

Appeal Decisions

Hearing and site visit held on 24 January 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 01 March 2017

Appeal A Ref: APP/F1040/C/16/3152512

Appeal B Ref: APP/F1040/C/16/3152513

Land to the north of Station Road, Melbourne DE73 8BR

- 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 Act’].
- The appeals are made by Mrs Amanda Jackson (Appeal A) and Mr Peter Jackson (Appeal B) against an enforcement notice issued by South Derbyshire District Council.
- The enforcement notice was issued on 20 May 2016.
- The breach of planning control as alleged in the notice is the siting of a residential caravan on agricultural land without planning permission.
- The requirements of the notice are to:
 - (1) Cease the use of the land for the siting of a residential caravan.
 - (2) Remove from the land the caravan presently sited there.
 - (3) Remove from the land any base provided in association with the residential caravan, including all materials used in its construction and any footings, to an authorised place of disposal.
 - (4) Remove from the land any sheds, outbuildings and any and all other unspecified chattels and structures provided in connection with the residential occupation of the land to an authorised place of disposal.
 - (5) Reinstate the land to its condition prior to the taking place of the breach of planning control by re-seeding to agricultural grassland
- The period for compliance with the requirements is 183 days.
- Appeal A and B are 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 Decisions: The appeals are allowed, the enforcement notice is quashed after corrections, and planning permission is granted in the terms set out below in the formal decisions.

Appeal C Ref: APP/F1040/W/16/3152494

Field Farm, Station Road, Melbourne, Derby DE73 8BR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs P Jackson against the decision of South Derbyshire District Council.
- The application ref 9/2015/1036, dated 3 November 2015, was refused by notice dated 15 February 2016.
- The development proposed is described in the application form as follows: ‘*Siting of an agriculturally justified caravan to be continued in use until the dwelling simultaneously applied for is completed*’.

Summary of Decision: The appeal is allowed, and temporary planning permission granted.

Preliminary matters

1. The description of development given in the planning application form, and the Council's refusal notice, is unclear. In Appeal C permission is sought for continued use of land for the stationing of a caravan for human habitation. There is agreement that the proposal is better described as follows: *Change of use of land for stationing of a mobile home for human habitation*.

Matters concerning the notice

2. There are a few matters relating to the notice I discussed with the appeal parties. The notice as issued alleges a breach of planning control consisting of a material change of use, under section 171A(1)(a) of the Act. In reality the breach is the continuation of a residential use of the land after the planning permission from which it benefited expired. The latter initially granted on 6 January 2010 for change of use of land for the siting of a caravan for an agricultural worker for a 3 year temporary period (ref: 9/2009/0906/U) ['the 2010 permission'].
3. Condition 1) imposed on the 2010 permission states: '*This permission shall be for a limited period only, expiring on 31 December 2012 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period*'. The reason given is to enable the viability of the business to be established.
4. Prior to expiry of the 2010 permission, a further application to extend the period specified in condition 1) was granted on 7 January 2013 by the Council. That purports to grant a further temporary permission until September 2014 (ref: 9/2012/0951/B ['the 2012 permission']). In a similar vein, condition 1) of the 2012 permission states: '*This permission shall be for a limited period only, expiring on 31 December 2015 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period*'. The reason given is to enable the viability of the business to be established.
5. As I explained at the Hearing, the continuation of a use authorised by a planning permission granted for a limited period beyond the expiry of that period is not a change of use and not, in itself, development within the meaning of s55(1) of the Act. The issued notice is therefore incorrect and to accurately reflect the breach that has occurred, it should have alleged a failure to comply with a condition subject to which planning permission has been granted, under s171A(1)(b) of the Act. Although erroneously drafted, I am not persuaded it left any party in doubt as to what activity was being enforced against, given the way and manner in which the appeal parties have presented their arguments.
6. If the necessary correction were made, the deemed planning application under s177(5) of the Act, by analogy with s73A(3)(b), would be for the development originally permitted but without condition 1), with effect from the day following the date when the limited period imposed by that condition expired. Should the appeal on ground (a) succeed, I would grant a new permission on the deemed planning application, with any conditions that I consider to be appropriate.

7. In such circumstances, the planning considerations relating to the material change of use alleged in the issued notice, as addressed by both main parties in evidence, do not differ in any way from those relevant to a breach of condition 1) imposed in the 2012 permission.
8. Therefore, I shall correct the notice to reflect the reality of the breach. The envisaged corrections do not address defects that result in a substantially different notice. In my judgement, the notice, as issued, is not so fundamentally flawed that it is beyond correction.

Appeals A, B and C - Ground (a) and s78

Main issue

9. The reason for issuing the notice and refusing planning permission focus on lack of agricultural justification for a rural worker to live at the site. The common main issue is whether there is an essential agricultural need for someone to reside on the site.

Planning policy

10. The development plan includes certain policies of the South Derbyshire Local Plan 1998 (LP), which have been saved following a Direction made by the Secretary of State, and Local Plan Part 1 adopted on 13 June 2016 (LPP1). Paragraph 215 of the National Planning Policy Framework records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it. I find no significant conflict with the NPPF in respect of the development plan policies cited by the appeal parties.
11. The draft Local Plan part 2 (LPP2), which will replace the current LP, has been submitted to the Secretary of State for public examination in January 2017. Emerging policy BNE5 and H25 relate to proposals outside of settlement boundaries and rural workers dwellings. The purpose of these reflect national planning policy in the NPPF. However, the LPP2 is yet to be found 'sound' and formally adopted. Having regard to NPPF paragraph 216, I attach it limited weight in the context of this appeal because it might change in the future.

Reasons

12. The site is situated in the countryside where residential development is strictly controlled, though the Council has no objections to the location of the mobile home in terms of its visual effect. The appellants seek planning permission to continue stationing the mobile home for human habitation purposes limited to a period of 3 years based on essential need in connection with a rural enterprise.
13. It is for Mr and Mrs Jackson to show essential need for a rural worker to live permanently at or near their place of work. In this particular location, relevant local and national planning policies would not be satisfied unless a special justification for the agricultural dwelling can be shown. Given that the main thrust of the NPPF and relevant LP policy is to achieve sustainable development, it is reasonable to consider functional need and viability. Otherwise, the planning system would, potentially, be open to abuse because a rural business may be financially unsustainable yet establish a functional need for a rural worker to live permanently at or near their place of work. Nonetheless, as circumstances can vary infinitely, functional and financial tests

should not be applied rigidly but with a margin of flexibility, and with a view of securing the underlying purposes of policy.

14. The holding is 13.8 hectares of mainly grade 2 agricultural land¹. It includes a range of modern farm buildings. The enterprise started in about 2009 and at the time the Council were of the view that, subject to provision of livestock buildings², there was an essential need for at least one stockman to reside permanently on the site. This is because of the anticipated scale of the livestock farming enterprise. It was considered that the enterprise would be sustainable based on business plans³. However the Council say matters have not progressed and the enterprise has no reasonable prospect of success, because the initial business plan was flawed.
15. Mr and Mrs Jackson have resided at the site for about seven years and that is considerable period of time. Nevertheless, a totally new enterprise has been set up with minimal resources. The amount of work undertaken to date is, in my view, impressive albeit that this has yet to blossom into a well-established profit-making enterprise. A number of livestock is in place and the farm has a record of accomplishment in horticulture. But continuing economic uncertainty has had an impact on progress as well as improving condition of the land, diligent acquisition of farm machinery and construction of farm buildings on a do-it-yourself basis. These activities in combination have taken longer than anticipated. The added complexity is a difference of opinion between Mr and Mrs Jackson and their first agricultural advisors about the farm's overall direction. That led to significant delay in establishing horticultural element of the business at a very early stage.
16. I consider that the explanation given as to why there has been a delay in establishing this enterprise is plausible. Indeed, from what I heard, it would be very difficult to flaw the passion to achieve agricultural aims, a key part of which is the livestock and horticultural element. Mr and Mrs Jackson appear genuine and committed to this enterprise; it did not come across to me as if the nature and scale of operations amount to a hobby or part-time farming activity.
17. In support of the need for a residential presence on the site, a new agricultural appraisal by Stephen Locke Associates, dated August 2016, has been prepared. This formed the basis of extensive debate. It focuses on expanding the livestock element and expansion of the existing free-range egg production to at least 1200 laying birds, the intensification of market garden crop and top soft fruit, production of bedding plants and sale of hanging baskets as well as the rotational use of wheat and grassland. Complementary income stream from sale of laurel garlands and wreaths is also anticipated.
18. Having regard to an industry-based Agricultural Budgeting and Costing Book (2015), the projected labour requirement increases to 2.04 full-time workers. Currently, a labour requirement of at least one full-time worker exists given the nature of this commercial enterprise. The question, however, is whether there is still a need for this full-time worker to be on hand day and night thereby justifying the temporary dwelling.

¹ DEFRA Agricultural Land Classification.

² Agricultural buildings to facilitate the poultry business (Council refs: 9/2009/0908/NA prior approval not required dated 20 November 2009, and 9/2009/0307/NO dated 6 January 2010).

³ Sansom Hamilton and Co July 2009.

19. I am not satisfied that the vegetable, horticultural and decorative hedging, in themselves or combined, require a continual on site residential presence. The nature and type of work involved, including crop husbandry, could take place during normal working hours; night time work is likely to be very limited indeed and any seasonal variation could be accommodated by another way. Even if this element of the business is dramatically increased by the introduction of polytunnels as proposed, it does not automatically follow that a functional need arises for worker's accommodation on the site.
20. On the other hand, animal welfare is at the forefront of Mr and Mrs Jackson's minds. I am cognisant that the livestock element is very important to the long-term viability of the farm. It seems that, given time to develop and expand as anticipated in the Locke report, this element of the business has the potential to grow into a viable enterprise. There is, and would be, a need to carefully manage and monitor the flock because of its scale and size. Additionally, Mr Jackson explained on occasions he had to respond quickly to emergencies and security breaches after normal working hours. I acknowledge that automated systems have their place, but there is need to effectively deal with the failure of power supply affecting plant and machinery, given the potential for premature loss of valuable livestock. Furthermore there is a need to deal with any predator attack or outbreak of disease decisively and quickly, because of the number of livestock.
21. The site is accessed via a rural road network and is generally remote from nearby settlements and there is a public footpath nearby. Mr Jackson's unchallenged evidence is that there have been security breaches. Although the protection of livestock from theft or injury by intruders carries some weight in support of a temporary agricultural dwelling, these reasons alone would be insufficient. Nevertheless, given the specific evidence about damage to plant and machinery on the holding, a 24-hour residential presence would assist in securing the site from potential intruders.
22. Taking all of the points in the preceding paragraphs together, there is a need for at least one full-time rural worker to run and manage the enterprise and to be on hand day and night. Currently, Mr Jackson fulfils this role although his wife would provide additional support when the business expands. Apart from the caravan, there is no existing dwelling on the unit to meet the identified need. There is a clear functional need which cannot be fulfilled by another existing dwelling on the unit or any other existing accommodation in the area, which is suitable and available for occupation by the worker concerned.
23. I now examine viability of the enterprise. The Council say accounts of the farm business have not been presented, but a new enterprise is being established. Additionally, details have been included in the Locke report. The latter shows that the business now operates in year 1, which is 2016, year 2 being 2017 – 2018 and year 3 is 2018 – 2019. Should the enterprise progress according to plan, it will be down to Mr and Mrs Jackson to produce sufficiently clear and precise corroboratory evidence to substantiate any future application for a permanent agricultural worker's dwelling.
24. There was some disagreement as to whether income generated by the decorative hedging element should be included. Taking this into account the enterprise as a whole is viable and sustainable. Whilst this type of activity is not directly linked to livestock farming, the nature and type of activity

- comprised in laurel wreath and garlands appears to be agriculture because plants are grown and harvested from the land. The activity is current and supports the farming enterprise. In my opinion, it would be unreasonable to simply exclude income from Mrs Jackson's business on the basis that it is not directly linked to the livestock farm.
25. The assumptions about livestock prices, estimated type and fixed costs associated with a breeding enterprise of this kind are unchallenged. The Council, however, challenge price for free-range eggs sales at an average of £1.75 per dozen. Mr Jackson maintained that he supplies to local hotel chains and retail outlets and that rate is achievable. He argues that his asking price is realistic given current market conditions. Provided his assumption is correct, he anticipates egg sales would generate potential income of £22,392 in 2017.
26. The detail showing income and expenditure year-end 31 March 2016 shows that Mr Jackson's enterprise made £15,313 gross profit in 2015 and £18,968 in 2016. Net profit is £184 and £7,337 respectively. Mrs Jackson's part of the business (5 April 2016) shows £12,348 gross profit in 2015 and £14,346 in 2016; net loss of £261 in 2015 but profit of £10,949 in April 2016. The projections for the enterprise as a whole show margins to be: £45,021 in 2017; £50,281 in 2018 and £56,817 in 2019. By year-end 2017 net profit would be reasonable and suggests the business would be operating at profit, and there would be sufficient funds for an agricultural worker's wage. The prediction is that reasonable and sufficient taxable profits would be generated by the rural enterprise to provide a reasonable return. If the modified business plan projections are adhered to, it seems to me that the enterprise is likely to be viable in the medium to long term. I consider now is not the time to close down this new rural enterprise.
27. Provided performance follows reasonably normal and natural patterns, the scale of the enterprise has a good prospect of succeeding in the longer term. I acknowledge that the information previously submitted to the Council generated some scepticism as to Mr and Mrs Jackson's intentions, but the evidence now presented shows there is a greater focus on what needs to be done. I consider that a further opportunity should be given because there is no significant risk that this enterprise would cease in the very near future.
28. On the main issue, in my planning judgement, the evidence now presented shows there continues to be an essential agricultural need for someone to reside on the site. Clear evidence has now been presented, to my satisfaction, which shows that the enterprise has been planned on a sound, realistic and justified financial basis. Having regard to guidance found in the Department's Planning Practice Guidance (PPG)⁴, I take the view that, on the particular facts and circumstances of this case, a further limited trial period is justified and ought to be granted so that the appellants can demonstrate viability of this rural enterprise.
29. Accordingly, the change of use of the land for the stationing of a mobile home for human habitation, subject to conditions, would not materially conflict with LP policies EV 1 and EV 5, LPP1 S2 and H1, and NPPF paragraph 55 in particular, and would be broadly consistent with emerging LPP2 policies BNE5 and H25.

⁴ Paragraph 014 reference ID:21a-014-20140306.

Appeals A, B and C - conditions

30. I have considered suggested conditions in the light of advice contained in the PPG. The development is retrospective and a commencement condition is therefore not necessary in Appeal C. There is a proven essential need for one rural worker to live permanently at this site. Planning permission is granted for a temporary period of 3 years to facilitate this residential use, because of the identified agricultural need and to demonstrate viability. It is necessary to impose a time limit condition. A suitably worded stipulation would enable the local planning authority to maintain control over the development, which is temporary in character and reassess the agricultural need for the caravan. Furthermore, a restoration scheme should be required. To avoid any doubt, it is necessary to stipulate only one mobile home is allowed. Given the location of the site, a condition stating that the caravan shall only be occupied by a person(s) solely or mainly or last working in agriculture, which is defined in s336(1) of the Act as amended, is required.
31. Layout drawings show the location of the static caravan but it is unclear because the timber decking and sheds are not included. External lighting needs to be controlled given the exposed positioning of the caravan. Drainage detail need submitting. The appellants accept a retrospective type condition with strict timescales, which should ensure the details are submitted, given that the caravan is already on site. However, there is no need to provide soft planting to screen the caravan given temporary nature of the scheme.

Appeals A, B and C - overall conclusions

32. Having considered all other matters, I conclude that Appeals A, B and C should succeed on ground (a) and planning permission will be granted. Appeals A and B ground (g) does not therefore need to be considered as the notice will be quashed.

Formal decisions - Appeal A and B

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

- (i) in section 1, THIS IS A FORMAL NOTICE, the replacement of the text *section 171A(1)(a)* with *section 171A(1)(b)*;
- (ii) in section 2, the land to which this notice relates, the deletion of the text identifying the land and substitution therefor by: *Field Farm, Station Road, Melbourne, Derby DE73 8BR shown edged in red on the plan attached to the enforcement notice*, and
- (iii) the replacement of the wording in section 3, the breach of planning control alleged, in its entirety with and substitution therefor by:

Planning permission was initially granted on 6 January 2010 for change of use of land for the siting of a caravan for an agricultural worker for a 3-year temporary period (ref: 9/2009/0906/U). Condition 1) states 'This permission shall be for a limited period only, expiring on 31 December 2012 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period'.

A further application for planning permission to extend the period specified in condition 1) of planning permission ref: 9/2012/0951/B was granted on 7 January 2013, subject to the following condition 1):

'This permission shall be for a limited period only, expiring on 31 December 2015 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period'.

This condition has not been complied with in that the mobile home remains stationed on the land and is occupied for human habitation.

34. Subject to the above corrections, the appeals are allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely, change of use of land for the siting of a caravan for an agricultural worker for a 3 year temporary period at Field Farm, Station Road, Melbourne, Derby DE73 8BR, as shown on the plan attached to the notice subject to the following conditions:
- 1) The planning permission hereby granted for the siting of a caravan for an agricultural worker shall be for a limited period being the period of 3 years from the date of this decision. The residential use of the land hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of three years from the date of this decision, in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
 - 2) There shall only be one (1) static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.
 - 3) The occupation of the mobile home hereby permitted shall be limited to a person or persons solely or mainly, or last working in agriculture (as defined in section 336 of the Town and Country Planning Act 1990 (as amended)), in the locality or to the spouse, widow or widower of such a person and to any resident dependants.
 - 4) The residential use of the land and siting of a caravan hereby permitted shall cease and the caravan removed from the land within 183 days of the date of failure to meet any one of the requirements set out in (i) to (v) below.
 - (i) Within two months of the date of this decision, full details of the type, location and siting of the caravan, timber decking, timber sheds or buildings used ancillary to the residential use, detail for drainage and external lighting (herein known as 'the scheme'), shall be submitted to the local planning authority together with an implementation and timetable.
 - (ii) Within ten months of the date of this decision the scheme and timetable submitted pursuant to (i) above shall have been approved by the local planning authority or, if the local planning

- authority refuses to approve them or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme and timetable shall have been approved by the Secretary of State.
 - (iv) The scheme shall have been fully implemented in accordance with the approved details and timetable pursuant to (i) to (iii) above.
 - (v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal C

35. The appeal is allowed and planning permission is granted for change of use of land for stationing of a mobile home for human habitation at Field Farm, Station Road, Melbourne, Derby DE73 8BR in accordance with the terms of the application, ref 9/2015/1036, dated 3 November 2015, subject to the following conditions:
- 1) The planning permission hereby granted for the siting of a caravan for an agricultural worker shall be for a limited period being the period of 3 years from the date of this decision. The residential use of the land hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of three years from the date of this decision, in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
 - 2) There shall only be one (1) static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.
 - 3) The occupation of the mobile home hereby permitted shall be limited to a person or persons solely or mainly, or last working in agriculture (as defined in section 336 of the Town and Country Planning Act 1990 (as amended)), in the locality or to the spouse, widow or widower of such a person and to any resident dependants.
 - 4) The residential use of the land and siting of a caravan hereby permitted shall cease and the caravan removed from the land within 183 days of the date of failure to meet any one of the requirements set out in (i) to (v) below.
 - (i) Within two months of the date of this decision, full details of the type, location and siting of the caravan, timber decking, timber sheds or buildings used ancillary to the residential use, detail for drainage and external lighting (herein known as 'the scheme'), shall be submitted to the local planning authority together with an implementation and timetable.
 - (ii) Within ten months of the date of this decision the scheme and timetable submitted pursuant to (i) above shall have been

- approved by the local planning authority or, if the local planning authority refuses to approve them or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme and timetable shall have been approved by the Secretary of State.
- (iv) The scheme shall have been fully implemented in accordance with the approved details and timetable pursuant to (i) to (iii) above.
- (v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

John Steedman	Steedman Planning
Stephen Locke	Stephen Locke Associates
Peter Jackson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Stewart BSc (Hons) MA TP MRTPI	Planning Officer, South Derbyshire District Council (SDDC)
Alan Barrett	Planning Enforcement Officer, SDDC
David Hughes BSc (Hons) FBIAC	Agricultural Consultant, SDDC

DOCUMENTS HANDED IN AT THE HEARING

- 1 Hearing notification letter by the Council.
- 2 Schedule of proposed modifications to Local Plan Part 2 by the Council.
- 3 Extract copy of Local Plan (1998) by the Council.
- 4 Extract copies of planning permissions granted by the Council.
- 5 Field Farm budget 2017 by the appellant.