



Appeal Decisions

Hearing held on 4 June 2019

Site visit made on 4 June 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 09 September 2019

Appeal A: APP/J0405/C/17/3191315, 3192683

Trail Flat Farm, Lee Road, Quainton, Bucks, HP22 4BH

- 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 Lorna Walley (3191315) and Mr Walley (3192683) against an enforcement notice issued by the Aylesbury Vale District Council.
 - The enforcement notice was issued on 9 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the land for the stationing of a mobile home in residential use.
 - The requirements of the notice are:
 - i. Cease the use of the mobile home for residential purposes
 - ii. Remove the mobile home from the land or limit its use to purposes ancillary to the lawful use of the land.
 - The period for compliance with the requirements is 6 months.
 - Appeal 3191315 is proceeding on the grounds set out in section 174(2)(a) (b) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal 3192683 is proceeding on the grounds set out in s174(2)(b) and (g) of the Act.
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Appeal B: APP/J0405/W/18/3204639

Trail Flat Farm, Lee Road, Quainton, Bucks, HP22 4BH

- 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 Mrs Lorna Walley against the decision of the Aylesbury Vale District Council.
 - The application Ref: 18/00321/APP, dated 26 January 2018, was refused by notice dated 20 March 2018.
 - The development proposed is a four bay portal frame barn for livestock with storage area for machinery and hay.
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FORMAL DECISIONS

APPEAL A

1. It is directed that the notice be varied in Section 6 by deleting "6 months" and substituting instead "9 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

APPEAL B

3. The appeal is allowed and planning permission is granted for a four bay portal frame barn for livestock with storage area for machinery and hay at Trail Flat

Farm, Lee Road, Quainton, Bucks, HP22 4BH in accordance with the terms of the application Ref. 18/00321/APP, dated 26 January 2018, and the plans submitted with it, and subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The materials and finishes to be used in the development shall be as shown on the approved plans, or as otherwise submitted to and approved in writing by the local planning authority.
- 3) No development of the building above floor level shall take place until details of soft landscaping, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) If the use of the building for the purposes of agriculture permanently ceases within 5 years from the date on which the development was substantially completed, and planning permission has not been granted on an application or has not been deemed to be granted under Part 3 of the Act, for development for purposes other than agriculture, within 3 years from the date on which the use of the building for the purposes of agriculture ceased, then, unless the local planning authority have otherwise agreed in writing, the building must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been approved in writing by the local planning authority.

APPLICATIONS FOR COSTS

4. Applications for an award of costs were made by both the appellants and the Council. These applications are subject of separate Decisions.

PROCEDURAL MATTERS

5. At the start of the Hearing an additional ground of appeal against the enforcement notice, ground (b), was introduced. No detailed evidence in respect of ground (b) had previously been submitted for the appellants and the Council had not had sufficient time to investigate or consider the relevant matters.
6. The parties agreed that this ground of appeal could be dealt with separately through an exchange of written representations in accordance with an agreed timetable. One of the subsequently received Council documents was erroneously sent with missing pages, but later sent as a complete document. Additionally, the appellant submitted further comments and photographs on 8 July 2019. In the interests of fairness and natural justice I have taken all of the submitted documents and photographs from both parties into account in reaching my decision.
7. Appeal B seeks planning permission for an agricultural barn. The barn would house cattle and machinery and would form part of and be integral to the agricultural enterprise at the appeal site. As such, the barn also relates to the justification argued for the retention of the mobile home in Appeal A.

APPEAL A, ground (b)

8. An appeal on ground (b) is a claim that those matters (i.e. the matters stated in the notice which may give rise to the breach of planning control) have not occurred. The burden of proof in a ground (b) appeal falls to the appellants, and the test of the evidence is on the balance of probability.
9. The appellants argue that there has not been a material change of use by the stationing of a mobile home (a caravan) for residential purposes as alleged in the notice. They argue that the caravan was altered in such a way that it became a building, and was so at the date the notice was issued.
10. The appellants must therefore demonstrate that at the date the notice was issued, 9 November 2017, the structure on site in which they live was a building rather than a caravan.
11. Section 336(1) of the Act defines "building" to include "any structure or erection". Whilst the definition of "caravan" under section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) begins "any structure designed or adapted for human habitation" it continues "which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)". In this regard there is no dispute that a caravan as defined by the CSCDA was already on site when the appellants purchased the land in 2015.
12. When introducing the ground (b) appeal at the Hearing it was said that the whole body of the caravan was removed in one piece leaving the chassis intact underneath, then a new body (as now existing) was hoisted in and fitted to the chassis. Further works were subsequently undertaken, including a dwarf brick wall around the perimeter of the caravan and upon which the caravan is fixed. That is somewhat inconsistent with the subsequent ground (b) statement submitted for the appellants in which it is said that the further works included the repair of *some* of the exterior panels by their replacement.
13. The lack of clarity aside, whether permanent fixtures to a caravan render it a building is a matter of fact and degree. Key points to consider as to whether a structure is a building are size, permanence and physical attachment to the ground; no single factor is decisive. As to size and permanence, the structure has been on site, albeit altered, for some time. It has a domestic scale and appearance and has resulted in physical change to the land. However, the same could be said in respect of many caravans sited for residential use.
14. The concept of mobility is critical. It is not necessary that a caravan must be capable of being moved on its own wheels, it may be mobile if capable of being picked up intact and put on a lorry by crane or hoist. Also, if appendages or built structures are added/fixed to a caravan the caravan may still be mobile if those elements are removable so as to allow for the removal of the caravan.
15. During my visit to the appeal site I saw that the brick dwarf wall around the perimeter of the structure infilled and enclosed the gap between the underside of the floor and the concrete pad on which the whole structure is sited. The floor of the structure along its long edges rested on top of what appeared to be a thin bed of mortar on top of the wall. This was not the case at the two ends where there were narrow gaps between the wall and the structure. The

underneath of the structure was not visible. It is said¹ that the existing structure consists of *the floor structure being mounted on a red brick supporting plinth and supporting concrete block piers, whereby the floor sub-structure is cemented into place, all attached to the concrete raft foundation.*

16. Submitted photographs of the underside show the chassis (sub-structure) of the caravan sitting on top of a number of brick or breeze block piers. The piers themselves are cemented together and also to the concrete slab on which they are mounted. Where the chassis rests on top of the piers the photographs show they are joined by mortar/cement.
17. However, the amount of mortar/cement is very minimal at these relatively few contact points with the chassis. As such, almost all of the chassis, other than at these points, is uncemented. Moreover, it appears to me that the very small amounts of cement could be removed, as could the previously mentioned thin bed of mortar between the side walls of the caravan and the dwarf wall. While I accept that separating the caravan and chassis from everything else might result in minimal cosmetic damage, there is no convincing evidence to indicate that the integrity of the structure as a whole would be at risk. Consequently, I do not include the concrete slab, supporting piers or dwarf wall as integral parts of the caravan's structure. Additionally, whilst the caravan is attached to services, which are described as permanent and integral to the whole structure, I see no reason why these could not be disconnected. That they are not "quick release" connections does not persuade me otherwise.
18. To conclude; in terms of assessing whether the structure remains a "caravan", the key issue is whether the caravan is still capable of being detached from its supporting elements and removed from the site intact as I have previously set out. Overall, there is no convincing evidence that the caravan could not be so detached and transported.
19. Consequently, for all the above reasons, I conclude that the appellants have failed to demonstrate, on the balance of probability, that the caravan structure is not a caravan as defined in CSCDA, and hence they have not established that the matters stated in the enforcement notice have not occurred.
20. The appeal on ground (b) therefore fails.

Appeal A, ground (a)/deemed planning application

21. An appeal on ground (a)/deemed application seeks planning permission for the development described in the alleged breach of planning control at Section 3 of the enforcement notice. Hence, planning permission is sought for use of the land for the stationing of a mobile home for residential use. At the Hearing it was confirmed by the appellants' consultant that this was for a 3 year time limited period. I have dealt with the appeal on that basis.

Background

22. The irregular shaped appeal site is located in the countryside, approximately 4.45ha in area, extending to the south from its gated access off Lee Road, Quainton. It includes pasture land, hardstanding, a stable block and an open fronted portal building. A public footpath crosses the site. There is a lengthy planning history to the site but currently the site is in use for agricultural

¹ Appellants' ground (b) appeal statement, paragraph 2.5

purposes and for keeping the appellants' horses. In addition, the mobile home subject of the enforcement notice is occupied residentially by the appellants and their children.

Main Issues

23. These are whether there is an essential need for a rural worker to permanently live on site, and the effect on the character and appearance of the area.

Whether there is an essential need for a rural worker to permanently live on site

24. It was argued for the appellants, and as set out in written submissions, that saved policy RA11 of the Aylesbury Vale District Local Plan (2004) (LP) supported allowing the appeal. However, this policy relates to the conversion of existing buildings. It is not therefore relevant to this appeal under ground (a) which seeks planning permission for a mobile home (a caravan) for residential use for a temporary period of 3 years. For the same reason policies referred to in the emerging Vale of Aylesbury Local Plan (VALP) which pertain to the conversion of existing buildings are also not relevant. LP policies RA19, RA20, RA21, RA22 and RA24, also referred to, were not saved policies when the notice was issued and since they no longer exist they are also not relevant.
25. Policy H1 of the Quanton Neighbourhood Development Plan (2016) (NP) supports development proposals for permanent new housing or conversion of existing buildings in the countryside where they assist the sustainable growth and expansion of a business or enterprise. Saved LP policy RA23 supports permanent new dwellings for workers associated with horse related activities where they are located to meet the identified functional need and be well related to existing farm buildings or other dwellings.
26. Paragraph 79(a) of the Framework² (previously paragraph 55) sets out that decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
27. The appellants refer to caselaw³ which established that former paragraph 55 of the Framework did not include a financial test, it only requiring a judgement of whether the proposed enterprise had an essential need for a worker to live on the site or nearby. However, more recent Government guidance in PPG⁴ sets out relevant considerations that may be relevant to take into account in respect of paragraph 79(a), including the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. Hence, I consider that in addition to it being necessary to establish a physical or functional need for someone to be on-site at most times, there must also be at least *some* evidence that the enterprise has a reasonable prospect of success and will endure for the lifespan of the permission sought. Indeed, it would be difficult to conclude that there was an "essential need" in relation to an enterprise which had no such prospect of success.

² National Planning Policy Framework (2018)

³ *The Queen OAO of Embleton Parish Council, David Ainsley v Northumberland City Council v Ivor Gaston* [2013] EWHC 3631

⁴ Planning Practice Guidance ID: 67-010-20190722

28. The functional and financial tests for temporary dwellings for rural workers in VALP Policy H3 is very similar in substance to those set out in Annex A to the former PPS7⁵, and the parties agreed that policy H3 broadly reflects the Framework in respect of isolated dwellings for rural workers. I concur with that view. However, given the emerging stage of the VALP I attach limited weight to policy H3.
29. The appellants' Agricultural Appraisal (AA) sets out that the agricultural operations of the enterprise consist of managing a multiple suckler herd of cattle finished on grass with supplementary feed. The main labour activity relates to rearing of cattle at all times of the year and includes bucket feeding and weaning of calves to an age of 3 months, thereafter rearing to an age of between 12 and 16 months before being sold. I heard that the appellants currently sell their cattle mainly to Mitchells of Harefield but wish to diversify into direct sales of their beef locally to butchers, restaurants and public houses. In addition, once the main herd is fully established there is an intention to manage at least some of the calves as part of a rose veal enterprise.
30. In terms of the labour requirement the AA refers to the Agricultural Budgeting and Costings Handbook which was agreed at the Hearing to set out an acceptable methodology for assessment. The AA concludes that the total labour requirement was 3141 hours per year with Standard Man Days (SMD) equating to a need for 1.4 full time workers.
31. However, this total figure includes labour hours attached to the livery of the appellants' four horses. I have no doubt that the horses require appropriate time to be spent on site for care and welfare, but the paragraph 79(a) exception is clear in that it relates to an essential need for a rural "worker" to live permanently at or near their "place of work" in the countryside. Clearly, the care of the appellants' privately owned horses, which is a non-commercial use, does not form part of the agricultural business/enterprise.
32. Excluding the element of the AA calculations for caring for the horses, and relying instead solely on the agricultural enterprise, the SMD equates to a need for 0.5 of a full time worker. Comparing the two elements, it is evident that the need for a worker to be permanently present on site for the agricultural enterprise forms a significantly smaller proportion of time than is said to be needed for the care of the appellants' horses. On this basis the AA does not justify the need for a full time worker.
33. I take account of the arguments raised with regard to the need for security and the location of the public footpath. However, it is not unusual for footpaths to cross over farmland and I have not been provided with any records or details of reported criminal activity at the site. Moreover, there is no convincing evidence that other security methods, such as CCTV and alarms, would not be effective.
34. Furthermore, while I accept there would be particular times or incidences when close supervision of the cattle is required for health and welfare purposes, particularly in respect of young calves, there is little evidence to suggest that such situations could not be met through limited periods of 24 hour on-site presence. Again, the overnight use of CCTV, audio-monitoring and alarms for welfare purposes are not uncommon around the country. There was no

⁵ Planning Policy Statement 7: Sustainable Development in Rural Areas

compelling evidence presented as to why these would not be effective at the appeal site.

35. I acknowledge that permanently living on site would be advantageous, greatly more convenient for the appellants and more reliable in respect of security, health and welfare concerns. However, the test is one of necessity; there must be an *essential* need, which has not been demonstrated. The Council asserted that there were 15 properties available for sale within a 0.5 mile radius of the appeal site. I see no reason why the functional need of the enterprise could not be met by a property in such close proximity. It may well be the case that some of those other properties were unsuitable for the appellants' family, or too expensive. However, the Council's evidence of availability was not disputed. Moreover, there is no evidence before me to establish that close-by alternative housing is not so available, either for sale or for rental.
36. Taking account of all these factors I conclude that a physical or functional need for a rural worker to live permanently at the site has not been demonstrated.
37. The appellants financial forecast purports to show growing profits over the first three years following initial start-up. However, it does not take account of fixed costs such as for land, insurance, utilities or for the capital cost of the proposed barn (subject of appeal B). When these and other costs were factored in it was accepted by the appellants' consultant that the first year net income would be reduced to approximately £9,000 to £10,000 per annum, with following years also proportionately reduced.
38. While that represents a very low level of income from the enterprise, at least initially, I accept that people are often willing to accept such low incomes during initial start-up years. Moreover, the application is for a temporary period only. Any future application for a permanent dwelling would be separately and appropriately tested.
39. For these reasons I conclude, in line with PPG guidance, that the appellants have demonstrated the enterprise has a reasonable prospect of success and likely to endure for the lifespan of the permission sought. In this regard the proposal accords with paragraph 79(a) of the Framework. However, this does not outweigh my conclusion that a physical or functional need has not been demonstrated.

Effect on the character and appearance of the area

40. Given the size, scale and position of existing buildings within the site, together with other fencing and structures, I consider that the mobile home has been positioned so as to minimise its effect on the appearance of the countryside. While in its own right it is of considerable size, it is well screened, being tucked against the eastern boundary of the site, and does not appear unduly out of place in the context of the other nearby buildings.
41. However, in order to safeguard the intrinsic character of the countryside there is a presumption against isolated housing except in exceptional circumstances. The proposal is not such an exception since an essential need has not been demonstrated. As such, the residential use of the site, together with associated normal domestic paraphernalia associated with a family dwelling, would be incongruous and significantly harmful to the character and appearance of the

rural area. As such it would conflict with the requirements of saved LP policy GP35.

Conclusion on ground (a)

42. While in terms of financial viability I have found there to be a reasonable prospect of success and that the enterprise would likely endure for the lifespan of the permission sought, the appellants have failed to demonstrate that there is a physical or functional need for a permanent on-site presence. Overall therefore, the proposal fails to accord with paragraph 79(a) of the Framework which states that development of isolated homes in the countryside should be avoided unless there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
43. Additionally, for reasons set out earlier, the unjustified siting of the mobile home for residential purposes results in harm to the character and appearance of the area in conflict with LP policy GP35. It also thereby fails to accord with NP policy H1.
44. The appeal on ground (a)/deemed planning application therefore fails.

Appeal A, ground (g)

45. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 6 months. The appellants seek a period of 18 months.
46. I am mindful that the harm resulting from a breach of planning control should be remedied as soon as possible. Allowing 18 months would be tantamount to granting temporary planning permission for the dwelling and such a long period has not been justified. However, it seems to me that finding and securing alternative family accommodation within a reasonable commuting distance to the appeal site could take longer than 6 months.
47. In light of all the circumstances I consider on balance that 9 months would be more reasonable.
48. The appeal on ground (g) therefore succeeds to this limited extent and I have varied the notice accordingly as set out in the formal decision.

APPEAL B

Main Issues

49. Having regard to the reasons for refusal in the Council's decision notice I consider the main issues to be whether the size of the proposed barn is reasonably required for agricultural purposes, and the effect of the building upon the character and appearance of the area.

Reasons

Whether reasonably required

50. The proposed four bay portal framed building would measure approximately 11.9m x 24.4m, providing 290m² floorspace, with eaves and ridge heights of approximately 4.9m and 6.5m respectively. From ground level it would be

constructed from green painted concrete blocks, Yorkshire boarding above to eaves level, and with a shallow pitched cement fibre roof with eight rooflights. A roller shutter door would enclose one of the four bays, the other three remaining open with metal five bar gates. The appellant's stated intention is that it would be used for accommodating cattle along with storage of machinery and hay.

51. The Council's first reason for refusal of the planning application was based on a lack of supporting information to establish that there is an operating and viable agricultural business on the site and that there is a need for a building of the size proposed. In the absence of such information the Council considered it was unable to conclude that the building would provide long term economic benefit and constitute sustainable development. As such, it would conflict with NP policy LE1.
52. However, in light of the detailed evidence presented to the Hearing in respect of the appellants' existing and proposed cattle rearing enterprise on the site, the Council's agricultural consultant accepted that the building would be of a size and scale that would be appropriate for the planned enterprise. I concur with that view. In this regard therefore there would be no conflict with NP policy LE1.

Character and appearance of the area

53. Given that the height and overall scale of the building would be appropriate for the planned cattle rearing enterprise I turn now to its design.
54. The proposed building is without doubt designed to function as a typical agricultural barn. As such, and given its proposed construction materials and finishes, I consider that it would clearly appear as a typical agricultural barn, such that is commonly found in the countryside. While it would undoubtedly be a large building, I nonetheless consider it would not be so bulky as to be overly dominant or intrusive in its countryside setting in the context of its agricultural purpose.
55. As was acknowledged by the main parties at the Hearing, economic and other factors in farming enterprises are never certain and there is always the inherent risk of business failure. In such circumstances a redundant building of the scale proposed, if not used for other suitable purposes, would become an unattractive feature in the landscape. In this regard the parties agreed that should the building become redundant for an extended period of time it should be removed so as to safeguard the rural character and appearance of the area. A planning condition can be imposed to secure removal in such an eventuality.
56. For these reasons, I conclude that the proposed building would not result in any significant harm to the character and appearance of the area. As such, it would accord with the requirements of NP policy E1 and saved LP policy GP35.

Conditions

57. In addition to the standard condition for commencement, planning conditions are necessary to secure appropriate materials, finishes and soft landscaping in the interest of visual amenity.
58. For reasons set out above I have also imposed a condition requiring the removal of the building should it become redundant.

Conclusion

59. For all the above reasons, and taking account of all other matters raised, the appeal is allowed.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Tom McArdle BSc (Hons) MRICS	Pike Smith & Kemp Rural
MNAEA	
Mr Walley	Appellant
Mrs Walley	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Ray	Aylesbury Vale District Council
Bibi Motuel	Aylesbury Vale District Council
Phillip Dales	Aylesbury Vale District Council
Anthony Atkinson	Acorus Ltd

INTERESTED PERSONS:

Brian Fludgate	Clerk to the Quainton Parish Council
Arthur Evans	Chair of the Quainton Parish Council
Martin Jacobs	Chair of Quainton Village Society

DOCUMENTS SUBMITTED AT THE HEARING:

1. Discussion Document D4 – Vale of Aylesbury Local Plan examination 2018

DOCUMENTS SUBMITTED POST-HEARING:

1. Ground (b) written submissions for the appellants
2. Ground (b) written submissions for the Council
3. Costs application for the appellants
4. Costs application for the Council