



Appeal Decisions

Site visit made on 10 April 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI)

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal A Ref: APP/W1850/W/23/3326667

Nacklestone Barns , Blackbridge , Leintwardine , Herefordshire , SY7 0NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Gareth Morgan against the decision of Herefordshire Council.
 - The application Ref is 223484.
 - The development proposed is: Use of Land for the Stationing of a Key Workers Caravan and construction of a Barn.
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Appeal B Ref: APP/W1850/C/23/3327833

Nacklestone Barns, Blackbridge , Leintwardine , Herefordshire , SY7 0NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Gareth Morgan against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 2 August 2023.
 - The breach of planning control as alleged in the notice is Without planning permission the use of land for the siting of a mobile home for residential purposes, marked with a red X on the attached plan.
 - The requirements of the notice are to:
 - (1) Permanently cease the residential occupation of the mobile home in the approximate position marked with a red X on the attached map of the Land;
 - (2) Permanently remove the mobile home in the approximate position marked with a red X on the attached map of the Land; and
 - (3) Remove from the Land all buildings, materials and rubble arising from compliance with requirements (1) and (2) above.
 - The periods for compliance with the requirements are:
 - (1) Compliance with (1) above, within 180 days from the date the notice takes effect;
 - (2) Compliance with (2) above, within 210 days from the date the notice takes effect; and
 - (3) Compliance with (3) above, within 240 days from the date the notice takes effect.
 - The appeal is proceeding on the ground (g) set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Decision in Relation to Appeal A

1. The appeal is dismissed.

Decision in Relation to Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. Two appeals are before me for determination, one made against the refusal to grant planning permission, which I refer to as Appeal A, and Appeal B, which is made against the Council's decision to issue an enforcement notice. The

proposed development in Appeal A is the use of land for the stationing of a key worker's caravan and the construction of a barn. That application was submitted retrospectively and the caravan and barn are both in situ. The breach of planning control alleged in the enforcement notice relates solely to the use of land for the siting of the mobile home for residential purposes but does not refer to the associated barn.

4. The Council have noted that no elevational drawings of the barn were submitted with the planning application. However, the site plan depicts the footprint and location and the structure has already been erected, such that there is no difficulty in assessing its impact and proceeding to determine the appeal.
5. The Council has also raised concerns that the appellant has sought to evolve the scheme for which permission is sought under Appeal A by submitting further accounts and information regarding the business intentions, particularly with regard to raising birds for the table, something which was not part of the information submitted with the planning application. However, the information does not seek to alter the development for which permission is sought and in that sense, is not an evolution of the scheme.
6. Moreover, it is not uncommon for further information to be submitted with appeals in such situations where appellants seek to justify a need for on-site occupation, particularly given that timescales move on and more up to date accounts become available. The Council has had the opportunity to respond to the information and I am satisfied that no injustice will arise as a result of my decision to take account of it when determining the appeal.
7. Appeal B is made on ground (g) alone. Consequently, I shall consider the planning merits in respect of Appeal A first, before moving onto Appeal B.

Appeal A

Main Issues

8. The main issues in the determination of the appeal on ground (a) are:
 - i) Whether the residential occupation of the caravan is justified based on the functional needs of the associated pheasant rearing business and, associated with that, whether sufficient information has been submitted to demonstrate that the business would be viable in the longer term;
 - ii) The effect of the development on the integrity of the River Teme Site of Special Scientific Interest (SSSI), the Downton Gorge Special Area of Conservation (SAC) and the River Clun SAC.
- i) *Functional Need and Financial Viability*
9. It is common ground that the appeal site is located within the countryside, some distance from the nearest village, in a location where planning permission would not normally be given for new residential development, in line with the settlement hierarchy set out by policy RA2 of the Herefordshire Local Plan – Core Strategy (2015) (the Local Plan).
10. Policy RA3 of the Local Plan identifies that new residential development within the countryside will be limited to proposals which satisfy a number of criteria. Of

relevance to the development in this instance is the first which is that a proposal must meet an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work. That policy is broadly consistent with the aims of paragraph 84 of the Government's National Planning Policy Framework (the Framework).

11. The information required to satisfy the broad thrust of policy RA3 is set out within policy RA4. In short, the policy requires that there is an essential functional need for a dwelling, that such need could not be met by using existing accommodation and that the unit forms part of a financially sustainable business. Any dwelling is also required to be sited in order to meet any functional need and to be of high quality design.
12. Where financial stability is not proven or where an enterprise is not yet established, planning permission may be granted for a maximum of up to three years under the policy to enable the financial sustainability to be assessed. In respect of the latter point, the pheasant rearing business is relatively newly established, such that detailed accounts are limited to a recent snapshot. The appellant requests permission for a temporary period to enable the business to become established.
13. I shall return to the issue of financial stability later in my decision but any such consideration is first dependent upon the appellant being able to demonstrate a functional need for a permanent on-site presence.
14. The primary rationale behind the application is bird welfare and on-site security. However, I find the information submitted is of quite a general nature, lacking in specific details. For example, reference is made to mobile gas heaters being used in sheds to regulate temperature, with a possibility that suffocation and high levels or mortality could occur if the heating fails. Similarly, artificial lights are used in sheds and the information indicates that in the event of a power failure, the lights need to be switched back on within 10 minutes to avoid bird losses. Potential leakage of drinking water is also cited.
15. However, the information appears to be presented as a worse-case scenario with little context provided to indicate the frequency that such incidents might occur or whether any alternative measures could be employed to avoid them. In terms of lighting, power failures on the grid are infrequent. If the system runs off-grid, there is no reason to suppose a well serviced generator would be unreliable. According to the appellant, gas heaters can blow out frequently in the wind. It is not clear what type of heaters are being used or whether a more reliable system has been investigated to solve that issue.
16. Likewise, little information is provided to indicate how often water drinkers leak or become blocked or freeze over to the extent that one could gauge how much of an issue the problem actually is. It is also notable that the Year 1 account and Year 2 Forecast in the Business Plan provide minimal amounts in respect of repairs or maintenance at £439 and £1000 per annum respectively. If systems were as unreliable as is being presented one may expect those figures to be higher or that money may be earmarked for investment in more reliable equipment.
17. I do appreciate that higher levels of monitoring are likely to be needed during the rearing phase, where chicks are brought to site from 1 day old. That would include monitoring for stress, fatalities and to check for disease and to administer

medicines if needed. Interestingly, no outlay at all was recorded for medication in Year 1 and none was predicted in Year 2 which casts some doubt on the extent of the problem regarding disease. Removing dead or diseased birds could also be undertaken as part of a daily routine when living off-site.

18. It would no doubt be easier to carry out regular checks whilst living on site but outside of the peak rearing period, where it is suggested that checks need to be carried out every few hours, the level of input is likely to be less intensive. The over-wintering of breeding stock between the months of September and February will involve more mature birds. Checking that the heating is working during the colder months is clearly important but I refer to comments above relating to the lack of information on heating systems or consideration of alternative methods.
19. During the laying season from March to July, eggs are required to be collected every day but that does not necessitate a permanent unit at the site but could be undertaken as part of a regular daily routine whilst living off-site.
20. In terms of security, the site is not completely isolated, being in close proximity to other dwellings which would provide some surveillance. Alternative security methods including fencing and/or CCTV could also be employed as can often be the case at rural businesses such as livery yards etc.
21. Overall, whilst I can appreciate the desire for a continuous on site presence, the information provided does not demonstrate a need for a residential unit on the site 24 hours a day throughout the year. Even if more regular checks through the night may be required during the rearing period that would not necessitate a year round residential presence. Temporary accommodation in a touring unit or similar could be employed over a short period of time if such a need was demonstrated but I am not satisfied on the information before me that the mobile home is justified on the basis of the functional requirement.
22. There is also a complication in that the bulk of the pheasant rearing activity takes place on land adjacent to the application site. The caravan and associated barn are set within the red edge on the site location plan which denotes the application site, whilst the pens and enclosures and bird houses are within the blue edge which denotes other land within the appellant's control. The Council is of the view that pheasant rearing for the purposes of stocking local shoots does not constitute agriculture and represents a material change of use of that land.
23. Had I found that there was a justification in functional and financial terms for a dwelling associated with the use for pheasant rearing for local shoots it would have been difficult to grant planning permission given that the use itself does not benefit from permission. I understand that the appellant applied to the Council for a material change of use of the land to seek permission to use it for the rearing of game birds. That application has been refused and an appeal has recently been made to the Planning Inspectorate.
24. Whether planning permission should be granted for the use of the land in respect of rearing game birds is a separate consideration to whether there is a justification for a full time residential presence on the land. My decision makes no comment on the suitability or otherwise of the use of the adjoining land but, for the reasons given, I am not satisfied that a functional need has been demonstrated for a full-time residential presence.

25. Given my conclusion in that regard, the financial basis on which the application is made is less crucial. Nonetheless, I do share the Council's concern as to whether the land available is sufficient to upscale the business to 15-20,000 birds as is the stated intention. The present scale of operations is far smaller but appears to occupy a considerable portion of the available land.
26. It is also difficult to ascertain whether the financial information provided is likely to be accurate without further information to support the figures provided. As noted above, the figures provided for repairs and maintenance appear to be low, with little in the way of contingency. No outgoings have been included for purchase of the land which presumably would amount to a cost on the business.
27. In addition, the incomings provide estimated costs for pheasant poult for the shoot, eggs, ex-layers, geese and lead free pheasant for the table. None of those figures are provided with any background information on market rates in the area. Like most produce, prices are likely to fluctuate and further understanding of why the particular prices have been deemed appropriate would have assisted in giving confidence to the business plan overall.
28. Similarly, anticipated heating and feed costs appear to be quite low at only £1800 in year 2, a figure that would be lower than the heating bill for an average dwelling in the current climate of high energy bills. No information is provided as to how that figure is derived in terms of the unit costs for gas or the quantum of feed purchased. I also note that eggs are hatched off-site with chicks raised on-site from one day old up to 7/8 weeks when the poult are sold to shoots, butchers or restaurants. If the hatching service is provided by others, prior to chicks being brought back onto site to be reared one may reasonably expect an associated costs but nothing relating to that element of the business is included in the accounts.
29. Overall, the accounts depict a small-scale business which is turning over a marginal profit, even on the figures provided. However, like most businesses, those figures will be sensitive to fluctuations in costs and sales values and no sensitivity testing or cost comparisons have been provided. My concerns in that regard do raise questions over the viability moving forward and the ability to scale up operations in the manner currently anticipated by the appellant which reinforces my conclusions regarding the lack of a clear justification for a full time residential presence on-site, even for the temporary three year period requested.
30. Therefore, in the absence of a clear functional need, the stationing and occupation of the mobile home for residential purposes is contrary to the aims of policies RA3 and RA4 of the Local Plan, both of which seek to limit residential development within the countryside unless specific exceptions apply. For the same reasons, the development does not meet any of the exceptions set out at paragraph 84 of the Framework.

Effect on the Integrity of the SSSI & SAC

31. The appeal site is within 30 metres of the River Teme SSSI which is hydrologically linked to the River Clun SAC and the Downton Gorge SAC. In line with Regulations 63 and 64 of the Habitat Regulations¹, prior to deciding or giving consent for any project that is likely to have a significant effect on a European Site,

¹ The Conservation of Habitats and Species Regulations (2017) (as amended)

either alone or in combination with other plans or projects, the competent authority must carry out an appropriate assessment of the implications of that plan or project on the site's conservation objectives. The Council, as competent authority at the application stage, carried out an AA. In appeal situations the Inspector is the competent authority and the duty therefore falls on me.

32. The River Clun SAC covers just under 15 hectares in Shropshire and Herefordshire and is designated as a European Site on account of its habitat which hosts the freshwater pearl mussel. Natural England have confirmed that schemes impacting on the River Teme SSSI have the potential to impact on species that are integral to the River Clun SAC. The River Teme catchment is said to be in unfavourable condition, with excessive levels of phosphate impacting on water quality.
33. The Downton Gorge SAC qualifies for designation on account of its habitat containing "Tilio-Acerion" forests of slopes, screes and ravines. It is downstream of the appeal site and has the potential to be impacted by surface water and water pollution.
34. The appeal development is small-scale of itself but does have the potential to add to phosphate levels in the catchment, in combination with other plans and projects, through the disposal of foul sewage from the caravan and surface water from the caravan, barn and associated hard surfaces. The appellant contends that foul water is collected in a portaloo before being disposed of away from the site by a contractor. Precisely where that is is not apparent from the information provided which leads to some uncertainty.
35. Moreover, that only accounts for foul drainage. Little information is provided in terms of surface water drainage and it is not clear where the path of such drainage is or the extent to which it will intercept with the River Teme catchment which is in close proximity. The Herefordshire Council document "Criteria for Discharges to Drainage Fields"² provided by the appellant identifies thresholds for small developments where discharges are likely to present a low risk that phosphorus will have a significant effect on designated sites.
36. However, it has not been demonstrated that the development complies with the stated criteria in terms of the volume of discharge or the conditions set out at (a) to (g) of that document. In fact, condition (a) requires that any drainage field is more than 50m from the boundary of the designated site whereas the Council state that the site is less than 30m from the River Teme.
37. In the absence of adequate information I cannot rule out the possibility that the development before me will have significant effects on the respective SACs in combination with other planned development, especially given the sensitive and already degraded state of the designated assets.
38. As set out above, the proposal before me relates only to the caravan, the barn and associated access drive and hard surfacing immediately adjacent. The pheasant pens themselves are not part of the application and the use of the land is subject of a further appeal. Nonetheless, there is a clear link and the appellant's stated intentions of significantly expanding the number of birds on site are said to be dependent upon an on-site presence in the mobile home. Thus, applying a

² Identified as Version 2, dated 01 July 2022

precautionary approach, the associated impacts are related to the proposal and should be considered.

39. The appellant indicates that the pheasant pens are lined to prevent effluent escaping and that excrement is collected and composted. Again, there is a lack of detail regarding that process in terms of the design of any lining, the location of any composting and any assessment of whether phosphates could be discharged through that process. In addition, the birds are not only housed in buildings but roam externally in enclosed pens, directly on the surface of the field. There are no obvious measures to prevent excrement which is laid directly onto the surface from reaching the river. There is also the possibility that surface water from the caravan and buildings could run off across the land, intercepting with any effluent. As such, the extent to which phosphates from birds would enter the River Teme catchment is unquantified and ambiguous.
40. I am mindful that the appellant runs a small business, no doubt with limited resources, such that the cost of commissioning reports from relevant professionals would be a significant burden. However, I cannot overlook the clear requirements of the HRA and cannot rule out likely significant effects on the River Clun SAC and the Downton Gorge SAC. Accordingly, I concur with the AA carried out by the Council which found a likelihood that the development would have an adverse effect on the integrity of the designated assets. Those findings were supported by Natural England and the limited information presented in support of the case does not lead me to a different conclusion.
41. The proposal is subsequently contrary to The Habitat Regulations 2017 and contrary to policies LD2 and SD4 of the Local Plan, as well as the aims of paragraphs 192 and 193 of the Framework.

Other Matters

42. Reference has been made to other breeding operations in the local area with a suggestion that they may be operating without permission. Such matters would be for the Council to investigate the allegation does not impact on my conclusions on the planning merits in this case.
43. The development would appear to cater for a local need for birds, both for the shoot and for the table and will have knock on economic benefits. That is a positive material consideration to which I attach moderate weight, commensurate with the modest scale of the business.
44. A refusal to grant planning permission, allied to the effects of the associated enforcement notice would have a significant and negative effect on the homelife of the appellant. It is clearly a case where Article 8 Convention Rights are engaged³. Whilst the appellant, who was professionally represented, did not raise Article 8 Rights within the appeal submission it is clearly a matter of relevance in the appeal.
45. Rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country.

³ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998

In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality. I shall address whether the interference in this case would be proportionate and lawful in the planning balance below.

Conclusion on Appeal A

46. For the reasons given, there is no demonstrable functional need for the year round occupation of the mobile home and the submitted financial information is limited in extent which raises questions over the ongoing viability of the business. Accordingly, the development is contrary to the aims of policies RA3 and RA4 of the Local Plan and represents new residential development in a countryside location, remote from shops and services.
47. Moreover, I cannot rule out the likelihood of significant, in combination, effects on the integrity of designated European sites. In the absence of any indication that alternative sites were considered or any imperative reasons of over-riding public interest the harm in that respect carries significant weight. The implications of the Habitats Regulations indicate that it would be unlawful to grant permission in those circumstances. Similarly, paragraph 193(a) of the Framework would indicate that permission should be refused. The harm to natural assets is such that the development conflicts with policies LD2 and SD4 of the Local Plan.
48. Overall, the development conflicts with the policies of the development plan as a whole and I attach great weight to the harm arising.
49. The effect of the notice would be to remove the appellant's current place of residence. However, there is no indication that he would be rendered homeless or unable to secure alternative accommodation elsewhere. Similarly, given that I am not convinced of the rationale for requiring a permanent on site presence on grounds of security or bird welfare, it does not follow that the business would necessarily be untenable without the mobile home, depending upon any decision relating to the use of the land.
50. Given the clear breach of planning policy and the associated harm arising I find that interference with the Human Rights of the appellant would be proportionate in this case. Consequently, that is not a matter that outweighs the conflict with the development plan and the harm arising.
51. No conditions have been put forward that would mitigate the harm and it follows that Appeal A should be dismissed and I will refuse to grant planning permission for the development that has already taken place.

APPEAL B

Ground (g)

52. An appeal on ground (g) is made on the basis that the period for compliance falls short of what should reasonably be allowed. There was some confusion on the effective date of the notice because the date of the letter accompanying the enforcement notice was 06 September whereas the date on the notice itself stated 08 September 2023. The Council has confirmed that the date on the letter was a typographical error and that the correct date was 08 September. In any event,

given that an appeal has been submitted, the effective date would be the date of my decision so any confusion in that respect has been superseded by events.

53. The appellant requests that a 12 month period is given on the basis that the bird rearing business is managed over a 12 month cycle. However, I am required to balance the impact against the clear imperative to ensure effective enforcement of the planning system.
54. Whilst there would no doubt be some impact on the business, for the reasons given in my decision in respect of the planning appeal, I am not convinced that an on-site presence is required for the business to continue to function. It would no doubt be less convenient for the appellant to travel to and from the site but not essential from the information before me. In addition, the notice gives a period of 180 days for the residential use to cease. That would allow for any chicks being reared under the present June-September cycle to reach the 7-8 week age and be sold without disruption.
55. Balanced against that there is the likelihood of harm to designated SACs/ the SSSI and the clear breach of planning control relating to a dwellinghouse in a location where permission would not normally be granted. Human rights are relevant consideration in respect of ground (g) but the appellant hasn't made any argument in that respect or indicated that he would be unable to secure alternative accommodation within the timescale provided.
56. Overall, I find that the periods set out within the enforcement notice provide a proportionate response in respect of the appellant's Article 8 rights and a reasonable balance in the circumstances of the case. Therefore, the appeal on ground (g) fails and I shall dismiss the appeal and uphold the enforcement notice.

Chris Preston

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W1850/C/23/3327833	Mr Gareth Morgan
Appeal B	APP/W1850/W/23/3326667	Mr Gareth Morgan