



Appeal Decisions

Hearing held on 26 June 2019

Site visit made on 26 June 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 10 July 2019

Appeal Refs: APP/F0114/C/17/3187755 and 3187756

Pipley Bottom Farm, North Stoke Lane, Upton Cheyney, Bristol BS30 6NG

- 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 Mr L and Mrs J Preece against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice was issued on 27 September 2017.
 - The breach of planning control as alleged in the notice is the change of use of land from agriculture to a mixed use of agriculture and residential through the siting of metal containers for residential purposes.
 - The requirements of the notice are 1. Cease the use of the land for residential uses; 2. Permanently remove the linked metal containers used for residential purposes from the land; 3. Demolish or dismantle the concrete footings, remove the hard surface upon which the metal containers are placed from the land and remove all resultant materials from the land; and 4. Restore the land to its original condition as undeveloped agricultural land using topsoil and re-seed the restored land with grass seed.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Act and the appeal by Mr L Preece (3187755) is also proceeding on the grounds set out in section 174(2)(a) of the Act
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Appeal Ref: APP/F0114/W/17/3187860

Pipley Bottom Farm, North Stoke Lane, Upton Cheyney, Bristol BS30 6NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr L Preece against the decision of Bath & North East Somerset Council.
 - The application Ref 17/00545/FUL, dated 2 February 2017, was refused by notice dated 27 July 2017.
 - The development proposed is the erection of temporary agricultural workers dwelling.
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Appeal Ref: APP/F0114/W/17/3191382

Pipley Bottom Farm, North Stoke Lane, Upton Cheyney, Bristol BS30 6NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class A of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr L Preece against the decision of Bath & North East Somerset Council.
 - The application Ref 17/05140/AGRN, dated 22 November 2017, was refused by notice dated 17 November 2017.
 - The development proposed is erection of side extensions to existing agricultural barn and a separate shed.
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Decisions

Appeal Ref: APP/F0114/W/17/3187860

1. The appeal is allowed and planning permission is granted for the erection of temporary agricultural workers dwelling at Piple Bottom Farm, North Stoke Lane, Upton Cheyney, Bristol in accordance with the terms of the application Ref. 17/00545/FUL, dated 2 February 2017, subject to the following conditions:

1. The development hereby permitted shall be removed and the land restored to its former condition no later than three years after the date of this decision.
2. Occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.
3. The timber cladding and artificial turf roof covering as shown on drawing 51462-04-002 Rev B shall be installed within three months of the date of this decision and shall be retained until the building is removed.
4. No external lighting shall be installed until details of such lighting have been submitted to and approved in writing by the local planning authority. Only lighting approved by the local planning authority shall be installed in accordance with the approved details.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, external alteration or enlargement of the building hereby permitted shall be carried out without planning permission having been granted by the local planning authority.

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2. The planning appeal and the ground (a) enforcement appeal have succeeded and planning permission has been granted, under the planning appeal, for the building that is the subject of the notice. The enforcement notice is quashed.

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3. The appeal is dismissed.

Procedural matters

4. Prior to the hearing an application for costs was made by Mr Preece against the Council. This application is the subject of a separate Decision.

5. The planning appeal against refusal of an application for 'the erection of temporary agricultural workers dwelling' and the ground (a) enforcement appeal for 'the change of use of land from agriculture to a mixed use of agriculture and residential through the siting of metal containers for residential purposes' are, in effect, the same development.

6. In the interests of clarity and precision, the development that has been permitted is that described in the planning application, rather than the breach of planning control set out in the enforcement notice. The 'temporary agricultural workers dwelling' will be referred to as the 'temporary dwelling' in this Decision.

Reasons

The ground (b) enforcement appeal

7. A ground (b) appeal is made when the Appellants claim that the breach of planning control has not occurred. If the siting of the metal containers and their use for residential purposes, as alleged in the enforcement notice, did not commence until after the date of the notice then the ground (b) appeal will succeed. The Appellants accept that the metal containers were sited on the land before the date of issue of the notice.

8. They claim, however, that they did not commence permanent occupation of the metal containers until after the date of issue of the enforcement notice, and that before that date they resided at a property in Bristol. They do accept, however, that they did use the containers for occasional residential occupation before the date of issue of the notice and the property was registered for the payment of Council Tax from 1 July 2015. It is unclear therefore, when permanent occupation of the metal containers did commence.

9. The burden of proof falls on the Appellants. On the balance of probabilities and given the payment of Council Tax, and their acceptance that they did occupy the units for residential purposes before the relevant date, the Appellants have not discharged that burden. The ground (b) appeals thus fail.

The ground (c) enforcement appeal

10. A ground (c) appeal is made when the Appellants claim that the breach of planning control alleged in the notice is either permitted development or has the benefit of planning permission. The Appellants accepted at the Hearing that the breach of planning control is not permitted development and that it does not benefit from planning permission. The ground (c) appeal thus fails.

The ground (d) enforcement appeal

11. The ground (d) appeal does not relate to the breach of planning control alleged in the notice. It does not, furthermore, relate to the concrete footings referred to in the third requirement of the notice. It relates to the land beneath the concrete footings, the subject of the fourth requirement of the notice, which, the Appellants claim, is as it was when they purchased the land from the previous owner. Whether the land should or should not be restored to its original condition is a matter for consideration under the ground (f) appeal. It is not a matter that is relevant under ground (d). The ground (d) appeal thus fails.

The ground (a) enforcement appeal and the planning appeal

12. Piple Bottom Farm is in the Green Belt and in the Cotswolds Area of Outstanding Natural Beauty.

13. The main issues in the ground (a) enforcement appeal and the planning appeal are; first, whether the temporary dwelling is inappropriate development in the Green Belt; second, whether the temporary dwelling causes any other harm, with regard to the openness and visual amenity of the Green Belt and to the character and appearance of the Cotswolds Area of Outstanding Natural Beauty; third, the material considerations to be weighed against any harm caused; and fourth, the planning balance and very special circumstances.

The first issue – inappropriate development

14. National planning policy on Green Belts is found in the National Planning Policy Framework (NPPF) and in paragraph 145 it is stated that the construction of new buildings in the Green Belt is inappropriate. There are exceptions to this, including buildings for agriculture and forestry, but the temporary dwelling is a residential building, and is not an agricultural building. The temporary dwelling is inappropriate development and conflicts with planning policy on Green Belts set out in the NPPF. As stated in paragraph 143 of the NPPF inappropriate development is, by definition, harmful to the Green Belt.

The second issue – other harm

15. Piple Bottom Farm is about 10.3 hectares of mainly pasture land on the steep south slope of a valley. A track leads to the farm, alongside a minor triangular wooded part of the farm, down the north slope of the valley to a crossing of a stream, which has woodland on both sides. After crossing the stream the track extends up to a hard surfaced parking and turning area close to the woodland on the south side of the stream. To the east of this area is an agricultural barn for which planning permission was granted in March 2008 for 'erection of a fodder store'. To the west are the two linked, blue painted, metal containers that are the temporary dwelling that is the subject of the ground (a) enforcement appeal and the planning appeal, and a smaller storage container.

16. The temporary dwelling is about 12 metres long, 6 metres wide and 2.6 metres high. The structure has a volume and undermines the spatial openness of the Green Belt. It is not an attractive structure and, in itself, it harms the visual openness of the area. The Appellants recognise this and propose to clad the elevations of the structure with horizontal timber boarding and to cover the roof with artificial turf. This would mitigate the visual harm to the openness of the Green Belt and could be ensured by imposition of a condition.

17. Along the south boundary of the farm is a public right of way bounded on both sides by fences, trees and other vegetation. Towards the east end of the boundary the right of way has earth banks on both sides that prevent sideways views. Towards the west end the banks are not as high and there are views across the landscape to both sides. The views are restricted, however, by trees and vegetation and the structures at Piple Bottom Farm are only visible from about 50 metres of the right of way and at a distance of about 150 metres.

18. There are only backward views from this section of the right of way walking from east to west. Walking in the opposite direction the structures are seen in forward views and the blue painted containers are conspicuous. However, with the aforementioned mitigation works in place the structure would blend in, to a significant degree, to the backdrop of mature woodland alongside the stream. It would also be seen in the context of its immediate surroundings, which include the much larger barn, vehicles and other items that are always likely to be on the hard surfaced area, and fenced areas of immature orchard to the south of the temporary dwelling and the barn. The structure would be a feature in the landscape but would not cause any material harm to the visual amenity of the Green Belt or to the character and appearance of the Cotswolds Area of Outstanding Natural Beauty

19. The temporary dwelling, with mitigation in place, would cause harm in addition to that by reason of inappropriateness but only to the spatial openness of the Green Belt. Paragraph 133 of the NPPF states that "The Government attaches

great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”.

The third issue – material considerations

20. Paragraph 79 of the NPPF provides that the development of isolated homes in the countryside should not be permitted unless, amongst other things, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Paragraph 83 states that planning policies and decisions should enable, amongst other things, the development and diversification of agricultural and other land-based rural businesses.

21. The Appellants wish to establish a land-based rural business on the land. The development of such a business accords with paragraph 83 of the NPPF and is the material consideration put forward by the Appellants that, they claim, justifies a conclusion that very special circumstances exist in this case.

22. The Appellants claim that there is an essential need for an agricultural worker to be resident on the farm to support the agricultural enterprise that they plan to establish. Policy RE4 of the Bath and North East Somerset Placemaking Plan (B&NESPP) states, in clause 2, that new dwellings to support a newly established rural business will only be granted for a temporary period provided there is clear evidence of a firm intention and ability to develop the enterprise and the provisions of clause 1 are satisfied.

23. Clause 1 sets out six criteria – the Council accepted at the Hearing that criterion v is not relevant and criterion vi is met by imposition of a condition restricting occupancy of the temporary dwelling to an agricultural worker. Criterion i requires there to be a clear functional need for the worker to live on the holding, criterion ii requires the business to be financially viable, criterion iii requires the need for the accommodation to be for a full time worker, and criterion iv seeks to satisfy the functional need by use of other existing accommodation in the area.

24. Mr Preece is an Engineer who currently works for the Ministry of Defence and Mrs Preece is a Secondary School Teacher. They have two young daughters. They wish to establish a farming enterprise at Piple Bottom Farm, also using about 6 hectares of land located elsewhere, but have been hampered by various factors, including the serious illness of Mrs Preece’s mother. It is Mr Preece’s intention to cease employment and work on the farm. He expects this to be an environment better suited to his personal medical circumstances. Mr and Mrs Preece started farming in 2012 on a different holding.

25. They currently keep horses and a small herd of Bagot goats, a rare breed that is a protected species. By year three of the enterprise they plan to have 22 Bagot nannies and kids, 40-50 of either Golden Guernsey or British Saaren goats, 50 chickens for sale of eggs off site, and four Welsh Section C and D brood mares and a stallion. They also expect to be continuing with the sale of hay and wood, the latter collected from the woodland that they own. The Bagot goats are kept for conservation reasons whilst milk from the other herd will partly become cheese for local sale; Total Produce Bristol Foodservice have recently re-confirmed their interest in marketing goat products as part of their locally sourced product range.

26. Mr Preece has obtained a City and Guilds Qualification to transport live animals and Mrs Preece has British Horse Society qualifications. Mr Preece also has

business and engineering qualifications and others in the fields of management, portfolio management, risk management, and project management. The farming enterprise has, consequently, been expertly planned both in operational and financial terms. Mr Coke, for the Council and with regard to clause 2 of policy RE4, accepted at the Hearing that there is clear evidence of a firm intention to develop the enterprise over a three year period. He did, however, question the Appellant's ability to develop the business by commenting on a projected financial deficit in year two.

27. There is no doubt that Mr and Mrs Preece, if provided with the opportunity to develop the business, would have to cope with the up and downs of farming as a business as a result of factors outside of their control, such as the weather, fluctuating purchase costs and sale prices, and livestock illnesses and injuries. These factors would affect the financial predictions but there is nothing in evidence, even the projected financial deficit in year two, to indicate that the Appellants would not be able to cope with the financial and operational ups and downs of the business, or that they would be unable to develop the business so that it becomes financially viable and sustainable.

28. Those representing the Council accepted at the Hearing that, for the farming enterprise to flourish, there would be a clear functional need for a worker to live on the holding, and that the need for the accommodation would be for a full time worker. Criteria i and iii of policy RE4 are therefore satisfied. It was also accepted that the business would be financially viable though it was pointed out that some of the income is based on activities, such as the selling of hay, that do not require a worker to be resident on site. But this is common for a farming business and there is no doubt that the majority of income would be generated from activities that do require a worker to be resident on site. Criterion ii of the policy is satisfied. At any moment in time there will be homes for rent in the area but it is unlikely, given evidence that has been submitted, that a property would become available at the right time, with the right accommodation for the Preece family, at an affordable price, and in a location close to Piple Bottom Farm. It is unlikely that other existing accommodation in the area would satisfy the clear functional need for a worker to live on the holding. Criterion iv of Policy RE4 is thus satisfied.

29. Taking these factors into account there is an essential need for a rural worker to be resident at Piple Bottom Farm for the planned business to succeed, and there is clear evidence of a firm intention and ability to develop the enterprise. The proposed temporary dwelling thus accords with B&NESPP policy RE4.

30. Other material considerations include considerable support for Mr and Mrs Preece's plans by the local community, notwithstanding Mr Ward's concerns for the effect of the temporary dwelling on the landscape as expressed at the Hearing, and their intentions for conservation of the Bagot goat breed.

The fourth issue - the planning balance and very special circumstances

31. Paragraph 83 of the NPPF supports the development of agricultural and other land-based rural businesses. The Council accepts that there is an essential need for Mr Preece to live on site in order to develop the business and it must therefore be concluded that there is an essential need for the temporary dwelling so that he and his family can live on site. It is inevitable that the dwelling does not preserve the spatial openness of the Green Belt. The temporary dwelling thus conflicts with paragraph 133 of the NPPF. In this case there is conflict between the provisions of paragraphs 83 and 133 of the NPPF.

32. With regard to harm caused by reason of inappropriateness, if this harm was to be considered conclusive in circumstances such as those found in this case then no development associated with such a rural based business would be permitted in the Green Belt. This cannot be the intention of national planning policy.

33. Taking the aforementioned factors into account, and as a matter of planning judgement, the harm caused by reason of inappropriateness and to the openness of the Green Belt is clearly outweighed by the material considerations mentioned above, which include the essential need for Mr Preece to live on the land to develop the proposed business, which has a real prospect of achieving viability over the three year period for siting of the temporary dwelling.

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, determination must be made in accordance with the plan unless material considerations indicate otherwise. The temporary dwelling accords with B&NESPP policy RE4 and the Council has not identified any conflict with any other development plan policies.

35. Paragraph 144 of the NPPF states that "Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations". In this case there are material considerations that clearly outweigh the harm that would be caused by the temporary dwelling, by reason of inappropriateness and to the openness of the Green Belt, such that very special circumstances exist.

Conditions

36. The Council has suggested five conditions and these have been imposed though they have been amended in the interests of clarity and precision and to comply with tests set out in the National Planning Practice Guidance. Condition one will ensure that the dwelling is temporary rather than permanent, condition two limits occupation to an agricultural worker and dependants, condition three is in the interests of visual amenity, condition four is in the interests of ecology, and condition five will prevent the addition of otherwise permitted development.

Conclusion on the ground (a) enforcement appeal and the planning appeal

37. The temporary dwelling causes harm by reason of inappropriateness and to the spatial openness of the Green Belt. The harm caused is clearly outweighed by material considerations such that very special circumstances exist. The ground (a) enforcement appeal and the planning appeal succeed and the ground (f) and (g) enforcement appeals do not need to be considered. Planning permission has thus been granted for the erection of temporary agricultural workers dwelling at Piple Bottom Farm, North Stoke Lane, Upton Cheyney, Bristol, subject to five conditions.

The prior approval appeal

38. The erection and extension of an agricultural building on an agricultural unit of 5 hectares or more, if it is reasonably necessary for the purposes of agriculture, is development permitted by Class A of Part 6 of Schedule 2 of the Town and Country (General Permitted Development) Order 1995 as amended (the GPDO), subject to the condition that, if deemed necessary, various matters are approved by the local planning authority before the development is commenced. The local

planning authority deemed that it was necessary for an application to be made to them for their approval. The application was made and was refused.

39. The main issue is whether the erection of side extensions to the existing agricultural barn and a separate shed satisfy the requirements of the GPDO so that they would be permitted development.

40. Class A permitted development is the carrying out on agricultural land comprised in an agricultural unit of five hectares or more in area of, amongst other things, works for the erection, extension or alteration of a building which is reasonably necessary for the purposes of agriculture within that unit. Piple Bottom Farm is an agricultural unit of more than five hectares and the proposed side extensions would be to the agricultural barn.

41. Development is permitted by Class A if, where development is carried out within 400 metres of a protected building, the development is not used for the accommodation of livestock. A protected building is a permanent building that is normally occupied by people. The barn is less than 400 metres from the curtilages of protected buildings; these include dwellings on the south side of North Stoke Lane to the north of the farm.

42. The statement submitted with the application states that "Our rural enterprise is currently being stifled by our lack of sheltered livestock accommodation...", that the extensions to the barn would be used, amongst other things "...to keep the livestock in and safe...", and that layout around the extended barn would "...facilitate ingress and egress of livestock". It is clearly the Appellant's intention to use the extensions, at least partially, for the accommodation of livestock. The proposed side extensions to the barn do not satisfy a condition of Class A and are not permitted development.

43. There is confusion between the main parties about the separate shed. The Appellant submitted a lengthy statement with the application that is ambiguous in itself, and further confusion was caused by the Appellant's submission of another lengthy statement after the application was submitted. The Council considered the application on the basis of a drawing appended to a statement that illustrated an open sided structure that would support a pitched roof over the storage containers in residential use that are the subjects of the ground (a) enforcement appeal and the planning appeal. This was a reasonable position given the content of the statements. The Appellant, however, submitted the application for a shed that would envelop the storage containers in residential use and another nearby container in storage use. A note on a drawing submitted with the application indicated that the containers would be removed 'at a later stage'.

44. An open sided structure to support a pitched roof over the storage containers in residential use is not a structure that is reasonably necessary for the purposes of agriculture within the unit. Such a structure is not therefore permitted development. The intended use of a structure that would envelop the containers is wholly unclear and, if it was to be built, it would compromise the residential use of the containers for which temporary planning permission has been granted. There is insufficient unambiguous information to demonstrate that the structure would be reasonably necessary for the purposes of agriculture within the unit. In either scenario the proposed separate shed is not permitted development.

45. The erection of side extensions to the existing agricultural barn and a separate shed do not satisfy the requirements and conditions of Class A of the GPDO. They would not be permitted development and the appeal thus fails.

46. The Appellant could, rather than seeking to rely on permitted development rights, apply for planning permission for the side extensions to the barn. Such an application could include provision for the accommodation of livestock.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr L Preece	Appellant
Mrs J Preece	Appellant
Mr P Taylor	Appellants' Friend

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Almond	Senior Planning and Enforcement Officer
Mr T Coke	Agricultural Consultant

INTERESTED PERSONS:

Mr A Ward	Chairman of Bittow Village Residents Association
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DOCUMENTS

- 1 Drawing no. 51462-04-002 Rev B.
- 2 Letter to the Appellants from Total Produce dated 17 June 2019.
- 3 Last three year financial growth analysis.