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## Appeal Decision

Site visit made on 28 September 2020

by **Jessica Graham BA(Hons) PgDipL**

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

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**Appeal Ref: APP/X1118/C/20/3251165**

**Land at Little Brayford, Little Bray Lane, Brayford, Barnstaple, Devon EX32 7QF**

- 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 Ms Helen Greenidge against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 20 March 2020.
- The breach of planning control as alleged in the notice is:  
*Within the last 10 years, breach of condition 3 of planning permission 61307 consisting of the residential use of the workshop and a material change of use of the land consisting of the storage of a shipping container.*  
*Within the last 4 years unauthorised material change of use of the workshop to a dwelling and operational development consisting of the erection of a corrugated arched structure and the erection of a porch structure connected to the caravan called The Chalet.*
- The requirements of the notice are:
  1. Cease the residential use of the workshop edged in blue on the attached location plan
  2. Remove the kitchen and cooking facilities from the workshop
  3. Remove all washing facilities including toilet, shower, sinks and taps from the workshop
  4. Remove all domestic items and paraphernalia from the workshop including but not exclusively furniture, bed and sofa
  5. Remove the shipping container from the land edged in red on the attached location plan
  6. Remove the corrugated arched structure from the land
  7. Remove the porch structure from the caravan (mobile home)
  8. Remove any rubbish and or debris resulting from compliance with steps 1 to 7 from the land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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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### Background

1. In March 2017, the Council granted planning permission<sup>1</sup> for the construction of “One Local Needs Dwelling & Workshop” on the appeal site. The plans approved by the grant of permission included the stationing of a mobile home, for use

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<sup>1</sup> Decision Ref 61307, dated 10 March 2017

during the construction of the dwelling. The grant of permission was made subject to a number of conditions. These include requirements that the workshop should only be used by the occupiers of the approved dwelling, and only for purposes within Use Class B1 and for ancillary storage (condition 3); that archaeological investigation be undertaken (condition 7); and that the mobile home should only be occupied by the applicant during the construction of the dwelling and thereafter be removed from the land (condition 12).

2. The mobile home was stationed on the site and the workshop was constructed, but the evidence of the Appellant is that the discovery of a substantial rock outcrop on the site, and the presence of graves revealed by the archaeological investigation, have had a significant adverse impact on the viability of constructing the approved dwelling. The Appellant and her partner began to use the workshop as their temporary dwelling while the initial investigatory works were taking place, and now wish to continue living there.

### **The appeal on ground (a)**

3. The ground of appeal is that planning permission ought to be granted for the matters alleged by the notice. The Appellant has clarified that the appeal on this ground is limited to seeking planning permission for the use of the existing workshop as a dwelling, and for the construction of the porch attached to the mobile home. Permission is not sought for the stationing of the shipping container or the erection of the corrugated arch structure, as these were only ever intended to be temporary.

#### *The status of the 2017 Permission*

4. The Appellant contends that works to provide the site access have taken place in accordance with condition 9 of the 2017 Permission, such that the 2017 Permission has been materially commenced, and the ability to complete it is available as a fallback position. However, the Council contends that this fallback position does not exist, because the development that has taken place on site does not accord with the plans approved by the 2017 Permission.
5. When reliance is placed on an existing grant of permission, it is necessary to show that the permission has been commenced. Very little is needed to "initiate development" under s.56(1) of the 1990 Act: it occurs when the operations are commenced, or the new use is instituted, or the earlier of these times if operations and a material change of use are both carried out. What has been done needs to have been done in accordance with the relevant permission, and to have been material in the sense of not being *de minimis*. It is possible to commence a development for the purpose of s.56 and thereby meet a deadline forming a condition of the planning permission, and then later to deviate from the permitted works in a manner that becomes an enforcement issue, without retrospectively altering the fact that the commencement of the development had occurred for s.56 purposes.
6. Here, it is common ground that works on site commenced within three years of the date of the 2017 Permission (as required by condition 1), and that the size, scale and siting of both the workshop and the mobile home accord with the details shown in the approved plans. There is no suggestion that the operations carried out were in breach of any of the conditions requiring the prior approval of details or associated works. In these circumstances, I am satisfied that the works to the access, the siting of the mobile home and the construction of the

workshop effectively commenced the 2017 Permission. That the approved dwelling has not itself been constructed, and that the workshop and mobile home have subsequently been occupied in breach of conditions 3 and 12 of the 2017 Permission, does not alter the fact that the 2017 Permission was validly commenced. The 2017 Permission is therefore extant, and so it would be open to the Appellant (or any subsequent owner of the land) to construct the approved dwelling on the appeal site without the need for any further grant of planning permission.

*The proposed use of the workshop as a dwelling*

7. Policy ST07 of the adopted *North Devon and Torrington Local Plan 2011-2031* ("the Local Plan") provides that in Rural Settlements which contain at least one prescribed service or community facility (such as Brayford), appropriately located development of a modest scale will be enabled to meet locally generated needs. Policy DM24 of the Local Plan then sets out the circumstances in which proposals for local occupancy dwellings to meet a locally identified housing need will be supported. One of its criteria is that secure arrangements are made to ensure "local occupancy" dwellings remain available to meet the housing needs of the local community, both initially and in the long term.
8. In determining the planning application which resulted in the grant of the 2017 Permission, the Council was satisfied that the need for a single dwelling to meet local housing need had been demonstrated at the appeal site, and a s.106 Agreement was completed to secure its future occupation as a "local needs" dwelling. The Council's case in this appeal is that permission exists for one local needs dwelling on the appeal site, so there is no need for another.
9. The Appellant's case is that she does not seek permission for the residential use of the workshop *in addition* to the dwelling approved by the 2017 Permission. Rather, the (deemed) planning application here is for the use of the workshop as a dwelling, *instead of* the construction of the approved dwelling. The Appellant contends that this could be achieved either through the revocation of the 2017 Permission or, if I were to allow the appeal on ground (a) and grant permission for the use of the workshop as a dwelling, the imposition of a condition on that permission to prevent the dwelling allowed by the 2017 Permission from being built for as long as the workshop was occupied as a dwelling.
10. A planning permission can only be revoked by the planning authority or the Secretary of State following the process (with provisions for compensation) set out under s97 and s100 of the TCPA90, so revoking the 2017 Permission is not a course of action that is open to me in the context of the current appeal.
11. In circumstances where planning permission is sought for a new building to replace one that has already been built, and it would be possible for the two to exist at the same time, a condition can be used to ensure that the existing building is demolished before its replacement is built. However, where (as here) permission is sought for a building to replace a previously approved but not yet constructed building, for which planning permission remains extant such that it could later be built in addition to its proposed replacement, it would not be appropriate to impose a condition purporting to prevent the construction of the already permitted building. A planning condition does not formally revoke an extant planning permission, and there would be an enforceability problem if the land were subsequently sub-divided, so that the site of the

dwelling approved by the 2017 Permission fell within different ownership. A completed planning obligation would be needed to prevent both permissions from being implemented, as such an obligation runs with the land and so would bind any successors in title.

12. No such planning obligation has been provided in this case. In the absence of any means of preventing the dwelling approved by the 2017 Permission from being constructed, it is necessary to determine the application for the use of the workshop as a dwelling on the basis that this would be an additional dwelling on the appeal site. Since no case has been made that there is an identified local need for an additional dwelling here, this would be at odds with the approach set out in Local Plan Policies ST07 and DM24 of limiting new housing development in Rural Settlements to that which is required to meet local need.
13. In summary, if planning permission to use the workshop as dwelling were being sought on the basis that construction of the local needs dwelling allowed by the 2017 Permission had effectively been precluded (either by revocation or by planning obligation), the balance of considerations in this case would turn on whether or not the location of the workshop within the site were a suitable alternative to the location of the originally approved dwelling, and (in the absence of any planning obligation limiting its use to occupation as a "local needs" dwelling) whether the Appellant is right that the workshop should be regarded as a disused or redundant building in the terms of Policy DM27. However, since no means of preventing the construction of the dwelling allowed by the 2017 Permission has been provided, the change of use of the workshop to a dwelling would conflict with the objectives of Local Plan Policies ST07 and DM24. No other material considerations, of sufficient combined import to outweigh that conflict, have been identified.

*The porch attached to the mobile home*

14. The plans approved by the 2017 Permission include a mobile home, labelled as "Proposed mobile home to be used during construction"; condition 12 of that Permission limits the use of the mobile home to occupation by the applicant during construction of the dwelling, and requires its removal by 31 March 2020 or when the dwelling is capable of occupation, whichever is the sooner.<sup>2</sup>
15. I share the Council's view that the presence of the mobile home in what is a fairly prominent position within the appeal site is not appropriate or sympathetic to its setting in terms of design, layout, appearance, materials and its relationship to existing buildings. It conflicts, in this respect, with the aims of Local Plan Policy DM04. It is clear that the siting of the mobile home was proposed, and approved, on the basis that it would have only a temporary presence on the appeal site, such that its adverse impact on the character and appearance of the area would be limited to that temporary period.
16. I note the Appellant's contention that the porch which has now been attached to the side of the mobile home is a fairly modest addition. Nevertheless, I saw at my site visit that in public views from Littlebray Lane it has a domesticating effect, giving the mobile home a settled and "permanent" air. In my judgment, this undermines the visual reading of the structure as a temporary presence:

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<sup>2</sup> The Appellant advises that an application is being made to the Council to allow the extended use of the mobile home beyond the time limit specified in this condition. That is not a matter that is currently before me.

rather than an impermanent and “mobile” home, it now appears as a more permanent, residential addition to the street scene. This increases the existing conflict with Policy DM04’s aims of ensuring that new development is appropriate to its setting.

17. In short, I find that while the proposed occupation of the mobile home during the construction of the approved dwelling provided “in principle” justification for its temporary siting on the appeal site, that justification does not extend to adding additional components which obscure the temporary nature of its presence.

*Conclusions on the ground (a) appeal*

18. For the reasons given above I conclude that the appeal on ground (a) should fail, and planning permission should not be granted for the deemed planning application in respect of the residential use of the workshop or the porch structure connected to the mobile home.

**The appeal on ground (g)**

19. The ground of appeal is that the period of nine months for compliance with the requirements of the notice falls short of what should reasonably be allowed.
20. The Appellant’s case is that if the appeal on ground (a) is dismissed, she will need to try to find an alternative design for a dwelling on the appeal site to address the problem of the additional costs presented by the discovery of the graves and the rocky outcrop, and will need to have somewhere to live while the planning issues are resolved. She contends that a temporary consent to continue living in the workshop could be included as part of any application to revise the 2017 Permission, but that this would mean she would be left in limbo pending the determination of that application, and suggests that this issue could be addressed by allowing three years for compliance with the notice’s requirement to cease the residential use of the workshop.
21. It is important to bear in mind that upholding the notice will result in the loss of the Appellant’s home, and she must be given a reasonable period in which to make arrangements for alternative accommodation. Of course it is also important, in the public interest, that the requirements of the notice should be carried out without undue delay to overcome the harm identified by the Council in its reasons for issuing the notice.
22. I appreciate that the formulation of a new design for a dwelling, which has proper regard to the constraints of the site, will take some thought but I have not been provided with any reasons as to why the process of compiling, submitting and determining a planning application for such a proposal would take more than nine months. Nor is there any indication that nine months would be insufficient time for the Appellant, as a fallback position should the application fail, to look for an alternative place to live. It is also worth noting that the Appellant applied, in the context of this appeal, for permission to use the workshop as a dwelling in place of the house approved by the 2017 Permission. While (for the reasons set out above) I have been obliged to determine that application on the basis that it sought permission for a second dwelling on the appeal site, this does not preclude the Appellant from making a new planning application for that “alternative instead of additional” proposal,

and pursuing with the Council the possibility of either revoking the 2017 Permission or entering into a relevant planning obligation.

23. Taking all of this into account, I consider that a period of nine months to cease the residential use of the workshop strikes the appropriate balance between the competing private and public interest, such that there would not be a disproportionate burden placed on the Appellant. I therefore conclude that the appeal on ground (g) should fail.

### **Conclusion**

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Formal Decision**

25. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Jessica Graham*

INSPECTOR