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## Appeal Decision

Site visit made on 30 September 2019

**by J Whitfield BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 November 2019**

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**Appeal Ref: APP/X1355/C/18/3214107**

**Land at Pole Tree Farm, Rushy Lea Lane, Wolsingham, Bishop Auckland  
DL13 3NX**

- 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 Leslie Pert against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 13 September 2018.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 and 9 of a planning permission Ref 3/2012/0116 granted on 2 August 2012.
- The development to which the permission relates is the erection of general purpose agricultural building, stable block, siting of static caravan and formation of new vehicular access. The conditions in question are:
- No 2 which states that: the development hereby approved shall be carried out in strict accordance with the following approved plans:  
Site Location Plan dated 16 March 2012;  
Proposed Elevations and Roof Plan (Agricultural Building) dated 16 March 2012;  
Proposed Elevations and Plan (Stables) dated 20 March 2012;  
Site Plan Proposed Arrangement dated 26 June 2012; and,
- No 9 which states: The agricultural workers static caravan hereby approved shall be removed from the site on or before the 02 August 2015 unless a further planning permission is granted by the local planning authority, and within 3 months of the date of the removal of the caravan the site shall be restored so far as is reasonably possible to its condition prior to the caravan being sited.
- The notice alleges that the conditions have not been complied with in that the fencing at the site access is not in accordance with the approved site plan and the static caravan has not been removed from the Land.
- The requirements of the notice are:
  1. Permanently remove from the Land all caravans.
  2. Permanently remove from the Land the metal 'heras' type fencing at the entrance to the site (between the roadside wall and double timber gates) and erect post and rail timber fencing between the roadside wall and double timber gates (not exceeding 1.2m in height) in the location and as detail on approved plan "Site Plan Proposed Arrangements dated 21 June 2012 received by the local planning authority on 26 June 2012 copy of plan attached to this Notice.
- The period for compliance with the requirements is 12.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision:** The appeal is dismissed and the enforcement notice is upheld with variations.

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## Background

1. Planning permission was granted for the erection of a general purpose agricultural building, stable block, siting of static caravan and formation of new vehicular access on the land on 2 August 2012<sup>1</sup> (the 2012 permission). It was granted subject to several conditions, one of which was for the development to be carried out in accordance with approved plans (condition 2). Another required the agricultural workers static caravan approved by the permission to be removed from the site on or before 2 August 2015, unless a further permission was granted, and subsequent restoration of the land to its former condition (condition 9). Essentially, condition 9 ensured that the permission granted was temporary in respect of the caravan.

## The Notice

2. The appellant has raised several points regarding the validity of the notice. The key point of the appellant's arguments on validity is that condition 9 of the 2012 permission only requires the caravan to be removed, it does not require the use of the land for the siting of the residential caravan to cease. Thus, it is said, once the caravan has been removed, the planning permission would still exist for the use of the land for the siting of a caravan.
3. However, such a view seems to me to be a somewhat narrow construction of the 2012 permission. The description of the development that was granted referred to, amongst elements of operational development, the siting of a static caravan. Case law<sup>2</sup> has established the use of land for the siting of a caravan is not development, nevertheless, a material change of use can occur if the caravan is sited for the purpose of a particular use of the land. In this instance, the 2012 permission limits the caravan explicitly by way of condition to a particular purpose for residential occupancy by persons working in agriculture or forestry.
4. I am satisfied, therefore, that a more logical construction of the 2012 permission is that it granted consent for the use of the land for the siting of a caravan for residential purposes, limited to a person working in agriculture or forestry. As a result, it seems rational to deduce that, when the caravan approved by the permission is removed in accordance with the time limitation of condition 9, the use of the land for the siting of the caravan for residential purposes similarly ceases. That is the function of the limitation imposed on the permission – the permission explicitly does not allow that use to continue beyond 2 August 2015. There is no compelling evidence before me which suggests the 2012 permission can be construed in any other way. The fact that the condition (and thus the notice) does not explicitly require the residential use to cease is not in my view fatal to its construction.
5. Consequently, I am of the view that the appellant's scenario whereby another caravan could be brought onto the land and used for residential purposes once the present caravan has been removed would amount to a separate breach of planning control. Nevertheless, whether, as the appellant suggests, such a scenario would be lawful is a matter for the Council and the appellant to pursue under section 191 of the 1990 Act.

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<sup>1</sup> LPA Ref: 3/2012/0116

<sup>2</sup> *Wealden DC v SSE & Day [1988] JPL 268*

6. Both the appellant's additional point that condition 9 does not prevent any other caravan being sited on the land and the question as to whether the requirement of the notice to remove from the land all caravans goes beyond what is necessary to remedy the breach is a matter for consideration under the appeal on ground (f). I will return to it in due course.
7. The appellant also indicates that the notice is headed 'breach of condition(s) of planning permission' but that they have nevertheless considered it on the basis that it is an enforcement notice. The notice is headed 'enforcement notice', however. Section 171A(1)(b) of the 1990 Act sets out that failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. Section 172(1)(a) of the 1990 Act sets out that a local planning authority may issue a notice where it appears to them that there has been a breach of planning control.
8. The appellant also argues that the notice does not recognise what can be done without planning permission. Little of this argument is expanded upon and it is not entirely clear what the appellant is referring to. Nevertheless, any fallback position afforded by rights conferred under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or otherwise would be a consideration under the appeal on ground (a) or a potential lesser step to be argued under ground (f).
9. Ultimately, case law has held a key test in assessing the validity of the notice is whether the notice tells the recipient fairly what they have done wrong and what must be done to remedy it. Section 3 of the notice sets out that the breach of planning control is a failure to comply with conditions 2 and 9 of the 2012 permission in line with section 171(A)(1)(b) of the 1990 Act, setting out the relevant details of the permission and the conditions in question.
10. Moreover, the notice sets out in section 5 clearly what the Council requires to remedy the breach of planning control or injury to amenity as the case may be. The wording is not vague or uncertain. As aforementioned, whether or not it is excessive is a matter for ground (f). As such, I am satisfied that the notice has been framed in the correct terms and tells the recipient fairly what they have done wrong. It follows, therefore, that I consider the notice is not invalid.
11. The use of the word permanently within the requirements of the notice is nonetheless unnecessary, having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be varied to delete the word without injustice to the appellant or the local planning authority.

### **Preliminary Matters**

12. It is evident from the submissions of the parties that the Council is satisfied that, since the issue of the enforcement notice, the requirements of condition 2 in respect of the fencing has been satisfied and the condition can be discharged. However, my decision in respect of the ground (c) and (a) appeals is based on what existed at the time the notice was issued.

### **The appeal on ground (c)**

13. An appeal on ground (c) is made on the basis that the matters in the notice alleged to constitute a breach of planning control, do not constitute a breach of planning control. The enforcement notice has been issued because it appears

- to the Council that a breach of planning control has occurred under section 171A(1)(b) of the 1990 Act, which is the failure to comply with a condition of a planning permission.
14. The appellant accepts that a breach of planning control has occurred in respect of the failure to comply with condition 2 of the 2012 permission. Whilst it is said that compliance has since been achieved, it is nevertheless agreed between the parties that the condition was breached at the time the notice was issued and therefore the matters in the notice in that respect did constitute a breach of planning control. I see no reason to conclude otherwise.
  15. Turning to the alleged breach of condition 9. Section 55(1) of the 1990 Act defines two limbs of development – operational development and the making of a material change of use. Operational development means the carrying out of building, engineering, mining or other operations in, on, over or under land. The parties agree that the siting of the caravan does not constitute operational development. I see no reason to disagree. Case law has established that the siting of a caravan for residential purposes constitutes a material change of use of land. The appellant argues that the development subject to the notice is also not a material change of use because the use of the land is as per the 2012 permission and, even were a material change of use to have occurred, the caravan complies with the 2012 permission.
  16. However, the notice is clear that is directed against a failure to comply with a condition or limitation subject to which planning permission has been granted under section 171A(1)(b) of the 190 Act. It is not directed against operational development or a material change of use. Section 171A(1)(b) sets out that such failure to comply with conditions amounts to a breach of planning control. Condition 9 of the 2012 permission is clear on its face that it requires the static caravan used for residential purposes granted as part of the permission to be removed on or before 2 August 2015. It is not disputed that the caravan was present on the land on the date the notice was issued on 13 September 2018.
  17. The evidence before me therefore indicates that there has a been a failure to comply with two conditions on the 2012 permission. I conclude, as such, that the matters stated in the notice as constituting a breach of planning control do, on the balance of probabilities, constitute a breach of planning control.
  18. The appeal on ground (c) does not therefore succeed.

### **The appeal on ground (a) and the deemed application**

#### *Background*

19. An appeal on ground (a) is that, in respect of any breach of planning control which may have been constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the conditions concerned ought to be discharged.
20. In cases where the notice seeks to enforce against a breach of a temporary time limit condition on a planning permission, the deemed planning application will be for the development originally permitted but without the condition, with effect from the day following the date when the limited period expired. Essentially, that would result in a permanent planning permission for the use of the land for the siting of a residential agricultural workers caravan.

### *Main Issues*

21. The Council's reasons for taking enforcement action against the breach are set out clearly in section 4 of the notice. The main issues for the deemed application are, therefore:
- the effect of the failure to comply with conditions 2 and 9 of the 2012 permission on the character and appearance of the area, including the effect on the landscape and scenic beauty of the North Pennines Area of Outstanding Natural Beauty (AONB); and,
  - whether there is an essential need for a rural worker to live at the appeal site.

### *Character and Appearance*

22. The appeal site lies within the North Pennines AONB, the special qualities of which are largely derived from the vast expanses of open moorland and upland river valleys. The appeal site is notable by its location on the upper slopes of the steep valley which encompass the River Wear below. The area is characterised by the open, sparsely populated fields and hedgerows, punctuated by copses and wooded areas.
23. The caravan is located a short distance back from the road and is visible in views from the road itself, as well as nearby roads and public rights of way. In addition, given its location on the steep, upland slopes of the valley, it is also visible in longer range views from the extensive footpath networks that pervade throughout the valley.
24. Whilst the landscape is punctuated by buildings, they are primarily agricultural in character, utilising traditional materials found in the wider landscape. In contrast, the caravan is relatively large in the context of other buildings and structures on the site and is clad with large expanses of white coloured panels. Moreover, its use of metal sheeting appears at odds to the palette of materials found elsewhere in the area. The planting of hedgerows only serves to augment the presence of the caravan and appears in contrast to the largely open landscape in which it sits. As such, I find the caravan appears as a visually intrusive feature within the landscape.
25. The fencing that has been erected is a metal 'heras' style fencing. The photographs provided in the Council's statement show it sits above the adjacent dry stone wall and appears as a dominant, commercial style fencing. It is in stark contrast to the dry stone wall and timber fencing which characterises the wider landscape. Its high degree of visibility on the surrounding road and public right of way network augments its incongruous presence within the area. As a result, the metal fencing has a harmful effect on the character and appearance of the area.
26. I conclude, therefore, that the failure to comply with conditions 2 and 9 of the 2012 permission has had a harmful effect on the character and appearance of the area, including the special qualities of the North Pennines AONB. Consequently, it conflicts with the design requirements of Saved Policies GD1 and ENV2 of the Wear Valley District Local Plan 1997 (the LP), in particular the need to ensure the protection and enhancement of the landscape qualities of the North Pennines AONB.

### *Essential Need*

27. The appellant argues that the Council found, in granting the 2012 permission, that the caravan would not have a harmful effect on the character and appearance of the area, including the special qualities of the AONB.
28. However, the Council granted permission for a temporary period, such that the impacts of the development would similarly be temporary in nature. This was justified on the basis that the development was essential for a rural worker to live at or near their place of work. In contrast, the consideration before me here is whether the residential caravan can subsist in perpetuity.
29. Saved Policy ENV1 of the LP states that development in the countryside will only be allowed where it is for the purposes of, amongst other things, agriculture, farm diversification or forestry. This is broadly consistent with the National Planning Policy Framework (the Framework), which states at paragraph 79 that 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.
30. The business comprises an egg production facility, which is housed in the poultry building on the site close to the caravan. There is around 24 acres of land associated with the business in total, comprising a mix of grazing land and the yard area where the poultry building and the caravan are located.
31. The Council is clear that the purpose of the 2012 permission limitation of a period of 3 years was in order for the economic viability of the poultry enterprise to be established and to allow justification for a full-time residential use to be demonstrated. The Council maintains that is yet to be the case. Indeed, planning applications for a permanent residential dwelling were refused in 2015<sup>3</sup> and 2017<sup>4</sup> on the basis that insufficient justification of an essential need had been provided. There is no indication that either of those were appealed under section 78 of the 1990 Act.
32. The appellant states that the appellant has decided to convert the enterprise to an organic farm and is currently going forward with a difficult period of conversion to achieve such an aim. Nevertheless, it is said the appellant is committed to the enterprise.
33. However, limited information of the needs of the business has been provided to me. There is no indication why a worker would need to be on hand 24 hours a day, 365 days a year to attend to the poultry enterprise, nor what the risks would be to the business were that not the case. Moreover, there is no evidence which indicates that the needs of the business could not be satisfied by the appellant living in alternative accommodation elsewhere in the area. Indeed, I noted on my site visit that the appeal site is a short drive from the town of Wolsingham whilst both the Council and appellant have submitted that the appellant now owns property elsewhere in the area. To that end, there is no evidence of whether or not any issues arising with the business could be managed remotely.

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<sup>3</sup> LPA Ref: DM/15/03797/FPA

<sup>4</sup> LPA Ref: DM/17/03448/FPA

34. Furthermore, there is no indication that the enterprise is financially viable going forward or could sustain a full-time worker. The past accounts for the business have not been provided by the appellant nor have any business plans for the business going forward. In addition, there is no evidence that the site is subject to security concerns to such an extent that would justify a permanent on-site presence.
35. I conclude, therefore, that on the evidence before me it has not been demonstrated that there is an essential need for a rural worker to live at the appeal site. As such, the failure to comply with condition 9 of the 2012 permission will conflict with Saved LP Policy ENV1 and paragraph 79 of the Framework.

#### *Other Matters*

36. The appellant argues that he has a fallback position of being able to lawfully site a caravan for residential purposes anywhere on the land, the visual harm of which would be no different to that subject of the notice. However, I have set out in preceding paragraphs of my decision why I do not believe that such a fallback position exists. I therefore afford it very little weight.
37. Likewise, there is no suggestion that there is a realistic possibility of a caravan for a non-residential use being brought onto the land if the notice is upheld or that doing so would serve the same purpose as the development subject of the notice. Thus, there is no fallback position of sufficient weight to justify the harm I have identified.
38. I have considered the 2014 appeal decision at Ladysteps, Carlisle<sup>5</sup> which has been submitted by the appellant. However, that decision related to an enforcement notice issued under section 171A(1)(a) of the 1990 Act. This appeal relates to a notice under section 171A(1)(b) of the 1990 Act. It seems to me the circumstances of the cases are not directly comparable and therefore I afford the decision little weight in coming to my conclusions.

#### *Conclusion on the appeal on ground (a)*

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **The appeal on ground (f)**

40. The appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
41. The notice does not state which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove from the land all caravans and to remove the fencing has been erected and replace it with the post and rail fencing approved under the 2012 permission. It seems to me, therefore, that the purpose of the notice is to remedy the breach of planning control by

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<sup>5</sup> APP/E0915/C/13/2208649

making the development comply with the terms, including the conditions, of the 2016 planning permission which has been granted in respect of the land. The purpose of the notice therefore falls under section 173(4)(a) of the 1990 Act.

42. In light of that, it seems to me that the requirement to remove the metal heras fencing and erect post and rail timber fencing in accordance with the 2016 permission does not go beyond what is necessary to remedy the breach. There are no lesser steps before that would remedy the breach.
43. However, it seems to me that the requirement to remove all caravans from the land does go beyond what is necessary to remedy the breach. The breach is the failure to comply with the requirement to remove the agricultural workers static caravan approved by the 2012 permission by 2 August 2015. In order to remedy that breach the requirement should be to remove from the land the agricultural workers static caravan approved by the 2012 permission.
44. The requirement to remove all caravans would restrict any lawful rights which may or may not exist to site a caravan on the land for storage or any other particular use which is not governed by the 2012 permission.
45. I conclude, therefore, that the requirement set out under paragraph 5(a) of the notice goes beyond what is necessary to remedy the breach of planning control. I can vary the notice to require the removal of the agricultural workers static caravan approved by the 2012 permission without injustice to the appellant or the local planning authority.
46. The appeal on ground (f) succeeds therefore to a limited extent.

### **Formal Decision**

47. It is directed that the enforcement notice is varied by:

- deleting the words "permanently remove from the Land all caravans" from paragraph 5a of the notice;
  - inserting the words "remove from the Land the agricultural workers static caravan in accordance with condition 9 of planning permission 3/2012/0116 granted on 2 August 2012" in paragraph 5a of the notice; and
  - deleting the word "permanently" from paragraph 5b of the notice.
48. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*J Whitfield*

**INSPECTOR**