



Appeal Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 31/07/2025

Appeal reference: CAS-03291-F0B7Y3

Site address: Land near Plas Ivor Cottage, Hill House to Llymon Brook, Cross Ash NP7 8PT

- 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 Andrew Phillips against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice, numbered E23/259, was issued on 25 January 2024.
 - The breach of planning control as alleged in the notice is *'Unauthorised residential use of the land including the associated siting of mobile home & kennels/wooden structures'*.
 - The requirements of the notice are:
 - (i) Cease the residential use of the land edged in red on the attached plan.
 - (ii) Remove the mobile home in its entirety from the land edged in red on the attached plan.
 - (iii) Remove all kennels & wooden structures associated with the residential use from the land edged in red.
 - The period for compliance with the requirements is: 3 months from the date that this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) a) of the Town and Country Planning Act 1990 as amended.
 - A hearing was held on 16 July 2025.
 - A site visit was made on 18 July 2025.
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Decision

1. It is directed that the enforcement notice be corrected by replacing Schedule 2 of the Notice with: *"Unauthorised material change of use of the land from agriculture to residential use including the associated siting of mobile home & kennels/wooden structures"*.
2. Subject to this correction, 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.

The Enforcement Notice (EN)

3. Irrespective of whether the enforcement notice is upheld, or quashed and planning permission granted, it is important that the development is correctly described – not least so that the deemed application for planning permission is considered on the right basis. Section 55 of the Act sets out the meaning of development, which includes the making of any material change in the use of buildings or other land. Due to the omission of the words ‘material change of use’ the allegation as currently drafted does not align with the definition of development set out in S55 of the Act and would need to be corrected. I have a duty to get the notice in order if I can and have wide powers of correction provided that the interests of neither party would be prejudiced.
4. The Council and the appellant agreed at the hearing that there would be no prejudice if I were to correct Schedule 2 of the notice to include the words “*material change of use*” of the land. It was also agreed that the breach should also make reference to its former use of “*agriculture*”. I have therefore corrected the notice accordingly.

The ground (a) appeal and deemed planning application

5. An appeal under Section 174(2)(a) of the Act is that planning permission should be granted for what is alleged in the notice which, in this case, comprises the material change of use of the land to residential use and the siting of a caravan. I shall determine the appeal accordingly, having particular regard to the following main issues: *whether the development complies with planning policy which seek to control development within the open countryside, and whether the personal circumstances of the occupants of the unauthorised development outweighs any policy conflict.*

Planning Policy

6. The site is located within open countryside as defined in the Adopted Monmouthshire County Council Local Development Plan (LDP) 2014. The LDP sets out a spatial strategy aiming to direct development to sustainable locations and a presumption against development in the countryside. Policy S1 of the LDP promotes sustainable development by distributing development to sustainable locations in accordance with the settlement hierarchy supporting the roles and functions of the identified settlements. The explanatory text to the spatial distribution of housing in the County also refers to the aims of reducing dependence on the car by directing growth and development to settlements and locations where services and facilities are available and accessible by public transport.
7. The appeal site is located approximately 1.4 miles to the south of Cross Ash in a very rural location accessed via an uneven single lane road. Cross Ash is a small rural village approximately 8.5 miles north-east of Abergavenny and 9.5 miles north-west of Monmouth. It has very limited local facilities and residents, therefore, depend on Abergavenny and Monmouth to access everyday services and facilities. I have not been provided with evidence on the availability of public transport from the appeal site that provides access to these towns. As such, the occupiers of the caravan are reliant on the private car to access all services and facilities, including leisure and employment opportunities.
8. Policies S1 and LC1 of the LDP allows dwellings outside development boundaries in exceptional circumstances where they are necessary for agriculture, forestry, ‘one planet development’, rural enterprise, rural / agricultural diversification schemes or recreation, leisure or tourism.
9. Planning Policy Wales (PPW) Edition 12 also states that new housing in the open countryside should be strictly controlled. One exception to this is where it is essential for a dwelling to house a worker in a rural enterprise. Technical Advice Note (TAN) 6:

Planning for Sustainable Rural Communities confirms in paragraph 4.3.1 that one of the few circumstances in which new isolated residential development in the open countryside may be justified is when accommodation is required to enable rural enterprise workers to live at, or close to, their place of work.

10. The appellant confirmed at the hearing that although one of the occupants, Mr Corey Wright, assists the appellant on his farm in the evenings and at weekends when required, the ground (a) appeal and the deemed planning application does not seek planning permission for the caravan as a rural enterprise dwelling under TAN6.
11. Therefore, having regard to the rural location of the appeal site the occupation of the caravan and the use of the land for residential use is an unsustainable form of development within the open countryside contrary to the sustainable development principles and placemaking outcomes set out in PPW and the adopted LDP. As a result, the development conflicts with Policies S1 and LC1 of the LDP as well as PPW and TAN6.

Personal Circumstances

12. The caravan has been occupied by Mr Corey Wright and Miss Molly Bryne (the occupants) since the autumn of 2023 following their eviction from their previously rented property. The occupants are a young couple who are friends of the appellant's son, and as they were being made homeless the appellant provided them with the caravan to live in temporarily. The appellant is seeking permission for the occupation of the caravan by Mr Corey Wright and Miss Molly Bryne for a further temporary period of two years.
13. The appellant's evidence relies on the personal circumstances of the occupants as material considerations in favour of granting planning permission for the unauthorised development, and has referred me to the Human Rights Act 1998 (HRA). I have had regard to Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights, incorporated into the HRA, which requires that decisions ensure respect for private and family life and the home, and to the peaceful enjoyment of their possessions. I have also noted the various caselaw cited by the appellant on this matter.
14. The appellant states that the occupants cannot afford to purchase or rent a suitable property within close proximity to Cross Ash to accommodate themselves and their working dogs. In this regard, the appellant has provided evidence of the cost of properties to rent within 3 and 5 miles of Cross Ash. The appellant's evidence also states that there is a distinct shortage of rental properties available in rural Monmouthshire and if they were to move into one of the main towns it would increase their travelling distance to and from work, and without any reliable or frequent public transport they would have no choice but to rely on private vehicles.
15. Whilst I do not doubt the unavailability and unaffordability of houses within 5 miles of Cross Ash, the appellant confirmed at the hearing that Corey Wright currently works for his father's scaffolding business based in Abergavenny, and Molly Bryne currently works as a teaching assistant at various schools around the County. As such, the occupants already travel by car to their places of work. Therefore, I am not persuaded by the appellant's argument that properties within the towns of Monmouth or Abergavenny would be unsuitable for the occupants as it would increase their travelling distance to and from work.
16. The appellant's evidence on the unsuitability of houses in Abergavenny is also conflicted as it was confirmed at the hearing that Molly Bryne's father has purchased a property for the occupants in Gilwern, which is approximately 13 miles from Cross Ash and only 4 miles from Abergavenny.

17. When questioned on the availability of assistance from Monmouthshire Housing Association (MHA) the appellant stated that if the occupants were to contact MHA they would be low priority as two young individuals with no dependants. However, no evidence has been provided to support this statement. Indeed, the appellant confirmed at the hearing that the occupants had not actually made any contact with MHA to see if they would be eligible for assistance and whether the housing association could help them find a suitable property. Given the appellant's argument that the occupants would be made homeless, I find the lack of contact with MHA to be very surprising.
18. Whilst I have taken into account the personal circumstances of the occupants, I consider that they have not suitably considered all other alternatives that are available to them. From the evidence before me, it is clear that the occupants have not sought to investigate the possibility of affordable rental properties in Abergavenny or Monmouth, and they have not attempted to seek housing advice or assistance from MHA.
19. I have considered the possibility of granting a temporary permission for a period of 12 months to allow time for renovations to be completed on the Gilwern property. However, I am not satisfied that this, in itself, provides sufficient justification for the grant of a temporary permission contrary to national and local planning policy.
20. I have not seen anything else to indicate that the residential use of the land is justified by the provisions of national policy and, in the absence of any material considerations that outweigh the foregoing policy conflict, I conclude that the development subject to the enforcement notice to be unacceptable in principle and contrary to national and local planning policy.

Other Matters

21. The appeal site lies within the catchment of the River Wye Special Area of Conservation (SAC) which is protected under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). Natural Resources Wales (NRW) has set new phosphate standards for riverine SACs following the revised Common Standards Monitoring guidance updated in 2016 by the Joint Nature Conservation Committee. The nature of the development has the potential to impact on phosphate levels. In these circumstances, the decision maker as the competent authority is required to carry out an appropriate assessment and in determining this appeal, I fail to be the competent authority.
22. The appellant has submitted a Septic Tank Report which has been reviewed by NRW as part of this appeal process. NRW has confirmed that the foul drainage will be disposed of via a private sewage treatment system which connects to the existing drainage field which meets the screening criteria set out in their advice, and it is satisfied that there is unlikely to be a pathway for impacts. I am also persuaded by the appellant's evidence that the development will not result in increased amounts of phosphates entering the SAC. An Appropriate Assessment is, therefore, not necessary in these circumstances and I find that the development will not harm the River Wye SAC.

Conclusions

23. Having regard to the above and the evidence before me I conclude that the ground (a) appeal and the deemed application should not succeed. I have taken into account all matters raised by the appellant, but none are sufficient to outweigh the considerations that have led me to my conclusions that the appeal should be dismissed and the enforcement notice should be upheld. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

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24. In reaching my conclusions, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives.

RH Duggan

INSPECTOR