
Appeal Decision

Hearing held on 11 April 2017

Site visit made on 11 April 2017

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 03 May 2017

Appeal A: APP/F0114/C/16/3156526

Land at Parcel 4677, Dunkerton Hill, Dunkerton, Bath, BA2 8PE

- 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 V Rhymer against an enforcement notice issued by Bath and North East Somerset Council.
- The enforcement notice was issued on 6 May 2016.
- The breach of planning control as alleged in the notice is the change of use of land from agriculture to storage by the siting of two shipping containers.
- The requirements of the notice are to:
 1. Permanently remove the shipping container marked as E on the plan attached to the notice from the land.
 2. Permanently remove the shipping container marked as F on the plan attached to the notice from the land.
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is found to be invalid and is quashed.

Appeal B: APP/F0114/C/16/3152073

Land at Parcel 4677, Dunkerton Hill, Dunkerton, Bath, BA2 8PE

- 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 V Rhymer against an enforcement notice issued by Bath and North East Somerset Council.
 - The enforcement notice was issued on 6 May 2016.
 - The breach of planning control as alleged in the notice is the erection of detached buildings and structures and the siting of two shipping containers.
 - The requirements of the notice are to:
 1. Demolish or dismantle the building (including roof and masonry pillars) marked as "A" on the plan attached to the notice and shown on photo "A" and remove all resultant materials including the containers from the land.
 2. Demolish or dismantle the building (including roof and concrete slab) marked as "B" on the plan attached to the notice and shown on photo B and remove all resultant materials including containers from the land.
 3. Remove the shipping container marked as "C" on the plan attached to the notice and shown on photo "C", demolish the masonry pillars and remove all resultant materials from the land.
 4. Demolish or dismantle the building marked as "D" on the plan attached to the notice and shown on photo "D" and remove all resultant materials including the container from the land.
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- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal does not succeed. The enforcement notice is varied to extend the period for compliance and is upheld. Planning permission is not granted.

Background

1. The appeal site extends to about 4 hectares. It is an elongated block of land adjacent to the A367 and with access from it. The land is within the Bristol and Bath Green Belt. The enforcement notice plan in Appeal B shows the siting of the buildings which are the subject that notice. An additional building is sited close to the site access but is not subject to enforcement action. Appeal A concerns 2 shipping containers which are in the locations shown as E and F on the enforcement notice plan.

The Enforcement Notice in Appeal A

2. Two matters concerning the enforcement notice in Appeal A were discussed at the Hearing. The Council confirmed that the alleged storage use was intended to apply only to the two shipping containers. Nevertheless, the allegation of a change of use should apply to the whole of the land identified on the enforcement notice plan as issued. It is the land in the appellant's control and is the relevant planning unit. To address this matter the Council suggests that the allegation should be varied to one of a change of use to a mixed use of agriculture and storage.
3. While the requirements of the notice require the permanent removal of the shipping containers they do not require the cessation of a storage use. The effect of section 173(11) of the Act as amended is that where a notice could have required any activity to cease but does not do so, and all the requirements are later complied with, planning permission shall be treated as having been given in respect of that activity. In this case the notice does not require the alleged storage use to cease. If the notice was upheld and the shipping containers then removed, the effect of section 173(11) would be to grant planning permission for that storage use. That effect was not intended by the Council and would be perverse. To address this matter the Council suggests that the notice be varied to add a further requirement. That requirement would be to cease the storage element of the mixed use of the land.
4. In deciding whether the notice can be varied to address these matters I must consider whether to do so would result in injustice to the main parties. The thrust of the appellant's case is that the land is in agricultural use. In that context I am satisfied that injustice to him would not result if the allegation was varied to refer to a mixed use as the Council suggests. However, to vary the notice as the Council proposes by adding a further requirement would make compliance more onerous for the appellant. He is unrepresented and would be required to do more than was apparent to him when the notice was issued. In these circumstances I conclude that the notice cannot be varied without causing injustice to the appellant.

5. I find that the notice is not capable of correction to vary its requirements as the Council suggests. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended because injustice would be caused were I to do so. The notice is therefore invalid and will be quashed as set out in the Formal Decision. Consideration of the appeal on ground (f) is therefore not necessary. I also draw attention to s171B(4)(b). Its effect is that if within the appropriate 4 or 10-year period a local planning authority has taken or purported to take enforcement action in respect of a breach of planning control, for example by serving a defective notice, they have a further 4 years in which to issue a second or subsequent notice. That is provided that the first notice was not already out of time and the matter constituted a breach of planning control.

Appeal B – Ground (c)

6. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the erection of the buildings does not constitute a breach of planning control. The erection of the buildings is not disputed. They are on the land in the positions marked on the enforcement notice plan. Mr Rhymer says that he understood that planning permission was not required for agricultural buildings.
7. Construction of the buildings began prior to 15 April 2015 so that the relevant permitted development provisions are set out in the Town and Country Planning (General Permitted Development) Order, 1995 (GPDO). Schedule 2, Part 6, Class B of the GPDO deals with development on units of more than 0.4 hectares but less than 5 hectares. Although Class B (a) covers the extension or alteration of an agricultural building, there is no provision for the erection of new buildings. I therefore conclude that the erection of the buildings was not permitted development. It amounted to a breach of planning control. The appeal should not succeed on ground (c).

Appeal B – Ground (d)

8. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the erection of the buildings is immune from enforcement action. With regard to operational development such as this the issue is whether, when the enforcement notice was issued, the buildings had been substantially completed for a period of 4 years. The appeal on this ground is limited to buildings B and D. The notice was issued on 6 May 2016, so that a period of 4 years before that began on 6 May 2012.
9. Mr Rhymer asserts that buildings B and D were substantially completed well before 6 May 2012. While he has provided a series of undated photographs, he has submitted no other supporting documentary evidence or evidence from other witnesses to support his assertion. Building B is sited close to the site access. It comprises 2 shipping containers around which other elements of the building have been added. They include a pitched roof which extends over the containers and projects to one side to provide a livestock enclosure. There is also the addition of a wall on part of the front elevation, which appeared to be unfinished at the time of my visit.
10. The Council has provided aerial photographs of the appeal site taken on 2 June 2009, 4 September 2013 and 9 September 2014. Building B does not appear in the 2009 photograph. While there is a building on the site of building B in the

2013 photograph, its roof appears significantly less extensive than that now in place. Mr Rhymer referred to the roof having been extended to provide a roof covering to the animal pen that now exists. Photograph B attached to the enforcement notice is undated but arises from the Council's investigation prior to issuing the notices in May 2016. It shows the containers and the roof extended but it does not show the walling which has been erected along part of the building's front elevation since that photograph was taken. I conclude that the available evidence does not show, on the balance of probabilities, that building B was substantially completed by 6 May 2012.

11. Building D is near the southern boundary of the appeal site. It comprises a shipping container integrated into other building elements. They include a ridged roof, brick walls and doors and windows of a domestic character. The site of building D is near the edge of the Council's 2009 photograph. While the photograph appears to show part of a structure, its full extent and its alignment are not apparent. It does not seem to me that the photograph confirms the presence of building D. Nor can the building be distinguished in the 2013 photograph, although what may be its outline can be seen in the 2014 photograph. In addition, the enforcement notice photograph of building D appears materially different to that which is in the appellant's photographs and which I saw on site, for example in the roof shape and the brick walling. I conclude that available evidence does not show, on the balance of probabilities, that building D was substantially completed by 6 May 2012. Having regard to the above I find that buildings B and D were not immune from enforcement action when the enforcement notice was issued. The appeal should not succeed on ground (d).

Appeal B – Ground (a) and the Deemed Planning Application

Main Issues

12. The deemed planning application is for the erection of the buildings and siting of containers as already carried out. The Council concedes that the buildings are for agriculture and that, on that basis, that they are not inappropriate development in the Green Belt. I share that view, notwithstanding the small scale of agriculture being carried out on the land. The Council contends that, despite this not being inappropriate development, the effect on Green Belt openness should be a main issue. It submits appeal decisions APP/J1535/A/11/2165129 and APP/J1535/A/11/2165133. In those decisions the Inspector took that view in similar circumstances.
13. Paragraph 89 of the National Planning Policy Framework 2012 (The Framework) sets out the types of building which are deemed to be not inappropriate. Impact on openness is implicitly taken into account in that paragraph with regard to buildings for agriculture, so that there is no further requirement to assess their impact on the openness of the Green Belt. On that basis, the first main issue in this appeal is the effect on the character and appearance of the area. The second main issue is whether any harm is outweighed by the agricultural need for the development.

Relevant policies

14. Policy CP6 of the Bath and North East Somerset Core Strategy, 2014 (CS) deals with environmental quality. Amongst other things it requires a high standard of design and conservation or enhancement of the district's

landscapes. Policy NE.1 of the Bath and North East Somerset Local Plan, 2007 (LP) says that development which does not either conserve or enhance the character and local distinctiveness of the landscape will not be permitted. LP policy GB2 does not permit development which would be visually detrimental to the Green Belt.

15. Framework paragraph 215 explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The requirement for a high standard of design is consistent with the thrust of the Framework. It is consistent with Framework paragraph 58 that development should respond to local character. However, there is not a requirement to conserve or enhance areas not covered by the designations set out in Framework paragraph 27. I give only moderate weight to that aspect of the Council's policies. Avoidance of visual harm is not part the Framework's approach to the Green Belt and I give policy GB2 only limited weight in this appeal.

The effect on the character and appearance of the area

16. The site forms part of a valley which descends towards the north-east. It is in an area of countryside which has a predominantly open, agricultural character. The buildings appear to be of a makeshift character, generally based on shipping containers with additions and extensions added to them. Two of the buildings appear unfinished and there are no submitted plans to show their intended appearance on completion. The buildings are seen with the two containers which are the subject of Appeal A. The overall effect is one of an uncoordinated scattering of development across the land. The buildings are not of a design standard consistent with policy CP8 and do not respond to local character. The land is well screened by boundary vegetation but building A is prominent in views into the land from near the site access. There are likely to be more extensive views into the site when vegetation is not in leaf. The proliferation of buildings, combined with their number, poor design and their distribution across the site, results in material harm to the character and appearance of the area. Although Mr Rhymer would be willing to carry out some re-painting there are no specific proposals and re-painting alone is unlikely to be effective in mitigating the harm. The development conflicts with the relevant CS and LP policies.

Agricultural need

17. Pigs, sheep and chickens are kept on the land. Mr Rhymer explains that there are up to 25 to 30 sheep and up to 18 pigs. The pigs are sold for slaughter. About 20 chickens are also kept. When I visited there was one pig, about a dozen sheep and a small number of chickens on the land. The site provides a part-time occupation for Mr Rhymer. There are no other farm workers involved, no farm plan and no systematic evidence of firm plans for significant future growth in livestock numbers.
18. Mr Rhymer referred at the Hearing to his use of each of the buildings and to his need to house livestock and to store tools, plant and equipment securely. Building B, for example, is used to store feed and to house a trailer used for transporting pigs. Building A provides a shelter for the chickens when they need to be indoors. Building C is a large container used to store fencing panels. The livestock numbers in this case are small. The 4 appeal buildings are substantial. In addition to those buildings there is the further substantial

building adjacent to the site access, which is not subject to enforcement action and is available to Mr Rhymer. He also uses the 2 shipping containers which are the subject of Appeal A. Mr Rhymer has referred to his need for some buildings near the site entrance and to the potential for him to rationalise his need for buildings on the land. I conclude on this issue that the evidence available does not justify the agricultural need for the number and extent of buildings in this appeal. That need does not outweigh the harm to the character and appearance to which I refer above.

Appeal B – Ground (f)

19. An appeal on this ground is that the notice's requirements exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which may have been caused. In this case the enforcement notice alleges the unauthorised erection of buildings and structures and requires their removal and that of resulting materials. Its purpose is to remedy the breach of planning control. The requirements go no further than is necessary to achieve that purpose. They are not excessive. The appellant suggests that he may be able to remove a container. This does not amount to a specific lesser step for consideration. I have already addressed the appellant's suggestion of re-painting some of the containers in the context of the deemed planning application. These matters are not sufficient for the appeal to succeed on ground (f).

Appeal B – The Period for Compliance

20. Although the appeal was not made on ground (g), the appellant is unrepresented and I explained at the Hearing that consideration of the period for compliance might prove appropriate. The Council raised no objection to that suggestion. It appears that there may be scope to rationalise Mr Rhymer's building requirements. In considering that, he may choose to obtain some professional advice and to engage in further discussion with the Council. An extended period would facilitate this and would also assist in resolving any animal welfare issues which may be of concern. In these circumstances the period for compliance with the notice's requirements will be extended to 12 months.

Overall Conclusion on Appeal B

21. Having regard to the above and to all other matters raised the appeal should not succeed. Planning permission should not be granted. The notice should be varied to extend the period for compliance and upheld.

Formal Decisions

Appeal A: APP/F0114/C/16/3156526

22. The enforcement notice is found to be invalid and is quashed.

Appeal B: APP/F0114/C/16/3152073

23. I direct that the enforcement notice be varied at paragraph 3 by replacing the words "6 months from the date on which this Notice takes effect" with the words "12 months from the date on which this Notice takes effect".

24. I dismiss the appeal and uphold the enforcement notice as varied. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

K Williams

INSPECTOR

