



Appeal Decisions

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by K R Saward Solicitor

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

Decision date: 24 October 2016

Pask Farm, Mount Pleasant Lane, Crossway Green, Stourport on Severn, Worcestershire

Appeal A: APP/H1840/C/16/3144871

Appeal B: APP/H1840/C/16/3145101

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Miss Sally Jones (Appeal A) and Mr Michael Hewitt (Appeal B) against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 19 January 2016.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of agricultural land to land used for the siting of a mobile home for residential purposes, including the siting of portable toilets and various domestic paraphernalia.
- The requirements of the notice are:-
 1. Permanently to cease the use of the Land for the siting of a mobile home for residential purposes.
 2. Permanently to remove the mobile home from the Land and to restore the Land to its former use, namely that of agricultural land.
 3. Permanently to remove from the Land all domestic paraphernalia, including but not limited to, hot tub, garden tables with umbrella and garden chairs, gas barbeque, garden furniture and portable toilets.
 4. Permanently to remove from the Land any utilities, pipework, cables and sewerage connections associated with the residential use of the mobile home.
 3. [sic] To remove from the Land entirely all domestic paraphernalia used in association with the residential use.
- The period for compliance with the requirements is three months for steps 1 & 2 and four months for steps 3 & 4.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) & (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision

Preliminary Matters

1. Originally the appeal was brought solely in the name of Miss Sally Jones whose
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appeal proceeds on grounds (a) and (c). A second appellant, Mr Michael Hewitt, was subsequently added. His appeal proceeds on ground (c) only.

2. The full postal address for the site includes the name Pask Farm which I have utilised above. With the consent of the parties it should also be inserted in the enforcement notice.
3. The enforcement notice alleges a change of use of the land by reference to the entire area shown on the plan attached to the notice whereas only part of the site is in residential use, the remainder being agricultural. The allegation should thus be the unauthorised change of use of agricultural land to a mixed use of agriculture and the siting of a mobile home for residential purposes. The notice requires correction accordingly.
4. There are two paragraphs numbered 5.3 in the enforcement notice, both of which deal with the same issue albeit the first in longer form. Clearly this is an error and one paragraph requires deletion. It was agreed at the Hearing that the second paragraph 5.3 should be deleted and the first paragraph amended to make reference to the domestic paraphernalia being that 'used in association with the residential use'.
5. It was agreed at the Hearing that all of those corrections referred to above can be made without injustice to either party.
6. Since the issue of the enforcement notice on 19 January 2016, the Council has adopted the South Worcestershire Development Plan (SWDP). This supersedes policies in the Wychavon District Local Plan. Full weight now attaches to policy SWDP 19 being the policy concerning dwellings for rural workers. This is incorrectly cited in the Council's reasons for issuing the enforcement notice as SWDP 1. The Council confirmed that policy SWDP 29 quoted in its Appeal Statement concerning sustainable drainage systems is not relevant in this instance. I have applied the newly adopted policies insofar as relevant in my consideration of the ground (a) appeal.
7. The appellants are aggrieved with the conduct of the Council, but dissatisfaction with the Council has no bearing on my consideration of these appeals which must be considered on the facts and merits as appropriate.

Background

8. Pask Farm comprises approximately 10 acres of agricultural land containing a building with farm shop. It is accessed from the A449 road via a single vehicular track. The caravan has been positioned on the land since 2014. A planning application for permanent residential use of the caravan was withdrawn in 2015. A retrospective application for the temporary stationing of a mobile home to accommodate an essential rural worker was refused on 20 April 2016. The reasons given were the failure to demonstrate an essential need for a full-time worker or a business need for the accommodation. No appeal has been submitted against that decision.

Appeals A & B - ground (c)

9. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The appeals on this ground relate solely to the two portable toilets positioned on the land.

10. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55 of the Town and Country Planning Act 1990 (as amended) and includes the making of any material change in the use of any buildings or other land.
11. The stationing of portable toilets is not a material change of use in itself. What is relevant is whether that use is ancillary to the primary use of the land or benefits from permitted development rights. The appellants confirmed that they are not seeking to rely on any permitted development rights.
12. It is not in dispute that the lawful primary use of the site is agriculture within the meaning of section 336 of the 1990 Act. I have no reason to conclude otherwise.
13. The notice alleges that the portable toilets form part of the unauthorised residential use of the land. The appellant maintains they are chattels used by volunteer farm workers and members of the public during open days which take place over Bank Holiday weekends. As such, it is claimed that they are disconnected to the residential use.
14. The portable toilets are not positioned close to the mobile home, but next to a shed in the yard where they are not far from the barn building and pens containing livestock. As the caravan contains a toilet, it is improbable that a residential occupier of the caravan would go to the trouble of using a portable toilet outside in the yard unless doing so in connection with their work on the farm. Parts of the site are very muddy which lends credibility to the appellants' explanation that workers hose down in the barn and use the portable toilets rather than the caravan which also prevents the spread of disease. Such an arrangement is entirely plausible.
15. Although it seems unlikely that two toilets would be required at all times of year, the number is not so excessive. Moreover, the presence of portable toilets is not untypical in a working agricultural farm environment.
16. As a matter of fact and degree I find on the evidence before me that the appellants have shown on the balance of probabilities that the purpose of stationing the portable toilets is ancillary to the primary agricultural use of the site. To this extent the ground (c) appeals succeed and reference to the portable toilets shall be deleted from the requirements of the notice.

Appeal A - ground (a) and the deemed planning application

Main Issue

17. The main issue is whether, having regard to the aims of national and local planning policies that seek to resist new dwellings in the countryside, there is an essential need for a rural worker to live at the site.

Reasons

18. The appeal site is outside any development boundary and is therefore in the countryside for the purposes of planning policy where development is strictly controlled. Paragraph 28 of the National Planning Policy Framework (the Framework) sets out that planning policies should support economic growth in rural areas and aims to promote the development and diversification of

agricultural and other land-based rural businesses in order to promote a strong rural economy. Paragraph 55 goes on to say that local planning authorities should avoid isolated homes in the countryside unless there are special circumstances. One example given is the essential need for a rural worker to live permanently at or near their place of work in the countryside.

19. Rather than permanent living accommodation, the appellant seeks a temporary planning permission for 3 years to enable her to establish the business. This is with a view to making a new application in the future for a permanent dwelling on the site. On that basis, the parties agree that the key local plan policy consideration is paragraph B of SWDP 19. This provides that for a new agricultural enterprise, a time-limited permission may be granted for a temporary dwelling, such as a mobile home or a caravan, until the economic viability of the enterprise is established. Although operational since 2014, the Council confirmed that it considers the business to be a 'new' agricultural enterprise for the purposes of the policy. Paragraph B goes on to state that applications for such dwellings must meet the functional and economic tests contained in Annex G. Whether or not each test is met is a matter of contention between the parties.

Functional need

20. Whilst there was some discussion at the Hearing over whether a functional need for a time-limited permission could be one established over time in the same way as economic viability, it is clear to me that there is no such policy provision. To meet the test of a functional need for a dwelling under Annex G, evidence is required to prove that the dwelling is necessary because of three factors. There is no dispute that there are no other dwellings available in the vicinity to meet criterion 1.b. and there is no existing residential accommodation on the site for criterion 1.c. to apply. It is criterion 1.a. that is contested. To meet 1.a. it must be shown that for reasons of animal welfare, security of animal stock or other stock, security of buildings or machinery, or the maintenance or delivery of essential processes, a full-time worker is required to live on the unit for most of the year.
21. The appeal was accompanied by an Agricultural Workers Dwellinghouse Appraisal. It identifies Pask Farm as a trading partnership between the two appellants. The Appraisal is dated February 2016 and states that Miss Jones resides in the caravan and is the one full-time worker. Mr Hewitt is said to be a silent partner in the business who lives elsewhere and is unable to take an active role in animal husbandry due to health reasons.
22. However, it emerged at the Hearing that Miss Jones moved out of the caravan in September 2015 and has not worked full-time at the farm since the start of February 2016 when she became a director of her family business where she is engaged full-time. Her work at the farm is in the evening and at weekends. Mr Hewitt has lived in the caravan since September 2015. As he was recovering from ill-health, Mr Hewitt was unable to work full-time at the farm until the subsequent February when he took over responsibility for the day-to-day management. These inconsistencies were described at the Hearing as an 'oversight'. That may be so, but it does give cause to doubt the accuracy of the facts presented in the written submissions when basic information is wrong and has not been corrected until subject to questioning at the Hearing.

23. Nevertheless, I accept that the identity of the full-time worker is not the pertinent issue, but the animal welfare and security needs of the farming enterprise.
24. The business is said to trade mainly with the objective of producing food in the form of eggs and meat to sell to the general public at the "farm gate". They also sell rare breed chickens. A shop within the barn displays and sells various produce from the farm and home baked meat products.
25. Obviously, livestock numbers will be continually fluctuating. The appellant confirmed that the details within the Business Plan provided remain largely accurate. There can be up to around 300 free range laying hens, two flocks of sheep with around 80 and 20 animals in each, 2 breeding Hereford cows, 5 breeding pygmy nanny goats, 30 laying ducks and 30 geese. The Plan lists 6 pedigree breeding Berkshire sows and 2 Gloucesters with 2 pedigree breeding boars of each breed. At my site visit there was also a pen containing turkeys. All of the livestock is kept outdoors with the agricultural building only used for livestock if there is a particular need.
26. The appellant's position is that it is not the numbers that give rise to the need for an overnight on-site presence, but the wide range of animal species and varieties requiring care and attention.
27. With all of the breeding pigs, cattle, sheep and goats, issues are said to often arise with difficult births and for youngstock during and after birth. Care is also needed for young animals which are vulnerable to a number of problems liable to cause distress and possibly death.
28. Whilst lambing would be once a year, the appellant says that pig litters could be all year. A litter may be born every month, sometimes more than one in a month. Aside from birthing issues, concerns arise from piglets being crushed, eaten by the sow or if hand-rearing is needed. Due to strict constraints on the transportation of livestock, piglets could not be taken home to feed as suggested by the Council. It may possibly be an option for other species, subject to appropriate record keeping.
29. During the daytime, it was explained how Miss Jones can be called on to deal with emergencies as her workplace is only around 4 miles away. She has some basic veterinary training in administering medication. Overnight, it is feared that livestock will be lost unless there is an on-site presence to attend promptly to issues arising.
30. According to the appellant, monitoring of the livestock overnight would not be effective with CCTV linked via the internet because it cannot cover animals out in the field. However, whilst the sheep are in the fields, the pigs and goats are in pens and it is unclear why CCTV monitoring could not be used. The reaction time may not be as quick as someone on site, but there is no guarantee that an on-site worker would be aware of an issue. Furthermore, if medication needs to be administered Miss Jones is not the person on site overnight and so either she or a veterinary specialist would need to be called anyway.
31. The Council maintains that the appellant could achieve the desired outcome by exercising permitted development rights pursuant to Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO'). This permits the use of land, other than a building,

as a caravan site in certain prescribed circumstances. Those circumstances are specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960, being cases where a caravan site licence is not required. Paragraph 7 thereof provides for the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.

32. This could assist the appellant if the need for an on-site presence arises for a 'particular season'. The expression clearly contemplates a short period of time and not an ongoing presence. The appellant acknowledges that a touring caravan could be brought onto the site if the need arose solely for the sheep, but with a wide range of species, it is maintained that the need is ongoing.
33. The amount of other livestock is limited in number. Whilst the appellant does not consider that to be significant, the number of emergencies must be influenced at least to some extent by how many animals are on site. I recognise that numbers may rise along with associated husbandry demands and inevitably there will be occasions when issues arise at night. However, there is little evidence of how frequently those situations might occur and to demonstrate that they can only be addressed adequately by having a worker living full time on the site. A caravan could be brought onto the land during the lambing season which would mitigate the risk. Other short periods may also be justified under the GPDO. Indeed, from the accounts given at the Hearing there will be times of year where it will be busier than others for birthing of certain species.
34. It is argued that the wide range of poultry species all require close management and supervision because of the need to keep them in small breeding groups to maintain the breed integrity. It was not explained satisfactorily why this could not be achieved by electric fencing or why it necessitates an overnight presence when the birds roost at night. Feeding and watering is said to take place twice a day and so does not impose an overnight demand.
35. A major part of the business involves egg production and care of young chicks. Both are susceptible to temperature fluctuations and eggs also require appropriate humidity to avoid losses. I do not doubt that this requires careful monitoring, but as temperature and humidity can be controlled electrically, it appears doubtful that this task necessitates someone being present at night. Power cuts could occur, but the farm has a generator that can be used when someone is present. There is no evidence of a power cut having occurred at night in the past 2 years to indicate that this is a concern of such likelihood as to warrant the residential use.
36. The appellant further argues that there is a risk from predators. Reference was made at the Hearing to two recent incidents of a fox destroying a significant number of the chickens which is why their numbers have reduced to 138. This appears to have occurred despite there being a residential use indicating that it is not necessarily a deterrent. It has not been demonstrated why the avoidance of future losses depends upon someone continuing to live on site.
37. From the information before me, whilst the diversity of agricultural activities may generate sufficient work for a full-time worker, there is not enough evidence to show that such a worker needs to live on the unit for most of the year to achieve excellent levels of animal welfare or to maintain the security of

the stock. Therefore, I cannot be satisfied that a functional need has been demonstrated pursuant to 1.a. of Annex D.

Economic sustainability

38. Under 2.a. of Annex G, evidence is required to establish in the case of a proposal for a temporary dwelling that the new enterprise has been planned on a sound financial basis.
39. It is evident from the details provided that there has been significant capital investment at Pask Farm ranging from the agricultural building, the farm shop to an array of equipment. The appellant also has a legal interest in the freehold title of the land. At the Hearing, budgeted financial accounts were produced for the year ended 5 April 2016. This information had not previously been made available and the Council was therefore afforded opportunity to consider the content. Having done so, the Council maintained its objection on economic sustainability grounds also.
40. The accounts are not signed or authenticated, but the appellant says that they were prepared by her accountants and I have no reason to disbelieve this. No salaries are shown and this was attributed to unpaid workers at the farm being friends and family who helped out. The shop was not open at the time accounted for. A net profit is shown for the first year of trading with a healthy increase in 2015/16 with profits drawn by Miss Jones.
41. A Business Plan prepared by the appellants chartered accountants formed part of the appeal documentation and contained a financial forecast over 3 years starting with the 2016/17 financial year. This anticipated a net profit of circa £15,552 rising to £29,178 in 2017/18 and £49,248 in 2018/19 with the trend expected to continue for the foreseeable future.
42. No figures were available on how the business has performed for the first 6 months of the current financial year compared with the forecast except the appellant acknowledged that the figures are currently down on the projection.
43. Whilst there are components in the accounts and projections which would have benefited from greater clarification, I am satisfied with the explanations given. As a young business which is evolving, I acknowledge that there may well be dips and setbacks as it seeks to become established. It has cleared a profit to date and there is reasonable expectation that it will continue to do so. Moreover it is clearly anticipated by policy SWDP 19 that a time-limited permission for a temporary dwelling may be granted until the economic viability of the enterprise is established. On the information now before me, I am satisfied that the enterprise has been planned on a sound financial basis and the economic viability test in Annex G is met.
44. However, both tests in Annex G must be met in order to fulfil policy SWDP 19. Having already found that the functional need test has not been met on the available evidence, it follows that there is not an essential need for a rural worker to live at the site. Therefore, the development does not comply with policy SWDP 19 or paragraph 55 of the Framework.

Conclusion on ground (a) and the deemed planning application

45. For the reasons given above, and having had regard to all other matters raised,

I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Formal Decisions

Appeal A

46. It is directed that the enforcement notice be corrected by:-

- (a) Deletion of the words "Land at" in paragraph 2 of the notice and substitution therefor with the words "Pask Farm,".
- (b) Deletion of paragraph 3.1 and substitution therefor with the following:
"Without planning permission, the unauthorised change of use of agricultural land to a mixed use of agriculture and the siting of a mobile home for residential purposes, including various domestic paraphernalia".
- (c) Insertion of the words "used in association with the residential use" after "domestic paraphernalia" in the first paragraph numbered 5.3.
- (d) Deletion of the second paragraph numbered 5.3.

and varied by

- (e) Deletion of the words "and portable toilets" from the first paragraph numbered 5.3 and insertion of the word "and" before "garden furniture".

47. Subject to these corrections and variations, 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.

Appeal B

48. It is directed that the enforcement notice be corrected by:-

- (a) Deletion of the words "Land at" in paragraph 2 of the notice and substitution therefor with the words "Pask Farm,".
- (b) Deletion of paragraph 3.1 and substitution therefore with the following:
"Without planning permission, the unauthorised change of use of agricultural land to a mixed use of agriculture and the siting of a mobile home for residential purposes, including various domestic paraphernalia".
- (c) Insertion of the words "used in association with the residential use" after "domestic paraphernalia" in the first paragraph numbered 5.3.
- (d) Deletion of the second paragraph numbered 5.3.

and varied by

- (e) Deletion of the words "and portable toilets" from the first paragraph numbered 5.3 and insertion of the word "and" before "garden furniture".

49. Subject to these corrections and variations, the enforcement notice is upheld.

KR Saward

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jane Phelps	Planning Enforcement Officer
Tara Lang	Planning Enforcement Officer
Andrew Ford	Senior Planning Officer

FOR THE APPELLANT:

Sally Jones	Appellant
Michael Hewitt	Appellant
Dyanne Humphreys	Chartered Town Planner
Philip Plant	Rural Planning Consultant

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Policies SWDP 1, 2, 19, 21, 25 & 29 of the South Worcestershire Development Plan, 2016
- 2 Plan identifying the approximate position of the portable toilets
- 3 Appellant's Appendix 3b – profit and loss projections
- 4 Budgeted financial accounts for year ended 5 April 2016