



Appeal Decision

Site visit made on 24 November 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/A1910/C/20/3254307

**Land at Plot 1, Cupid Green Lane, Great Gaddesden, Hertfordshire
HP2 6HN**

- 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 Dana Vatamanuick against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 29 April 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of the use of the land from agricultural to agricultural research with associated development.
- The requirements of the notice are: Step 1: Cease the use of the land for agricultural research purposes. Step 2: Remove all tents, fencing and septic tank system, as well as other non-agricultural items from the land hatched black. Step 3: Restore the land hatched black to its condition prior to the material change of use taking place.
- The period for compliance with the requirements is: Step 1: One day. Steps 2 and 3: Four months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Preliminary Matters

1. The appeal was initially made on ground (a). However, during the appeal process the appellant confirmed that he was changing his grounds of appeal to ground (b). The Council has had an opportunity to respond to the change in the grounds of appeal.
2. As this appeal only concerns the matters alleged in the enforcement notice, the proposed barn cannot be considered. The correct approach is to apply to the Council for planning permission for the barn. In the first instance, it will be for the Council to decide whether planning permission should be granted for that development.

Ground (b) appeal

3. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact. The onus of proof is on the appellant, the relevant test of the evidence being on the balance of probability.
4. The appeal site is a modest-sized plot of land, within a substantial agricultural field made up of several other plots in various ownerships. During my visit, I saw that the site is partly enclosed by close boarded timber fencing, described by the appellant as a wind break. Two buildings have been erected. The larger

building has a timber frame and is covered with white coloured plastic sheeting. Within the building there was a workbench, on which a small number of what I am given to understand were tomato and pepper plants, in pots. A number of empty pots made from recycled plastic bottles were kept nearby. Additionally, the building contained a wood burning stove, a toilet and shower connected to a septic tank, seating, a desk, a sink, kitchen units which contained various tools, as well as other small items of mechanical equipment. The smaller building, also covered with white plastic sheeting, housed a few chickens. On the external parts of the site there was a raised planting bed covered by a pile of timber, together with several petrol-driven mowers, metal crates and small containers.

5. The notice alleges a material change of use from agriculture to a use for agricultural research. The appellant nevertheless argued that the site is used for agricultural and horticultural purposes. He explained that the larger building is used as a polytunnel, to provide a consistent protected environment enabling the year-round growing of fruit, vegetables and garden crops for sale at local farmers' markets. He also explained that the smaller building is used as a chicken coop, the eggs produced being sold locally. Whilst the appellant agreed that he had previously described the use of the site as for agricultural research, he stated that this had been at the suggestion of Council officers.
6. The definition of agriculture in s336 (1) of the 1990 Act includes fruit growing, seed growing, dairy farming and the keeping and breeding of livestock and the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds. The activities described by the appellant fall squarely within the above definition. The activities he described are not dissimilar to those normally found on agricultural small holdings. Some of the activities described were taking place when I visited. Also, several of the items I saw being kept at the site, including the plant pots, metal racks, tools and equipment, had an agricultural utility and are therefore likely to facilitate an agricultural use. Although the scale of agriculture that I observed was very modest, it was more than de minimis. Moreover, as the appellant stated that activity had largely been put on hold for the duration of the appeal and also having regard to seasonal factors, the current limited scale of agriculture at the site is perhaps not surprising.
7. The definition of agriculture is wide and does not act to exclude any specific methods of agricultural production. As activity falling within the definition of agriculture can be undertaken purely as a hobby, the absence of a business plan does not mean that the site is being used other than for agricultural purposes. The design and external materials of the buildings is not inherently inconsistent with an agricultural use. I am given to understand that agricultural buildings using similar materials have been granted planning permission on adjacent plots. The activity being undertaken by the appellant could also be associated with a leisure or recreational use of the site. Equally, the presence of items such as the timber, mowers, crates and containers could indicate a storage use. However, such uses are not consistent with the appellant's evidence. Moreover, neither recreation nor storage uses are alleged in the notice.
8. The Council did not offer any detailed explanation of what it had meant by 'agricultural research' in the allegation. To my mind, this term is highly likely to describe the undertaking of activities to which scientific methods are applied,

involving tests and experiments and the recording of empirical data, with logical conclusions being drawn from the outcomes. Usually, but not exclusively, such activity might in some part be undertaken in a laboratory or a similar bio secure, controlled environment. Such a use might therefore fall within Use Class B1 (c)¹. However, there was no firm evidence of any activity akin to that described above as having taken place at the site. The rather rudimentary facilities at the site would not be conducive to supporting such activity in any event. As a result, there is no firm evidence to support a conclusion of the site having been used for purposes of agricultural research.

9. The appellant's submissions are consistent in terms of the site having been used for agriculture, not for purposes of agricultural research. When looked at in the round, his evidence is precise and unambiguous. There was little which cast doubt on the appellant's submissions. Therefore, I find the appellant's evidence persuasive and afford it significant weight.
10. Accordingly, on the balance of probability the available evidence shows that the allegation stated in the notice has not occurred as a matter of fact and the ground (b) appeal succeeds.
11. It is open to the Council to issue a fresh enforcement notice, if they consider that the site is in use for purposes other than agriculture and/or attacking the operational development, should they consider it expedient to do so.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

Formal Decision

13. The appeal is allowed and the enforcement notice is quashed.

Stephen Hawkins

INSPECTOR

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

