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## Appeal Decision

Site visit made on 26 November 2024

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 11 December 2024**

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**Appeal Ref: APP/L3245/C/24/3344429**

**Land east of Overton Dingle, Overton, Ludlow**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Thomas William Smith against an enforcement notice issued by Shropshire Council.
- The notice was issued on 15 April 2024.
- The breach of planning control as alleged in the notice is without planning permission:
  - i. The material change of use from agriculture to residential use and the siting of a static caravan on land for human habitation.
  - ii. Engineering operations including excavation of land, alteration of land levels, importation, laying of hardcore material and removal of vegetation in association or otherwise with the use of the land for residential use.
  - iii. Operational development erect a timber cabin for residential use and shed to house domestic paraphernalia and to erect fencing and gates which exceed 2m in height.
- The requirements of the notice are to:
  - (i) Cease the use of the Land for residential purposes;
  - (ii) Remove from the Land the hard standing formed by concrete bases, scalplings and waste materials identified as rubber excess and tyres.
  - (iii) Demolish and remove from the Land the timber cabin, shed and static caravan.
  - (iv) Demolish and remove from the Land the high close panelled timber fence and gates.
  - (v) Remove from the Land all materials associated with the above steps, motor vehicles, touring caravans and other domestic paraphernalia.
  - (vi) Return the Land to its former condition.
- The periods for compliance with the requirements are:
  - (i) 2 months after this notice takes effect to comply with step (i)
  - (ii) 4 months after this notice takes effect to comply with steps (ii) to (vi) inclusive.
- 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).

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld**

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### Procedural Matter

1. The date on which the enforcement notice (the notice) was signed is missing. However, the date of 15 April 2024 is included on the covering letter accompanying the notice. As there is no statutory requirement to include the date the notice was issued, this has no effect on the validity of the notice.
2. The appeal form indicates that an appeal is made on ground (f) only. However, the appellant's submissions include arguments pertaining to a ground (b) appeal. The Council addresses these arguments in their statement of case and therefore no parties would be prejudiced by my consideration of this additional ground of appeal.

### **The ground (b) appeal**

3. In appealing on ground (b) the burden of proof is firmly upon the appellant to demonstrate the alleged breach of planning control has not occurred as a matter of fact.
4. The appellant contends there is no permanent residential use of the land and that the cabin is used for documentation to be stored along with tools and machinery relating to BAAS Ltd, which is claimed to be building and agricultural services.
5. During my site visit, the appellant did not have access to the cabin nor the touring caravans and so I was unable to view inside them. Nevertheless, I could see through a number of the windows in the cabin, through which I observed a kitchen with cupboards that appeared to contain foodstuff, a couch, and a shoe rack near the front door that contained several pairs of casual footwear. There was no evidence the cabin was being used for the storage of any documents or machinery relating to a business.
6. There was an electric cable leading off the cabin towards what appeared to be an electric feed located adjacent to the entrance to the site. There were also two large gas bottles to the rear of the cabin that were connected to it. In addition, to the rear of the cabin was a small timber shed containing a washing machine and tumble dryer. Furthermore, a septic tank was sited close to the cabin, presumably to which it is connected.
7. Adjacent to the cabin was a large touring caravan, outside the door of which were plant pots. There were two smaller touring caravans on the site, one of which had an electrical extension lead leading to the cabin. There were also four cars parked on the site, which did not have the appearance of being commercial in nature and therefore it is reasonable to conclude they were for private domestic use.
8. Overall, the site appeared to be in use for residential purposes, with no evidence of a business operating from it. The Council confirm they served a planning contravention notice on the appellant/the appellant's father to establish what uses were taking place on the site, but it was not completed and returned.
9. The appellant also states that the hardcore was not imported as this was already situated next to the pre-existing barn. However, whether or not the hardcore was already present on site, it was still imported at some point in time.
10. Based on the evidence before me and the observations I made on site, there is no evidence of a business operating from the appeal site. It has not been demonstrated that the site is not used for residential purposes nor that the material used for the hardstanding has not been imported. Consequently, the ground (b) appeal fails.

### **The ground (f) appeal**

11. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those

matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

12. Having regard to section 173(4) of the 1990 Act as amended and the stated requirements of the notice, it is reasonable to conclude that the purpose of the notice is to remedy the breach of planning control.
13. The appellant argues that the fence and gates can be lowered. Be that as it may, there is no evidence before me as to what height they propose them to be lowered to. In any event, the lowered fence would still require planning permission. Therefore, it would not remedy the purpose of the notice, which is the breach of planning control.
14. As there is no ground (a) appeal before me, arguments regarding the need for the fence and its effect on the visual amenity of the area have not been taken into consideration.
15. By reason that there are no lesser steps which would achieve the purposes of the notice with less cost and disruption, I do not find that the requirements of the notice exceed what is necessary to remedy the breach of planning control.
16. The ground (f) appeal therefore fails.

#### **Other Matters**

17. I note the comments made regarding the access road, the strength of the bridge and the transfer of the ownership of the land after the notice was issued. However, these matters have had no bearing on my consideration of the grounds of appeal that have been made.

#### **Conclusion**

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

*A Walker*

INSPECTOR