



Appeal Decision

Site visit made on 29 January 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Appeal Ref: APP/P1045/C/23/3328350

Spitewinter Farm, Oakathorpe Road, Bolehill, Derbyshire DE4 4GP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Richard Bowler against an enforcement notice issued by Derbyshire Dales District Council.
- The notice was issued on 12 July 2023.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised sitting of a static caravan on land at Spite Winter Farm for residential purposes.
- The requirements of the notice are to:
 - a) Permanently cease the occupancy of the caravan
 - b) Permanently remove the caravan shown within the area edged blue on the attached plan, from the area edged red on the same plan.
 - c) Reinstate the land, in the area edged blue on the plan, to agricultural land.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is corrected at section 5.1c), by the deletion of the words 'to agricultural land' and the insertion of the words 'to its condition before the breach took place', so that step 5.1c) reads 'Reinstate the land, in the area edged blue on the plan, to its condition before the breach took place.'
2. Subject to the correction above, 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.

Matters concerning the notice

3. Requirement 5.1c) of the notice requires the recipient of the notice to reinstate the land, in the area edged blue on the plan, to agricultural land. Agricultural land is generally held to be land **used** for agriculture (my emphasis). While it does not explicitly require that the land is used for agriculture, I consider there is ambiguity in this regard.
4. Since an enforcement notice cannot require that a previous use is resumed, I shall correct the notice at section 5.1c) to delete the words 'to agricultural land' and insert the words 'to its condition before the breach took place'. This is clearly the Council's intention and since this accords with the wording used in section 173(4) of the Act, I consider there would be no injustice to either party were I to correct the notice in this way.

Ground (a)

5. An appeal under ground (a) is made on the basis 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 or, as the case may be, the condition or limitation concerned ought to be discharged.

Main Issues

6. The main issues of the appeal are whether there is an essential need for the appeal scheme to accommodate a rural worker on the land, and the effect of the appeal scheme on the character and appearance of the countryside.

Reasons

Whether there is a Need

7. The appeal site is located off Oakthorpe Road, in a generally rural area and comprises a number of agricultural buildings, surrounded by open farmland and is located in open countryside for the purposes of applying planning policy. The caravan is located towards the end of an access track, next to a traditional stone barn.
8. Policy S1 of the Adopted Derbyshire Dales Local Plan (2017)(the LP) seeks sustainable development by meeting most development needs within or adjacent to existing communities. Policy S4 of the LP concerns development in the countryside and supports housing to meet the essential requirements of agriculture, forestry or other rural enterprise in accordance with Local Plan Policy HC13. Policy HC13 of the LP supports development to meet the needs of agricultural workers, subject to meeting certain criteria, including:
 - a) there is a clearly established functional need;
 - b) the need relates to a full-time worker or one who is primarily employed in agriculture, forestry or other rural based enterprise which needs to be located in the area and does not relate to a part-time requirement;
 - c) the unit and the agricultural / forestry or other rural based enterprise has been established for at least three years and has been profitable for at least one of them, is currently financially sound and has a clear prospect of remaining so. Where this need is unproven or a new business is being established, a temporary dwelling (such as a mobile home) may be permitted to allow time to establish that there is a genuine functional and financial need for a permanent dwelling. A temporary dwelling will only be permitted for a maximum period of 3 years;
 - d) the functional need cannot be fulfilled by another existing building on the unit or within the locality that could be converted, or another existing dwelling on the unit or within the locality which is suitable and available for occupation by the worker concerned;
 - e) the size of the dwelling is commensurate with the needs of the enterprise and is sustainable in terms of the viability of the activity;
 - f) the dwelling is well related to either existing dwellings or buildings associated [sic] the activity with which it is required;

- g) the dwelling is not situated within an area of unacceptable flood risk.
9. The National Planning Policy Framework (2024)(the Framework) advises that decisions should avoid the development of isolated homes in the countryside unless, amongst other things, there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
 10. The appellant states that they have over 70 livestock, which require round the clock care, especially during calving season and over 100 sheep at certain times of the year. In response to a Planning Contravention Notice (PCN), the appellant provided test results for animals subject to a TB skin test on 13 March 2023. During my visit, I saw a number of cows and have no reason to doubt the appellant's evidence in this regard.
 11. However, while there may be a need for a presence on the site when the cows are in calf, the appellant has not explained why they need to live on site all year round. With respect to the sheep, there is no explanation as to why the appellant needs to reside at the site, where the sheep graze, whether they are put to lamb and if so, the number that are put to lamb, when and where. While it may be necessary for a worker to be present on site at certain times of the year, such as during calving or lambing, were I to grant planning permission for the alleged breach, the appellant would be able to reside at the appeal site permanently.
 12. While policy HC13 states that a temporary dwelling, such as a mobile home, may be permitted to allow time to establish that there is a genuine functional and financial need for a permanent dwelling, this does not appear to be the appellant's intention. The business does not appear to be new, and the appellant does not suggest they need more time to establish that there is a genuine functional and financial need for a permanent dwelling, nor do they suggest they would like planning permission for a temporary period.
 13. The appellant advised, in response to a Planning Contravention Notice (PCN), that they have no fixed abode. They also confirmed that the caravan was brought to the site around September 2021. The enforcement notice was issued in July 2023 and the caravan remained on site and in use by the date of my site visit. To date, therefore, it seems the caravan has already been at the site well in excess of 3 years and so the appellant has had sufficient opportunity to establish the need for a permanent dwelling.
 14. The appellant suggests they have been regularly broken into, however, no documentary evidence has been provided to support this claim, such as a police crime number. Furthermore, it is not clear whether other means of securing the site have been considered, such as CCTV, the installation of immobilisers, chip keys and trackers, locking gates and so on. While I appreciate that security is a concern for the appellant, I am not persuaded this constitutes a functional or essential need for the appellant to reside on site.
 15. The Council has drawn my attention to a barn, which was granted prior approval on appeal in 2015, reference 14/00546/PDA for the conversion to a dwellinghouse. The Council advise that this has not been implemented and the period for conversion lapsed in 2018. Although the permission granted by the GPDO has lapsed, the appellant has not explained why it would not be possible to utilise an existing building on the site.

16. While the appellant states they are happy to pay Council Tax, I afford this matter very limited weight since Council Tax is likely to be paid on a dwelling which does comply with policy.
17. In my view, the appellant has not shown that there is a functional need to reside at the site. Furthermore, the appellant has provided no evidence to show that any functional need (if one does exist) cannot be fulfilled by another existing building on the unit or within the locality, or another existing dwelling within the locality. As such, I find that the appeal scheme conflicts with policies S1, S4 and HC13 of the LP, the requirements of which are set out above and the relevant expectations of the Framework.

Character and appearance

18. Policies S1 and S4 of the LP both seek to protect, and where possible, enhance the landscape's intrinsic character and distinctiveness. Policy PD5 of the LP similarly seeks to protect, enhance and restore the landscape character. It states that development will only be permitted if the location, materials, scale and use are sympathetic and complement the landscape character. However, the materials used in construction of the static caravan contrasts significantly with the traditional materials used in construction of the adjacent stone barn.
19. Although the caravan is set back from the road, which limits views from the public domain, it introduces an incongruous feature which contrasts with the traditional buildings and materials used elsewhere in the area and is out of keeping with the established rural character and appearance of the area, contrary to policies S1, S4 and PD5 of the LP, the requirements of which are set out above, and policy PD1 of the LP, which seeks high quality design.

Conclusion

20. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.
21. I conclude that the appeal 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).

M Savage

INSPECTOR