling-up and Regeneration Act 2023 has amended s171B of the Act to provide for a 10 year time limit for taking enforcement action against operational development and material changes of use but does not apply here as the breaches of planning control occurred before this came into force.

³ Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598

⁴ Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council [2024] EWCA Civ

is no dispute about them in this present case. The dispute has been about the application of those matters to the relevant case law.

21. Since the Caldwell judgement was published, the NPA have agreed that with respect to both notices, the requirement to demolish the buildings can be deleted. I agree that all that should be required is the cessation of the residential use. The demolition of the lawful buildings would go further than is necessary to remedy the breach of planning control.
22. As such, appeals A and B on ground (f) are allowed.

Appeal B on ground (a)

23. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of planning control. Given the outcome of the appeal on ground (f), the Old Parlour building is highly likely to remain whether or not the I grant planning permission under this ground of appeal.

Main Issues

24. There was discussion about the main issues as I had set them out on the agenda sent to the parties prior to the hearing which were based upon the reasons for issuing the notice and the representations made prior to the hearing. Whilst it is for me as the Inspector to decide what the main issues in dispute are, I listened to the views of the main parties and their comments, which I have adapted accordingly. I have also re-ordered the main issues and introduced a third incorporating the 'other matters' within an overall planning balance, given the way in which the hearing panned-out.
25. The first main issue is the effect of the development on the character and appearance of the area. The second is the appropriateness of the dwellinghouse in this rural location with respect to the spatial strategy within the Dartmoor Local Plan 2018-2036, adopted December 2021 (LP) taking account of needs of the farm and whether it is essential for a worker to live on site as well as the availability of other housing nearby to serve those needs; and lastly the third main issue is the overall planning balance of other material considerations and the main issues.

Reasons – character and appearance

26. Notwithstanding the outcome of this appeal, the notice will not require demolition of the building. I am dealing with the merits of the Old Parlour for its use as a dwelling, as alleged and this main issue concerns how that use will affect the character of the site. Mr Aven for the NPA acknowledged that the retention of the building whether or not the appeal is allowed, affects the consideration of the impact upon appearance of the area. The NPA's main concerns are how the use will impact upon the character of the site and the National Park. However, such changes may have visual elements and so I have retained it within the main issue as set out.
27. LP Strategic Policy 1.1 sets out how the statutory National Park purposes will be delivered and Dartmoor's special qualities protected. Those purposes are:
 - a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area; and

- b) promoting opportunities for the understanding and enjoyment of the Special Qualities of the National Park by the public.
28. The Old Parlour is a 2 storey building which adjoins a complex of similar buildings such as the Sheep Shed and also holiday lets which are immediately on the south-west side. The building is separated by a concrete yard from the substantial utilitarian farm-buildings to the north-east. The building is not prominently positioned when viewed from the road to the south-west. From that direction Ms Sablon-Roberts' detached dwelling, Robertsacre House along with the garden around it and the holiday units, provide the setting and interrupt views of the Old Parlour. I left the site along the long farm-track to the north and the building is discretely set within the heart of the holding, not prominently visible from that direction either.
29. Whilst residential use of the building may lead to some need for residential structures such as sheds and children may require areas to play, leading to some change in character to domestic use, there are presently no obvious areas used just for those purposes. During the discussion on potential planning conditions, it was accepted that there was not a residential curtilage as such around the building which is surrounded by land used for purposes of the farm and its associated activities.
30. The NPA accept that in certain circumstances, dwellings may be required on farms and I turn to the detail of the policy implications with respect to the second main issue. However, with respect to the effects of this development on the character of the National Park, I did ask Mr Aven if farmsteads with dwellings integral to them are part of the character and he accepted that they can be. The existing house occupied by Ms Sablon-Roberts, the holiday units and together with this dwelling overall have represented an increase of residential uses within the farm over recent times. However, this development in the heart of the diverse business on the farmstead and in my view would not represent harmful creeping urbanisation as suggested by Mr Aven.
31. I therefore consider, in relation to this main issue, that the use of the Old Parlour as a dwellinghouse would conserve the character and appearance of the area. In this respect, the National Park purposes and the special qualities of Dartmoor would not be prejudiced as required by LP Strategic Policy 1.1 and this also conserves its character as required by LP Strategic Policy 1.2.

Reasons – spatial strategy

32. LP Strategic Policy 1.3 provides for a hierarchy for the location of development. Various categories of settlement are set out and although the appeal site is close to a number of buildings including some other dwellings, it was agreed at the hearing that it does not fall within any defined settlement and is within the "open countryside" to which paragraph 4 of Strategic Policy 1.3 therefore applies. Paragraph 4 permits development outside settlements, within open countryside in principle only subject to a number of criteria which includes at a), if it is for "farming, forestry or other land based rural businesses with a proven need to locate in the open countryside, including farm diversification". LP Strategic Policy 3.1 also directs the meeting of housing needs primarily within settlements and does not deal with dwellings in the open countryside.
33. As such, the dwelling on this site does not comply with LP policies for the provision of housing to meet general needs within the Dartmoor National Park

- due to its open countryside location. Consistent with the National Planning Policy Framework (the Framework), the LP strategy therefore seeks to avoid the development of isolated homes in the countryside other than in a number of very specific circumstances.
34. The Old Parlour is occupied by Mr Roberts who is employed on the farm in a part-time capacity, the rest of his working time carrying out agricultural contracting work. His wife is employed full-time on the holding and their 2 children live with them.
 35. The site includes a mixed enterprise which involves the keeping and breeding of livestock with sheep, cattle, pigs and chickens. There are 2 units of holiday accommodation which helps to diversify the income of the business. The business also has income from land stewardship and woodland schemes. There are around 198 acres of land, 108 of which are owned by the individuals involved in the business and the remaining 90 acres are rented. The appellants justification for needing the dwelling is based upon the requirements of this rural business where at least one farm-worker needs to be within sight and sound of the animals, in particular during lambing and calving. The NPA accept that 1 worker needs to live on or close to the land.
 36. There have been ups and downs with both stock numbers and also profits although the specific year that the NPA has drawn attention to with respect to the business making a financial loss, was 2020 when many of the business elements were affected by the Covid 19 pandemic. Notwithstanding the lack of much financial evidence, the NPA agrees that as well as a functional need for a worker to live on site, the business is well established.
 37. LP Policy 3.9 sets out the Dartmoor National Park detailed approach to rural workers' housing. However, in terms of deciding whether there is an essential need with respect to LP Policy 3.9 1 a), to live at or near the farm, it is relevant to consider the availability of other existing accommodation. If another house is available, that can be used to prevent the establishment of a dwelling (whether by conversion of an existing building or newly constructed) in a location which does not adhere to the overall strategy of the LP. That is underlined in the December 2023 NPA Supplementary Planning Document on "Housing" (SPD). LP Policy 3.9 at 3 b) also refers to the need for tying the approved dwelling and "any other relevant dwelling to the holding."
 38. The appellant for this appeal and owner of the Old Parlour, Ms Sablon-Roberts lives in the large house that is located to the south-west of the farm known as Robertsacre House. There is a dispute between the parties about the status of that dwelling with respect to whether or not it has an ongoing agricultural workers' restriction. Whether or not that restriction can still be enforced, it is necessary to consider whether the dwelling is available for occupation by Mr and Mrs Roberts and their children as well as the appellant.
 39. Also, it is clear that Robertsacre House has been constructed and extensions have been added including annexes, on the basis of it being justified to support the rural enterprise. The NPA policy background prior to the adoption of the current LP seems, from what can be gleaned from this background, to have also restricted housing in rural areas in a similar way. The current LP also, as previous approaches did, allows for extensions providing annexes to satisfy rural workers' accommodation needs.

40. The appellant says that she will not allow the dwelling to be shared by the people who are running the rural enterprise that she has a stake in even though they are also closely related to her. She is clearly focussed on her own preferences rather than those of the broader public interest and the strategic background of the LP. I on the other hand need to make decisions in the public interest rather than giving undue weight to private interests, such as those of the appellant, who wants to carry on living as they do at the moment.
41. Robertsacre House is reasonably located to provide accommodation for the worker to live at the site. It is positioned close to the farm-buildings and close to the owned land on the holding where livestock can be attended to, day and night. It was confirmed at the hearing that whatever the circumstances for the current building coming about and the number of extensions approved over the years, what exists now is as shown on the plan annexed to the appellant's statement with a NPA date stamp of 26 August 2011 and reference stamp '0430/11'. The plan shows a large 4-bedroom dwelling with ensuite facilities in 2 of those bedrooms, a large lounge on the ground floor as well as another larger room labelled as "annexe", along with a kitchen, conservatory ground-floor 'WC' and porch leading into the garage. The background to the extension being approved includes a design and access statement from the application with reference '0430/11' explaining that the at that time as well as Ms Sablon-Roberts and her late husband, one son lived within Roberstacre House and elderly parents of the then applicants were also in need of care.
42. However, as referenced in one of the appeal cases raised⁵, in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* [1996] it was held that it is insufficient for accommodation to merely exist, rather it is necessary to determine whether or not it can reasonably be held to be available. In that respect, the circumstances justifying the development of the dwelling as exists are somewhat different from the present situation. Having a single family member living in a large house or even needing to accommodate elderly relatives are both very different situations from having to accommodate, on a permanent basis, a family of 4 including 2 young children. Although the family are closely related, sharing a house in this way, even a large one like this, could be a stressful challenge for all parties and very different prospect from the one that justified this size of building. I can understand why it would not be a long-term solution. The dwelling is not reasonably available at the moment whilst the appellant occupies it in the present circumstances. It is a dwelling closely associated with the diversified farming business. Even if it is not restricted to occupation by an agricultural worker, and I do not have evidence of sufficient weight to satisfy me one way or another on that, there is a long history of the dwelling being extended based upon the needs of the holding. It is also owned by the appellant and should be considered as a "relevant dwelling" for the purposes of paragraph 3 b) of LP Policy 3.9 and I will return to this further below.
43. Other accommodation in the general area has also been referred to by the NPA that would cost between £275,000 and £300,000 which would not seem affordable based upon the drawings of the Mr and Mrs Roberts of around £27,000. Those properties would also not serve the same functional purposes of attending to animal welfare in particular because they are located a substantial distance from the land.

⁵ APP/Y2003/W/18/3216854

44. The requirements of paragraph 1 a) and b) of LP Policy 3.9 are met. I am also satisfied that the land management activity explained at the hearing and set out within the submitted evidence, contributes to conserving of the National Park's special qualities. The development complies with paragraph 1 c) too.
45. Given that the Old Parlour building is not being demolished via the notice and is likely to remain, at the hearing there was much discussion on the approach to the residential use being looked at as if it were the re-use of the building. Compliance with the notice will leave a building without a specified use which is likely to remain. I can give substantial weight to considering the deemed application that it is, in effect, seeking an alternative use for a building that is highly likely to remain whatever the outcome of this appeal.
46. Where the principle of new rural workers' housing is acceptable, LP policy 3.9 requires that proposals should: "a) use suitable redundant historic buildings before proposing the construction of new buildings." The Framework at paragraph 84 allows for isolated homes in the countryside only in certain circumstances. This includes at paragraph (c) where "the development would re-use redundant or disused buildings and enhance its immediate setting".
47. On the face of LP Policy 3.9 it is not directly consistent with the Framework approach in paragraph 84 c). However, the strategy of the LP is underpinned by the statutory National Park purposes which are also emphasised within the Framework. LP Strategic Policy 1.3 states that one of the forms of development acceptable in the open countryside, is if it is "necessary to sustain buildings or structures of proven conservation value." The requirement to seek conversion of historic buildings prior to construction of new buildings is consistent with the purpose of conserving and enhancing the cultural heritage of the area and therefore the LP as a whole along with the Framework. According to the LDC appeal I refer to above, the main parties in that case were in agreement that the Old Parlour had only been used as a dwelling since 2012. At that time, rather than converting an older building, it was considered the use was within a new building. There are other policies that relate to heritage assets. However, in my normal understanding of the word "historic", in the absence of a clear definition, it must mean a building with some significance to the history of the place or people or their culture, even if it is not defined locally or nationally as a heritage asset. I have not had my attention drawn to any historic significance of the building or its site. The development does not therefore comply with paragraph 2 a) of LP Policy 3.9. Although the appellant was in agreement to biodiversity improvements for agreement by condition, I am not persuaded that such measures would enhance the "immediate setting".
48. The building is clustered within a group of existing buildings at the heart of the farm and adjoining the holiday units which diversify the income of the holding overall. Its presence and use, I have already determined, would conserve the National Park's special qualities. As such therefore, paragraph 2 b) of LP Policy 3.9 would be complied with.
49. The size of the dwelling within the Old Parlour is larger than the 106m² gross internal floor area (GFA) allowed for by paragraph 2 c). The rationale for limiting the size of dwellings was explained and is also set out in the SPD as being to ensure that the long term affordability of farm holdings. It is also related to the overall LP Strategy requiring units are not significantly above the

size of national Technical Housing Standards, again to keep housing modest in size for affordability reasons. This dwelling is substantially above the required size limit being 158m² GFA. No evidence was presented about the value and affordability of this dwelling or therefore the significance of it being larger than the policy allows. It is very closely associated with the enterprise and activities within the busy farm which may affect its value. Also, in common sense terms, there is less scope to define the size of a dwelling when it involves the re-using existing buildings. However, given the GFA the development does not comply with paragraph c) of LP Policy 3.9.

50. LP Policy 3.9 also requires a legal agreement tying the dwelling and any other relevant dwellings to the holding. It is agreed that a planning condition would be needed to restrict the occupancy of the Old Parlour to a rural worker and that is necessary as part of securing compliance with LP Policy 3.9. Those factors may also affect the value. A s106 unilateral planning obligation has been submitted and discussed with the NPA. The effect of this would be to tie the Old Parlour dwelling to the land that is in the ownership of the appellant for this and the other appeals. Whilst there is a dispute over whether Robertsacre House continues to have a rural workers' occupancy restriction, it is a relevant dwelling. It would not comply with the LP to not also tie that to the rural enterprise via a s106 planning obligation. This represents further non-compliance with LP Policy 3.9.
51. The dwellinghouse in this location, does not comply with LP Strategic Policies 1.2, 1.3 and 3.1. Furthermore, even though there is an essential need for a rural worker to live on the site with no other dwellings being reasonably available, it does not comply with LP Policy 3.9 or the Framework. In relation to this main issue, this rural location in these circumstances is inappropriate for the dwellinghouse.

Reasons – other matters and the planning balance

52. The Old Parlour is occupied by Mr and Mrs Roberts along with their 2 young children, aged 2 and 5 years at the time of the hearing. As set out above, although there is another dwelling nearby owned by the appellant who is Mr Robert's mother, if the deemed planning application is not approved, the enforcement notice will come into effect and the family are therefore at risk of losing their home. An alternative suggestion is that the Ms Sablon-Roberts would have to find alternative premises in order to allow the occupation by her son and his family so that they can continue to run the business. That alternative would result in the loss of her home.
53. This would therefore lead to an interference with Article 8 of the Human Rights Act 1998 (HRA) which states that everyone has a right to respect for private and family life, their home and correspondence. Article 1 of the First Protocol: Article 1, the protection of property would also be engaged. These are qualified rights and interference may be justified in the public interest with the concept of proportionality being crucial.
54. The family would in my view only as an emergency stopgap be able to live in Roberstacre House. Their longer-term accommodation needs would have to be met, as things stand, elsewhere which would be further away from the land on which the business is run. This could therefore have implications for the running of the business particularly in terms of livestock welfare but also in terms of the economic benefits that running the business has to the family and

the wider economy. The interference with these human rights could directly affect the viability of the modestly profitable business.

55. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. There are 2 children who occupy the appeal site. They are 2 and 5 years of age. They attend a local nursery and primary school, respectively, and these formative educational stages are important to their development. Having to move within the 12 months required by the enforcement notice would be at a very sensitive time in their lives. Their level of care, protection, health, education and standard of living would not be maintained and would be harmed particularly as there is no clear adequate alternative accommodation for the family.
56. For reasons set out above, living at Robertsacre House would not be a long term practical option for Mr Roberts and his family. However, whilst Robertsacre House is occupied by Ms Sablon-Roberts, she is on hand to help care for the children. I am mindful that the loss of their home at the Old Parlour would be significantly to the detriment of the family and these young children who would lose their home close to their grandmother. There is no certainty however that Robertsacre House will remain with the land or with the Old Parlour which limits the weight that I can give to these matters. In these circumstances I do however give substantial weight to these personal circumstances including the best interests of the children. I also give limited additional weight to the economic benefits to the continued operation of this rural enterprise.
57. I am required to determine this application in accordance with the development plan unless material considerations indicate otherwise. That is the starting point and although I have found no harm with respect to the first main issue, given my conclusion on the second, the development plan as a whole is not complied with. The substantial weight that I give the personal circumstances including the best interests of the children along with the additional limited weight attributed to the economic benefits do not outweigh the lack of compliance with the development plan as a whole.

Reasons - Conclusion

58. The appeal on ground (a) in Appeal B is dismissed.

Appeals A and B Conclusion

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

Appeal C and D Conclusion

60. I conclude on the balance of probabilities that the alleged breach of planning control set out on the enforcement notice had not occurred. The appeal on ground (b) succeeds and the notice is quashed.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Sutherland Sutherland Property and Legal Services

Mr Roberts Appellant

Ms Michelle Sablon-Roberts Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Aven Principle Planning Officer (enforcement)

DOCUMENTS

No

- 1 Notification letter 26th April 2024
- 2 Email from A Sutherland 13/5/24 with and documents 3, 4, 5 & 6
- 3 Photographs of construction of Robertsacre House
- 4 Draft Statement of Common Ground
- 5 Aerial images showing locations of dwellings on the market
- 6 Draft s106 planning obligation
- 7 Land registration documents
- 8 Final signed s106 planning obligation
- 9 Final signed Statement of Common Ground
- 10 Plan showing Land registry plan DN740205
- 11 Plan showing with coloured floor areas of adjoining holiday lets
- 12 Appeal decision 3216854