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# Appeal Decision

Site visit made on 15 December 2015

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 February 2016**

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**Appeal Ref: APP/W1850/C/15/3129349**

**Land at Park Gate, Ivington, Leominster, Herefordshire HR6 0JX**

- 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 Mr John Hanson against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 27 May 2015.
- The breach of planning control as alleged in the notice is without planning permission unauthorised operational development in the form of rebuilding of a derelict building.
- The requirements of the notice are:
  1. Permanently cease rebuilding of the unauthorised building.
  2. Permanently demolish the unauthorised building and remove all resulting brickwork and waste materials from the site to a registered waste disposal site.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) 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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## Preliminary Matter

1. The enforcement notice refers to Policy H7 of the Herefordshire Unitary Development Plan (Local Plan) together with the National Planning Policy Framework (the Framework). The Local Plan has subsequently been superseded by the Herefordshire Local Plan – Core Strategy (CS). Therefore, the relevant policy is Policy RA3 of the CS.

## Site description and background

2. The appeal site lies in open countryside on the south side of the C1106.
3. It is common ground that the building was originally a dwelling which was last occupied in the mid-1950s. The Council maintain that the residential use has been abandoned.
4. At the time of my site visit the building was not occupied.

## Appeal on ground (c)

5. For the appeal on ground (c) to succeed the onus of proof is on the appellant to demonstrate that there has been no breach of planning control. The appellant contends that although the property has not been lived in for some time, the use has not been abandoned and it is still a dwelling house, the substantial rebuilding of which does not constitute operational development.
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6. Section 55 of the Act sets out the meaning of development and section 55 (2) sets out certain operations which do not involve development. Paragraph (2) (a) allows for the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
7. The appellant stated in 2012 (in response to the Requisition for Information) that the works being carried out were "renovating an existing farm cottage into a house". The Council contest that "nothing of the main structure of the original building remains apart from a small section of the stone wall at the front of the building. All other stone work, brick work and roof are new".
8. Case law establishes four criteria to be of relevance in considering whether a use has been abandoned; the period of non-use, physical condition of the land or buildings, whether any other use has occurred and the owner's intentions.
9. The appellant's evidence would suggest that whilst there was a cottage on this site for many years, it has not been used as a dwellinghouse for approximately 60 years and over the passage of time has fallen into a state of disrepair. The appellant's photographic evidence shows the cottage in an advanced stage of dereliction. The main body of the cottage had no roof, parts of its walls were missing and extensive vegetation was growing on and within its remains. I therefore consider that due to its physical condition the cottage was not capable of being a lived in as a dwelling house. The submissions indicate that there has not been any other use.
10. Whilst it was the appellant's intention to "repair and improve the dwelling once the funds became available", there is no evidence before me to show that the appellant or anyone else previous undertook any works to preserve the remains of the cottage or to prevent its deterioration. The absence of any such action does not indicate an intention to retain residential use in due course.
11. Based on the available evidence, on the balance of probabilities I consider that the residential use of the cottage was abandoned before the present works commenced.
12. In any event, the substantial rebuilding of the walls, new internal block work, the addition of a completely new roof and a rear extension goes well beyond what might be regarded as the carrying out for the maintenance, improvement or other alteration of a building (s55(2)(a)). Only part of the building remained and the operational development carried out is tantamount to a new building. Consequently, I consider that the building works constitute development as defined in s55.
13. From all I have seen and read, I agree with the Council, that the building was not a dwellinghouse at the time the work was being undertaken. The works have gone beyond repair and renovation and have amounted to building operations for which planning permission is required. Planning permission has not been granted. Thus, there has been a breach of planning control and the appeal on ground (c) therefore fails.

### **Appeal on ground (a) and the deemed planning application**

14. The deemed application is to retain the building in its present form. It is the appellant's intention to occupy the building as a dwellinghouse. The main issue

therefore is whether the development is acceptable in this location with due regard to the development plan and national policy.

15. In part 4 of the enforcement notice the reasons for issuing the notice include the unsustainable location of the appeal site. Neither of the main parties have provided evidence regarding the sustainability or otherwise of the appeal site.
16. The overarching aim of CS policy RA3 is to locate new development in sustainable locations. This policy is consistent with the Framework insofar as it does not enable development which would compromise the principles of sustainable development. The development does not meet any of the circumstances that are set out in either the policy or the Framework.
17. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. To promote sustainable development in rural areas, paragraph 55 advises that housing should be located where it will enhance or maintain the vitality of rural communities.
18. The economic role of sustainability includes contributing to a strong, responsive and competitive economy. The building of one dwelling would generate some temporary economic benefit during the construction phase. Furthermore, the contribution one dwelling would make to support the services and facilities in key settlements would be minimal.
19. The social role includes supporting a strong, vibrant and healthy community by providing housing required to meet the needs of present and future generations, and creating a high quality environment, with accessible local services that reflect the community's needs and supports its health, social and cultural well-being. Due to its isolated location it is reasonable to assume that residents would be likely to need to travel by car to access day to day facilities and services which are some distance from the appeal site. Thus, the development would not facilitate sustainable modes of transport. As a result, the development would not meet one of the core principles of the Framework to actively manage patterns of growth to make the fullest use of public transport, walking and cycling.
20. As far as the environmental role is concerned the development would not help to move towards a low carbon economy because it would not help to concentrate development close to infrastructure and services. The Framework is clear that the three roles of sustainability are mutually dependent; they should not be undertaken in isolation. In the overall balance, I am not persuaded that the modest economic benefit of the provision of one additional home demonstrably outweighs the adverse environmental implications of a dwelling in this location.
21. I therefore conclude that the location of this dwelling in the open countryside does not represent a sustainable form of development having regard to the definition of sustainable development as set out in paragraph 7 of the Framework. It is contrary to Policy RA3 of the CS which aims to ensure development is appropriate to the rural area. The appeal on ground (a) and the application for deemed consent fail.

**Appeal on ground (f)**

22. Section 173(4) (a) of the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control which has occurred by restoring the land to its condition before the breach took place.
23. The appellant contends that the steps to remedy the breach which require the demolition of the entire building are excessive and that the building could be returned to its original size.
24. The alleged breach of planning control is the rebuilding of a derelict building. The enforcement notice is not therefore directed at any demolition works that may have been carried out to facilitate those rebuilding works. It is not therefore necessary for the requirements of the notice to require any works to be carried out, other than the demolition of all of the new building, to remedy the breach.
25. The appellant has provided limited evidence regarding how much of the derelict building still remains. The Council argue that apart from a small section of the stone wall at the front of the building, this is completely a new dwelling. Accordingly, by requiring the demolition of those building operations carried out, the requirements of the notice would remedy the alleged breach of planning control. Insufficient evidence is available to demonstrate accurately what, if any, of the derelict building, still remains. Accordingly an alternative requirement could not be drafted with any necessary precision. In any event, in so far as any remains, it has been subsumed into the new building.
26. For the reasons above, I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

**Decision**

27. It is directed that the appeal is dismissed and the enforcement notice is upheld.

*Elizabeth Jones*

INSPECTOR