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## Appeal Decisions

Inquiry held on 26 - 27 November 2019

Site visit made on 25 November 2019

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 14 May 2020**

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### **Appeal A: APP/W1525/C/18/3206720**

**Dowsett Farm, Dowsett Lane, Ramsden Heath, Billericay, Essex, CM11 1JL**

- 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 Act").
- The appeal is made by Mr Frederick Eastwood against an enforcement notice (notice A) issued by the Chelmsford City Council.
- The enforcement notice was issued on 21 June 2018.
- The breach of planning control alleged in the notice is, without planning permission, the construction of two buildings used for residential purposes, six lighting columns and associated hardstanding.
- The requirements of the enforcement notice are:
  - (i) Demolish the buildings and their foundations (shown outlined in blue and numbered 1 and 2 at the approximate locations on the attached plan).
  - (ii) Break up the brick weave hardstanding (shown outlined in brown at the approximate location on the attached plan).
  - (iii) Scrape clear or otherwise remove from the land the hardstanding shown outlined in green on the attached plan).
  - (iv) Demolish the six lighting columns constructed on the land (shown marked in yellow at the approximate locations shown on the attached plan).
  - (v) Remove from the land all waste materials arising from the actions carried out at steps (i), (ii), (iii) and (iv).
- The period for compliance with the requirements is 3 months.
- The appeal proceeds on the grounds set out in section 174(2)(a), (d) and (g) of the Act. As such, 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 a correction and variation as set out below in the Formal Decision**

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### **Appeal B: APP/W1525/C/18/3206896**

**Dowsett Farm, Dowsett Lane, Ramsden Heath, Billericay, Essex, CM11 1JL**

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr Frederick Eastwood against an enforcement notice (notice B) issued by the Chelmsford City Council.
- The enforcement notice was issued on 21 June 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for storage.
- The requirements of the enforcement notice are:
  - (i) Cease the use of the land for storage.
  - (ii) Remove from the land the shipping container, bench, plant pots and any other item stored.
- The period for compliance with the requirements is 28 days.
- The appeal proceeds on the grounds set out in section 174(2)(b), (c) and (f) of the Act.

**Summary of Decision: The enforcement notice is upheld with corrections and variations as set out below in the Formal Decision**

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### **Application for costs**

1. An application for an award of costs was made by the Council against the appellant. This is subject of a separate Decision.

### **Appeal site and background**

2. The appeal site off Dowsett Lane lies within the Metropolitan Green Belt. It is approximately 9Ha in area and is as shown by the red line on the plans attached to the enforcement notices. The driveway access from the road leads to a hard-surfaced area containing 2 buildings. These are an adapted mobile home (MH) in which the appellant and his family live, and an adjacent utility building. These 2 buildings together with the hard surfacing and 6 lighting columns are subject of notice A. Within this area there is also an industrial size storage container which is subject of notice B. Further into the site there is a portal building, stables and fields.
3. The appeal site has historically been used for agriculture. In this context the MH was originally brought onto the land as a temporary mobile twin-unit caravan in the early 1990's but has never been removed.

### **The enforcement notices and procedural matters**

4. In respect of both notices, there is no dispute between the parties that the purpose of the requirements in Section 5 are to remedy the breach of planning control pursuant to s173(4)(a) of the Act. As such, it was agreed that "*remedying the condition of the land*" as drafted in Section 5 could be corrected to accurately reflect s173(4)(a), without resulting in any prejudice to the parties' cases. I will correct notices A and B accordingly. There are other matters in respect of notice (B) which are dealt with later in Appeal B.
5. I have taken into account the agreed Statement of Common Ground signed by both parties.
6. At the end of the second day of the Inquiry the main parties agreed to follow a timetable for the exchange of written closing submissions, and for the Council's application for costs to follow a written procedure. I have taken the parties' closing submissions into account in determining the appeals.
7. All oral evidence to the Inquiry was given under oath or affirmation.

### **APPEAL A**

#### **Appeal on ground (d)**

8. The appeal on ground (d) is made in respect of the MH only, and is a claim that it is immune from enforcement action due to the passage of time. There is no dispute that it is now a permanent building and was so at the date the notice was issued. To be successful the appellant needs to demonstrate that it became a building at least 4 years before the date on which the notice was issued; hence before 21 June 2014 ("the relevant date").
9. The burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probabilities. His evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good

reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.

10. It is firstly argued for the appellant that since the MH has been on the land in the same position since the early 1990's, and due to its age and physical condition rendering it immobile by the time he purchased the land in January 2013, it had by then acquired a degree of permanence and thus had become a permanent building. That notwithstanding, it is also argued that the works carried out to the MH by the appellant following his purchase of the site and before the relevant date were sufficient to convert it into a building. The appellant's evidence in respect of these matters is as set out in his proof of evidence (POE), various documents referred to, and his oral evidence to the Inquiry. I turn to these matters next.
11. The definition of a 'caravan' is set out in section 29 of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968. It includes any structure designed or adapted for human habitation 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. This can comprise not more than 2 sections designed to be assembled on site, which is physically capable, when assembled, of being moved by road (whether lawfully or not) from one place to another. It is pertinent to note that the mobility test within the definition is not failed by the removal by a caravan's wheels, or that the structure is no longer capable of being separated. It is sufficient that it is capable, for example, of being hoisted onto the back of a lorry and being transported by road to another location.
12. Section 55(1) of the Act defines 'development' to include building operations and s336(1) defines a 'building' as any structure or erection and any part of a building, as so defined. It is a matter of fact and degree whether a particular object comprises a 'building' as defined. In this regard the parties refer to well-known legal authorities and from these it is clear that 3 factors are relevant to consider - size, permanence and degree of physical attachment to the ground. No one factor is decisive.
13. As I saw during my visit to the appeal site, the MH has been subject of substantial interior and external works. Externally these include, amongst other features, a new single roof structure, timber cladding to the walls, the removal of the axles, wheels, and subframe and their replacement with a new structured sub floor attached to a supporting perimeter brick wall set in concrete footings.
14. That the MH was on the land for many years and had deteriorated prior to the appellant's purchase of the site is not disputed. However, in my view a caravan that has been kept on land in the same position for decades and has become somewhat dilapidated does not for those reasons alone transform it from being a caravan, as defined, into a 'building'. The same could be said of all static type caravans kept in fixed positions if that were the case, and I am unaware of any case law that supports such a proposition.
15. While the appellant and his family may have lived in the MH since 2013 it is the time that has elapsed since it became a building that is determinative in this ground (d) appeal. As such, the submitted Council Tax records<sup>1</sup> only lend

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<sup>1</sup> Appendix 3 to Eastwood POE

some support to the appellant's assertion that he lived in the MH during that period, they do not however provide any evidence of when the operational development was carried out resulting in the conversion of the MH into a building.

16. As set out earlier, a twin-unit caravan, once assembled, does not need to retain its wheels or (contrary to the assertion in the *Wyldecrest*<sup>2</sup> letter) to be capable of re-separation for it to still fall within the definition of a caravan. In this regard I consider that the insertion of concrete footings and supporting brickwork wall, to which the MH is attached, are critical to the tests of permanence and physical attachment to the ground, and hence to when the MH ceased being a caravan and became a permanent building.
17. In support of the appellant's case reference was made to the *Bryan*<sup>3</sup> letter dated 22 February 2014, and to the *Wyldecrest* letter. The *Bryan* letter describes that company's works to the MH pre-February 2014. These included replacing the existing axles and sub-frame and replacing with a new sub floor comprising of timbers and sleeper wall brickwork. The *Wyldecrest* letter describes that company's inspection of the MH undertaken in April/May 2014, hence after the works referred to in the *Bryan* letter.
18. The works to the underside of the MH observed and described in the *Wyldecrest* letter is of the "chassis welded together with cross members". That is quite different to the description of the sub floor in the *Bryan* letter. The *Wyldecrest* letter also makes no mention of the sleeper wall brickwork. As such, I find them to be inconsistent with one another in respect of the works undertaken and their chronology. Moreover, for reasons set out below, their chronologies as to when works were undertaken are irreconcilable with other oral, written and photographic evidence to the Inquiry.
19. Evidence which points to the conversion of the MH into a building after the relevant date was provided by Mr Jewell<sup>4</sup>. He visited the site after the relevant date on 23 December 2014. Although he did not enter the site he was able to view the MH and take photographs of it through gaps in the hedgerow which forms the boundary with the road. His oral and written evidence was that on that date he observed that the MH had not been subject to any exterior works. I consider that his dated photographs of the side-on views of the MH (Nos. 2 and 3 in appendix PH24), although partially obscured by foliage and a post and rail fence, nonetheless clearly show that the MH on that date did not have a supporting brick wall or other structure, and that one of its black wheels at one end is also visible. (These features are particularly evident in the electronic images in zoom). He visited a second time on 13 January 2015 and observed no change in appearance of the MH from previously. On a third occasion on 19 February 2015 he went onto the site with the appellant and again took photographs (appendix PH25). At that time a timber fence (no brick walling) enclosed the perimeter of the MH's underside. Mr Jewell's oral and written evidence was precise and detailed and corroborated by his photographs, and to all of which I attach substantial weight.
20. In the light of Mr Jewell's evidence of 23 December 2014 and later, the works described in the *Bryan* letter said to have taken place *before* 22 February

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<sup>2</sup> Appendix 5 to Bond POE

<sup>3</sup> Document 4

<sup>4</sup> Appendices PH24, PH25 & PH26 to Harwood POE

2014 cannot be correct. The reference to the wheels having been removed in the *Wyldecrest* letter in April/May 2014 must also be incorrect. Additionally, the appellant's own undated photographs<sup>5</sup> of the MH (labelled Spring 2013) cannot be accurate. For these reasons I attach no significant weight to these letters or the appellant's photographs in reaching my decision.

21. The balance of the evidence therefore points towards the MH still having wheels and no fixation to the ground well after the relevant date. Furthermore, there is no convincing evidence before me to indicate that at the relevant date the MH, even as a single structure, was not capable of being hoisted onto a lorry and being transported from the site by road. As such, the evidence leads me to conclude it was still a caravan, as defined, at the relevant date. Indeed, under cross-examination the appellant stated he was uncertain in his recollection of when particular works took place. In this regard his oral evidence was ambiguous and imprecise. In response to direct questioning concerning the photographic evidence of Mr Jewell (PH25), he fairly conceded that the concrete footings and brick walling took place after 19 February 2015.
22. Although the MH as a structure is of a size that could reasonably be indicative of a building, I find that in terms of the tests of permanence and physical attachment to the ground the appellant has failed to demonstrate, on the balance of probabilities, that the MH had acquired those characteristics and hence that it had become a building by the relevant date. As such, the building is not immune from enforcement action.
23. I heard and read submissions from both advocates on a point as to when the full range of building operations to the MH were substantially completed. However, it is unnecessary for me to conclude on that point given that I have found that the MH was not in any event a building on or before the relevant date.
24. The appeal on ground (d) therefore fails.

### **Appeal on ground (a)/deemed application for planning permission**

25. The main issues are:

- (a) whether the development is 'inappropriate development' within the Green Belt;
- (b) if inappropriate, the effect on the openness of the Green Belt and its purposes;
- (c) if inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### ***Reasons***

#### ***Whether inappropriate development***

26. The appeal development is located within the Green Belt. It comprises buildings and engineering operations; those being the MH, adjacent utility

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<sup>5</sup> Appendix F to Statement of Case, images E and F

building, hardstanding, and 6 lighting columns. Paragraph 145 of the Framework<sup>6</sup> sets out that a local planning authority should regard the construction of new buildings as inappropriate development. Exceptions to this include buildings for agriculture and forestry. Paragraph 146 sets out that engineering operations are also not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

27. Policy DC1 of the Core Strategy and Development Control Policies Development Plan Document (2008) (CS) reflects the provisions of Framework paragraphs 145 and 146. It states that planning permission will be refused for development within the Green Belt subject to certain exceptions, including where the development is for *a new building for purposes directly related to agriculture or forestry or is accommodation in connection with these uses in accordance with Policy DC33*. CS Policy DC33 is supportive of new dwellings for agricultural/rural workers subject to meeting specific criteria.
28. Policy CO8 of the emerging Chelmsford Local Plan (ELP) is also broadly consistent with the Framework and CS Policies DC1 and DC33. It provides that planning permission will only be granted for a new dwelling or caravan in the Green Belt where there is a proven essential need for the purposes of agriculture or forestry and very special circumstances which clearly outweigh the harm to the Green Belt and any other harm. The emerging plan is now at an advanced stage towards adoption and I attach significant weight to it in reaching my decision.
29. Although some work related to the horses on site was said to take place in the utility building, there can be no doubt from all the evidence before me that its primary function is to serve the day to day activities of the appellant and his family in the MH<sup>7</sup>. Given they are used together as a dwellinghouse they are self-evidently not buildings for purposes directly related to agriculture. Whether they fall to be considered as accommodation "*in connection with*" agriculture is dependent upon the use of the rest of the appeal site.
30. At the time of my visit to the appeal site there were a total of 11 horses on site; one being stabled with the other 11 in the adjacent 3 fields along with 11 sheep. Notwithstanding the presence of the sheep on this day it is not the appellant's case that he operates anything other than a horse (Gypsy Cobb) breeding business with capacity at this site for up to 20 horses. (The business also jointly operates from a separate 8Ha site near to Colchester).
31. The definition of 'agriculture' is defined at section 336 of the Act. It does not include the breeding and keeping of horses (*Belmont Farm v MHLG* [1962] 13 P&CR 417), but simply grazing horses does not result in any material change of use from agriculture. The case advanced for the appellant is that the fields are used for grazing the horses and that consistent with Sykes<sup>8</sup> this is an agricultural use of land. Hence on that basis, it is argued, the dwelling is accommodation "*in connection with*" agricultural use and so compliant with CS Policy DC1. However, I reject this argument for the following reasons.

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<sup>6</sup> National Planning Policy Framework (2019)

<sup>7</sup> Although I have found it to be a building in ground (d) I continue to refer to it as the MH for consistency

<sup>8</sup> *Sykes v Secretary of State for the Environment* (1981) 42 P&CR 19

32. Other than for residential purposes the land and buildings within the appeal site are used for keeping and breeding horses. In addition to being stable-fed the fields are used for grazing the same horses, and for some production of hay from surplus. All these and other horse related activities are physically and functionally interrelated elements of the horse breeding business as a whole. As such, I consider that the relevant planning unit comprises the whole of the land within the red line on the enforcement notice. There was no argument and no evidence submitted which sought to reason otherwise.
33. The nature and scale of the business use within the site is described in detail within the statement<sup>9</sup> and proof<sup>10</sup> submitted to demonstrate a need for the dwelling. They describe the day to day activities of the business and how the production of turnover is from the sale of horses reared on site. However, there is no convincing evidence in these documents, or in any other written evidence or oral testimony I heard, that indicates to me that the grazing of horses is anything other than one of a number of related activities which together comprise the use of the planning unit for keeping and breeding of horses. Consequently, different to *Sykes*, I find that the predominant use of the land in this case is not for the grazing of horses.
34. For these reasons I find that the buildings are not for purposes directly related to agriculture, or accommodation in connection with agriculture, in conflict with CS Policy DC1 and ELP Policy CO8. Neither do they fall to be considered as one of the exceptions listed within paragraph 145 of the Framework. As such, I conclude on this first issue that the buildings are inappropriate development in the Green Belt which is harmful by definition.

#### *Effect on openness and purposes of the Green Belt*

35. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. Perceptions of openness can be visual as well as spatial.
36. The buildings on site represent a significant increase in built form over the previous MH when it was a singular caravan. The area of hardstanding and lighting columns add further urbanising development. Consequently, in spatial terms there has been a significant reduction in openness resulting from the introduction of a level of development not previously present on the land.
37. In visual terms the area comprising the MH, hardstanding and lighting columns is to some extent less obvious given their set-back position from the road, existing hedgerow and tree screening, and only partial visibility in longer distance views from the surrounding countryside.
38. Overall, I find that the reduction in openness would be significant resulting in a similar level of harm. There would also be a significant adverse effect on one of the Green Belt purposes which seeks to safeguard the countryside from encroachment.

#### *Other considerations*

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<sup>9</sup> 'Application for the permanent siting of a rural worker's dwelling', Reading Agricultural Consultants, 2019

<sup>10</sup> Bond POE

*Need for a rural worker dwelling*

39. Paragraph 79 of the Framework sets out that isolated new homes in the countryside should be avoided other than in exceptional circumstances. Paragraph 79(a) provides for one such exception where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. In applying this policy the PPG<sup>11</sup> advises that information relating to functional need and viability are relevant considerations to take into account. The criteria of CS Policy DC33 also set out similar requirements in respect of these matters in order to demonstrate evidence of need.
40. With regard to the size of a rural worker's dwelling, it should be capable of providing a level of accommodation for such a worker and their family. In this regard the size of the dwelling provided by the MH and the adjacent utility room would be reasonably required.
41. However, having regard to other written and oral evidence I heard on whether there is an essential need, I find it unconvincing in several areas. I heard much about whether there was a functional need for the dwelling, and reference was made to the provisions of the Animal Welfare Act 2006 and associated welfare guidelines<sup>12</sup>. While the guidance advises that *sufficient staff must be provided at all times to ensure proper, regular and timely attention to all horses*, that does not equate to meaning that a permanent human on-site presence is required. Even accepting that the business activities support the need for a full time worker, I find that in view of the relatively low number of horses likely to be on site and the capabilities of remote monitoring (for example CCTV, alarm systems), and the likelihood of other accommodation being available in the locality, I am unconvinced that a permanent dwelling on the site is necessary. Mr Bloor, for the appellant, accepted that not all horse breeding enterprises required such a permanent on-site dwelling and on balance I consider that to be the case here.
42. I acknowledge the appellant's inability regards reading and writing. However, he has been professionally represented in terms of his accounts and throughout the appeal process. He has been running the equine business for many years, in addition to a roofing business. Both of these are subject to the submission of information for accounting purposes. While I understand that many of the appellant's sales and purchases may by tradition be cash and handshake transactions, it is inconceivable that all the appellant's purchases are of that type, such as for example the purchase of feed, equipment, utilities, stock, and veterinary services. However, no supporting documents in the form of invoices, orders or receipts relating to any of the appellant's purchases over recent years were kept for accounting purposes, and thus none provided in evidence. This lack of evidence was compounded in the appellant's cross-examination due to his recollection of sales and income from them over the last 2 years being confused and unclear. Moreover, the submitted financial accounts, produced primarily from the verbal recollection of the appellant, fell far short of the level of detail, and hence credibility, that one would reasonably expect as evidence of financial viability.
43. Furthermore, no business plan or projections for future years were provided. While paragraph 83 of the Framework encourages sustainable growth and

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<sup>11</sup> Planning Practice Guidance ID: 67-010-20190722

<sup>12</sup> Code of Practice for the welfare of Horses, Ponies, Donkeys and their Hybrids, DEFRA, 2017

expansion of rural based businesses, I am not convinced on the submitted evidence that the appellant's business has the potential to become a "high quality equine enterprise"<sup>13</sup>.

44. For these reasons I find that whilst I appreciate that it would be more convenient and highly desirable to have a permanent on-site dwelling, an essential need for one has not been demonstrated. Even if an essential need had been demonstrated it would not in any event be for *accommodation in connection with agriculture* in conflict with CS Policies DC1 and ELP Policy CO8.

#### *Planning History*

45. I acknowledge that the MH, as a caravan, had been on the land for many years, and that when the time limited planning permission for it expired no enforcement action was taken for its removal. However, as set out earlier, the dwellinghouse now on site comprising the MH and the utility building is substantially larger than the former caravan, and results in the adverse effects and harm to the Green Belt I have previously described.

#### *Personal circumstances*

46. Article 8 of the First Protocol of the Human Rights Act 1998 affords the right to respect for private and family life, including the traditions and culture associated with the appellant's Romany Gypsy status and way of life. In this regard I also take account of the PSED<sup>14</sup>, and the *best interests of the child*<sup>15</sup> with regard to the appellant's daughter. No other consideration is inherently more important than the best interests of the child.
47. Refusing planning permission and upholding the enforcement notice would result in the loss of the appellant's home and disruption to family life. It would therefore interfere with the appellant's and his family's rights. However, Article 8 rights are qualified such that an interference may be justified, and hence not a violation of rights, where it is in accordance with the law and the public interest.
48. In this case the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim; the protection of the Green Belt. I can also take account of the potential disruption to family life, including education, and their needs in relocating, when considering the period for compliance with the notice. Given the circumstances overall, I attach significant weight to the family's rights.

#### ***Planning Balance and conclusion on ground (a)***

49. The Framework, reflected in the Council's planning policies, requires that substantial weight is given to any harm to the Green Belt, and that *very special circumstances* will not exist unless any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
50. The proposed development is inappropriate development and is therefore harmful by definition. I attach substantial weight to that harm. I have also

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<sup>13</sup> Closing Submissions for the Appellant, para.76

<sup>14</sup> Equality Act 2010: Public Sector Equality Duty

<sup>15</sup> Article 3(1) of the United Nations Convention on the Rights of the Child

previously identified some loss of openness and an adverse impact on one of the Green Belt purposes which seeks to safeguard the countryside from encroachment. The additional harm arising from these matters attracts collectively further significant weight.

51. Against the totality of this harm there are other considerations which I have set out above which are argued to weigh in support of allowing the appeal. The considerations relating to the need for a dwelling and planning history are of no to little weight in reaching my decision. Those relating to the family's personal circumstances are of significant weight. However, in terms of Article 8 rights and the best interests of the child I find that refusal of planning permission and upholding the enforcement notice would be both proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
52. To conclude; the considerations raised in support of allowing the appeal are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt I have identified. Consequently, there are no very special circumstances to justify the inappropriate development in the Green Belt. As such, the development conflicts with the Council's planning policies as I have set out earlier, and with the Development Plan as a whole.
53. For all these reasons, the appeal on ground (a) fails.

#### **Appeal on ground (g)**

54. The appeal on ground (g) is a claim that the 3 month period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant seeks a period of at least 12 months and up to 24 months. Since the appeal has also been made on grounds (a) and (d) it is reasonable for the appellant to assume success on either of those and await the outcome of the appeal. Hence, the time that has elapsed prior to this appeal decision should not be taken into account.
55. The Council's estimate<sup>16</sup> for 2-3 days for demolition of the two buildings and removal of resulting waste does not take into account the need to safely and lawfully disconnect utility services, which may require separate scheduling and action. It also does not take account of the time required for taking up and removing the hardstanding, presumably following demolition, and the lighting columns. Also, some materials may be capable of being sustainably reused or stored elsewhere for such purposes if removed carefully.
56. In addition, and notwithstanding that there may generally be a supply of accommodation in the locality that would be suitable and available, it could take a considerable time to locate and secure such accommodation, whether on payment or by rental. I am also mindful that there can often be a lead in/waiting time before being able to physically relocate to a new property. Furthermore, having regard to their Article 8 rights and the best interest of the child, I consider it may be more difficult to secure accommodation within a reasonable travelling distance of the daughter's existing school. Disruption to her education should be avoided if at all possible.
57. Given the need to remedy the breach of planning control without undue delay, a period of 12 months or more for compliance is unjustified and excessive. In

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<sup>16</sup> Appendix PH33 to Harwood POE

my view, under normal circumstances, a period of 9 months would be more reasonable. However, the current “lockdown” in response to the Coronavirus pandemic has resulted in a slowdown and uncertain housing market situation where relatively few properties are coming to market for sale or rent. This will very likely make finding suitable accommodation more difficult for the appellant.

58. Taking account of all of these factors, I conclude on balance that it would be reasonable and proportionate to extend the period from 3 months to 11 months.
59. The appeal on ground (g) therefore succeeds to this extent and I will vary the notice accordingly.

## **APPEAL B**

60. As set out in my pre-Inquiry note to the parties, an enforcement notice is required to specify the precise boundaries of the land to which it relates, whether by reference to a plan or otherwise. In this regard Notice B identifies the land to which it relates, by red line on the attached plan, as being entirely the same area of land as in Notice A, and the alleged breach as *the material change of use of the land for storage*. However, given that some of the land is in use for residential purposes and for breeding horses, the alleged single use of the whole of the land for storage cannot be correct.
61. It is clear from all the evidence that the notice is aimed purely at the storage container (SC) sited near to the MH, and other domestic items referred to in the notice requirements. That appeared to be the way the appellant also interpreted the notice. I sought the parties’ views on whether the SC should properly be referred to as operational development and the notice and its requirements corrected accordingly, without resulting in prejudice to either party. The appellant agreed to this approach and on that basis the appeals on grounds (b), (c) and (f) would be unarguable and withdrawn.
62. The SC is of a considerable size and weight and has been in situ for a considerable period of time. It is incapable of being lifted and moved around the site without the necessary equipment and vehicles required in order to do so. Having regard to the tests in *Barvis*<sup>17</sup> its size and attachment to the ground (by resting on its own weight) gives it some of the characteristics of a building. Had the enforcement notice not been issued there is no evidence that it was likely to be removed. Furthermore, even it were moved around within the wider site, in terms of permanence this needs to be considered in terms of significance in the planning context; a principle established in *Woolley*<sup>18</sup>. When viewed in the context of this rural Green Belt landscape, the ability to move it around the site would not remove the significance of its presence in planning terms. The visual and landscape impact of the SC would not be affected to any material extent by any periodic changes in its position. Thus, having regard to size, attachment and permanence I conclude as a matter of fact and degree that the SC is a building.
63. In the event that I concluded the SC was operational development the Council accepted the proposed corrections to the enforcement notice as an alternative

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<sup>17</sup> *Barvis v SSE* [1971] 22 P and CR 710

<sup>18</sup> *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

position. I will therefore correct the notice accordingly and treat the appeals on grounds (b), (c) and (f) as withdrawn.

## **FORMAL DECISIONS**

### **Appeal A**

64. It is directed that the enforcement notice is corrected and varied by deleting in the first line of Section 5 the words "condition of the land" and substituting instead the words "breach of planning control"; and in Section 6 deleting the words "three months" and substituting instead "11 months".
65. Subject to the correction and variation, 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 Act.

### **Appeal B**

66. It is directed that the enforcement notice is corrected and varied by:
- in the title header of the notice delete the words "MATERIAL CHANGE OF USE" and substitute instead the words "OPERATIONAL DEVELOPMENT";
  - delete all of the words in Section 3 and substitute instead the words "Without planning permission, the siting of a storage container on the land in the approximate position shown in green on the attached plan";
  - in the first line of Section 4 delete the words "ten years" and substitute instead "4 years";
  - in Section 5 delete in the first line the words "condition of the land" and substitute instead the words "breach of planning control";
  - delete Section 5(i);
  - in Section 5(ii) delete all of the words and substitute instead the words "Permanently remove from the land the storage container". Re-number 5(ii) to become 5(i); and
  - in Section 6 delete all of the words and substitute instead the words "3 months".
67. Subject to the corrections and variations, the appeal is withdrawn.

*Thomas Shields*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|                              |                                  |
|------------------------------|----------------------------------|
| Jerry Fitzsimons, of Counsel | Cornerstone Barristers           |
| He called:                   |                                  |
| Peter Bond                   | Consultant, Bond Planning        |
| Alan Bloor                   | Reading Agricultural Consultants |
| Frederick Eastwood           | Appellant                        |

### FOR THE LOCAL PLANNING AUTHORITY:

|                           |                                         |
|---------------------------|-----------------------------------------|
| Dr Sam Fowles, of Counsel | Cornerstone Barristers                  |
| He called:                |                                         |
| Wayne Jewell              | Planning Enforcement Officer (Retired)  |
| Sam Franklin, RICS        | Consultant, Landscape Land and Property |
| Paul Harwood              | Planning Officer                        |

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- DOC 1 S.I 2009 No. 1611: The Horse Passports Regulations 2009
- DOC 2 Animal Welfare Act 2006
- DOC 3 *Code of practice for the welfare of horses, etc*, DEFRA, 2017
- DOC 4 Letter from Bryan Builders dated 22.02.2014
- DOC 5 Letter from local resident Sanders dated 26.10.2019