



---

## Appeal Decisions

Inquiry Held on 24 February 2021

Informal Site visit made on 22 February 2021

**by Brian Cook BA (Hons) DipTP MRTPI**

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

**Decision date: 9<sup>th</sup> March 2021**

---

### **Appeal A: Appeal Ref: APP/P1615/C/20/3257340**

#### **Land at Marshalls Meadow, Kilcot, Newent**

- 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 Michael Panting against an enforcement notice issued by Forest of Dean District Council.
  - The enforcement notice was issued on 8 July 2020.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agriculture to a leisure plot and the breeding of racing pigeons, the siting of an ancillary static caravan together with the erection of a building that accommodates the racing pigeons and the construction of a large hardstanding for the parking of vehicles on the Land.
  - The requirements of the notice are:
    - i) Cease the use of the Land for leisure purposes and for the breeding of racing pigeons;
    - ii) Remove from the Land the static caravan, including all fixtures and fittings and any associated paraphernalia located within the purple hatched area as indicated on the site location plan;
    - iii) Remove from the Land all miscellaneous items associated with the leisure use of the Land;
    - iv) Dig up the hardstanding and demolish the green mesh screening located within the purple hatched area as indicated on the site location plan;
    - v) Demolish the building located within the blue hatched area as indicated on the site location plan;
    - vi) After compliance with steps (iv) and (v) above, regrade the Land evenly and reseed it with grass;
    - vii) Remove all builders' materials and equipment, that are not directly associated with the maintenance of the Land.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- 

### **Appeal B: Appeal Ref: APP/P1615/W/20/3260387**

#### **Marshall's Meadow, Kews Lane, Kilcot, Newent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Michael Panting against Forest of Dean District Council.
  - The application Ref P0981/20/FUL, is dated 6 July 2020.
  - The development proposed is siting of a shed and of a caravan, together with re-stoning of existing access, and erection of fencing.
-

## Decisions

### Appeal A: Appeal Ref: APP/P1615/C/20/3257340

1. It is directed that the enforcement notice be corrected by the deletion of all the words in section 3 of the notice, *the matters which appear to constitute the breach of planning control* and the substitution of "*Without planning permission, the making of a material change of use of land from agriculture to a mixed use of agriculture and a leisure plot and the keeping of pigeons and the construction of a building/pigeon loft and the construction of a large hardstanding for the parking of vehicles on the land and the siting of a static caravan to provide a mess facility which individually and collectively facilitate that change of use*" and varied by: the deletion of the words "and demolish the green mesh screening" in requirement (d); the deletion of all the words in requirements (f) and (g) and the substitution of "*(f) restore the land to its condition before the breach took place*" in section 5 of the notice *what you are required to do*. Subject to these corrections and variations the appeal is dismissed and 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.

### Appeal B: Appeal Ref: APP/P1615/W/20/3260387

2. The appeal is dismissed insofar as it relates to siting of a shed and of a caravan, together with erection of fencing and planning permission is refused for siting of a shed and of a caravan, together with erection of fencing. The appeal is allowed insofar as it relates to re-stoning of existing access and planning permission is granted for re-stoning of existing access at Marshall's Meadow, Kews Lane, Kilcot, Newent in accordance with the terms of the application, Ref P0981/20/FUL, dated 6 July 2020, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; Block Plan Drg B Rev A Feb 21 insofar as it relates to the area marked "hardstanding (stoned)" only.
  - 2) Use of the area of hardstanding hereby permitted shall not commence until drainage works for surface water runoff from the area of hardstanding shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
  - 3) Details of any floodlighting of the land edged red on the approved location plan shall be submitted to and approved in writing by the local planning authority before installation. Development shall be carried out in accordance with the approved details.

## Procedural matters

3. The Inquiry sat for two days hearing evidence. As neither advocate was available on the third day, closing submissions were made in writing, sequentially, on 1 March. The Inquiry was formally closed on 1 March once both had been received.

4. I undertook an informal pre-Inquiry inspection of the wider area and of the site from the public domain on 22 February as set out above. In the exceptional circumstances caused by the Covid-19 pandemic and in accordance with government and Planning Inspectorate guidance I did not consider an accompanied internal inspection of the mobile home and/or the shed to be 'absolutely necessary' for me to reach a decision on the appeals. Both parties agreed that a formal site view was not required in the circumstances and one did not therefore take place.
5. The oral evidence of Mr Panting and Mr Colegate was taken under general affirmation.

### **Background, chronology and context**

6. In response to a complaint made on 16 April 2020 alleging various works at the appeal site Mr Colegate carried out what he described as the main enforcement investigation on 17 April. He made a note of what he saw and what Mr Panting told him in his notebook (which was provided in evidence) and took photographs (also provided). He did not see inside either the mobile home or the shed. In his oral evidence he described the atmosphere at the site as intimidating and Mr Panting's behaviour as both defensive in respect of some of the answers to questions put and aggressive generally.
7. Following further desk top investigations and land registry searches to establish ownership information, Mr Colegate visited the site again on 22 April to hand-deliver a letter of even date to Mr Panting. The letter required the removal of the static caravan, the pigeon shed, hardstanding area, fencing and all associated paraphernalia and the restoration of the land back to a field. A period of 21 days was allowed with a warning that the Council would consider the expediency of taking enforcement action if the breach of planning control was not remedied as required. Mr Colegate again took notes and photographs which were given in evidence.
8. Although in his oral evidence Mr Tufnell was unable to provide the date of his instruction to act for the appellant, on 1 May he began email correspondence with the Council about the site. In summary, his instructions were that the land was being used for agriculture and preparation began on a planning application for those works that required express planning permission.
9. On 15 May Mr Colegate informed Mr Tufnell that the 21-day period had expired with no action having been taken to comply with the requirements of the warning letter. A report was therefore being prepared for the next available planning committee seeking authority to take enforcement action.
10. On 19 June another Council enforcement officer carried out what was termed a compliance visit to the site. Photographs, submitted in evidence, were taken from vantage points in the public domain. The officer did not go onto the site. The officer is no longer with the Council and did not give evidence. The photographs show all the elements required to be removed still in place. They also show some sheep grazing the land and some additional structures adjacent to the pigeon shed.
11. Having been informed on 3 July that the planning committee would meet on 7 July to discuss the matter (among others), on 6 July the planning application that is the subject of Appeal B was submitted. In oral evidence Mr Tufnell

accepted that it had been rushed but he had wanted it to be before the Council so that the planning committee could take it into account when considering whether to take enforcement action.

12. Enforcement action was authorised by the planning committee and the notice that is the subject of Appeal A was issued in the terms set out in the heading above. This appeal is not the appropriate forum for the appellant's complaints about the Council's consideration of the expediency of issuing the notice to be heard and I do not do so.
13. It is perhaps worth noting that at no stage had any Council officer seen inside either the mobile home or the pigeon shed.
14. The Council considered the planning application to be not validly made since it disputed the fee that had been paid. As there was no valid application at the date when the notice was issued, the Council invoked s70C of the Act. It is not for me to offer any view as to whether it was right to do so since the Secretary of State has accepted jurisdiction in respect of the appeal against non-determination subsequently made (Appeal B).
15. The appeal against the notice was made on 6 August.
16. The next event of significance is the almost complete destruction of the pigeon shed on 26 December by the high winds associated with the named storm 'Bella'.
17. Mr Davies visited the site on 20 January 2021 on behalf of the Council, made notes and took photographs, both of which were appended to his proof of evidence. By this time what he estimated to be about 20-25% of the pigeon shed had been rebuilt on the timber base which remained. His photographs show both sheep and chickens present. Mr Panting refused to allow an internal view of the mobile home.
18. In response to pre-Inquiry notes from myself to the parties, on 12 February the Council suggested amendments to the wording of the breach of planning control and a minor variation to the requirements.
19. Finally, on the Friday before the Inquiry opened, the appellant submitted an amended block plan and amended elevations to reflect the post-storm development for which planning permission was now sought. Consequential amendments were also put forward to the use to now be made of the mobile home and thus the purpose for which it was stationed on the land.

### **Appeal A: The notice**

20. The appellant raised several queries in respect of the notice as issued. The initial contention that the notice may be a nullity was, however, not pursued.
21. As issued, the notice alleges a material change of use (to a leisure plot and the breeding of racing pigeons), operational development (the erection of the building) and engineering operations (the construction of the hardstanding). The alleged siting of a static caravan is also generally held to be a change of use of the land but the purpose for which it is alleged to have been stationed is required to be specified. I do not consider the notice is sufficiently clear about that. As far as I can tell, the notice does not state, as it should, the periods during which the alleged breaches have occurred. However, from the

chronology nothing turns on that since an appeal on ground (d) could not have succeeded in any event.

22. In response to the appellant's queries and those raised by me in pre-Inquiry correspondence, the Council invited me to amend both the breach of planning control and vary the requirements. The corrected breach alleged put forward is:

*Without planning permission, the making of a material change of use of land from agriculture to a leisure plot and the keeping of pigeons and the construction of a building/pigeon loft and the construction of a large hardstanding for the parking of vehicles on the land and the siting of a static caravan which individually and collectively facilitate that change of use.*

23. In opening the Council's case it was said that the notice relates to the material change of use to a leisure plot and the keeping of pigeons with consequential operational development (including the mobile home) which can be enforced against quoting *Kestrel Hydro*<sup>1</sup> and preceding authorities.
24. In the light of that and the use of the word 'facilitate', it seemed to me that the Council may now be alleging simply a material change of use of the land and relying on the quoted authorities to have the facilitating development removed through the requirements of the notice. I felt that such a correction could cause injustice to the appellant since the 'pick and mix' approach taken in respect of the appeal on ground (a) would be denied. As I understand paragraph 47 of the appellant's closing submissions my concern was justified.
25. However, Mr Davies confirmed that the Council's intention remained enforcement against the individual elements, namely, the material changes of use, the operational development and the engineering operations, and not simply against the whole activity as a material change of use. At paragraph 5.4 of the Council's closing submissions there is confirmation that, in its view, the 'pick and mix' approach remains available. It sees no injustice being caused to the appellant by the suggested correction.
26. Nevertheless, as stated above, the appellant indicated that a correction to the notice to an allegation of a mix of uses would be highly prejudicial to the appellant since the evidence would have been prepared on a wholly different basis. That is a contention to which I shall return having considered the grounds of appeal and the scope of any correction to the notice that is required.

### **Appeal A: the s174 appeal on ground (b)**

27. An appeal on this ground is that the matters alleged as the breach of planning control have not occurred. It would be wrong, in my view, to read into the statute that what has to be shown is limited to demonstrating that the alleged breach was not taking place at the issue date of the notice. That is not what the Act says. While that appeared to be appellant's position in opening, it was not taken forward in the closing submissions.
28. The appeal on this ground relates only to the alleged material change of use to a leisure plot and (as corrected) the keeping of pigeons. In my view, the

---

<sup>1</sup> *Kestrel Hydro v Secretary of State for Communities and Local Government* [2016] EWCA Civ 784

appellant has persistently misunderstood the nature of this ground of appeal. It does not concern the appellant's intended use of the land; it concerns the actual use of the land when complaints about that use are investigated by an appropriate officer of the Council.

29. The onus of proof rests with the appellant, on the balance of probabilities. The appellant's case rests on the written and oral evidence of Mr Panting. The Council's case relies mainly on the written and oral evidence of Mr Colegate and the photographs taken on the 19 June by the other enforcement officer. Local residents and the parish council have also provided written representations and photographs. However, none of those making written representations gave oral evidence and the appellant therefore did not have the opportunity to test that evidence.
30. Several matters are either not seriously in dispute between the parties or are matters that it is impossible for the appellant to counter. First, Mr Panting has been a racing pigeon breeder and racer of some considerable local renown. Second, he carried out this activity from his home address in the nearby market town of Newent. Third, the building/pigeon loft was formerly at the Newent address before being moved to the appeal site. Finally, up until at least November 2020, there were a considerable number of pigeons in and roosting on the building and flying around the appeal site.
31. What is in dispute is why the pigeon loft was brought to the appeal site and why the pigeons which are clearly shown in many of the photographs were still at the appeal site.
32. During his oral evidence, Mr Panting appeared to have some difficulty recalling the dates when events had happened or the detail of those events. He could not recall the dates of his employment with BT or the dates of his education at agricultural college. During his evidence-in-chief he was taken through his time at the appeal site month-by-month. His answers were quite clearly given with the benefit of a timeline to consult. Even so, some of his account was quite vague and he was unable to recall precisely when the pigeon loft building was destroyed by the storm. As this was a significant event which happened just over two months before the Inquiry and on a memorable day of the year (Boxing Day), I found this surprising.
33. It may be that Mr Panting does, in fact, have problems with his memory although that was not brought to the attention of the Inquiry. At one point I did intervene quite firmly which, on reflection, may have been insensitive in the potential circumstances. I therefore apologise to Mr Panting for that. However, the appellant's case on this ground relies almost wholly on his later recall of what was said during the visit on 17 April 2020 by Mr Colegate. As set out above, Mr Colegate took a contemporaneous note and photographs. On the balance of probabilities, it is my judgement that, in the circumstances, Mr Colegate's version of events is far more likely to be accurate.
34. It seems to me that Mr Colegate has drawn some inferences about the use of the building at the time of his visit rather than looked for himself. That said, on the appellant's own evidence, those inferences seem to have been reasonable.
35. During his evidence, Mr Colegate accepted that his note of the visit on 17 April was not a verbatim record of the discussion. He explained the intimidating

circumstances of the visit and why the note is quite short. The notebook entry records that Mr Panting advised he was erecting a pigeon loft and that the caravan was a place to have a cup of tea, etc. In the photographs taken on the day there are what was agreed to be eight pigeons visible in the doorways to the pigeon loft. None are visible flying.

36. As noted, Mr Colegate did not enter the building. He said there was no need to since Mr Panting had told him what the use was. Mr Colegate accepted that he did not ask if Mr Panting was breeding or keeping pigeons but said there was no need to as it was clear pigeons were there. Mr Panting's written evidence is that he discussed his past hobby of keeping racing pigeons with the officer when he was asked about them (emphasis added). That corroborates Mr Colegate's oral evidence that the appellant volunteered a considerable amount of information about the activity on site.
37. Mr Panting claimed to have given up racing pigeons some six years previously. He also said that he had not actively bred racing pigeons either since that time. Nevertheless, he still kept between 200 and 250 pigeons at his Newent address for what appeared to be sentimental reasons. It is quite clear to me that when the pigeon loft was relocated to the appeal site a substantial number of pigeons came with it. The precise number varied during Mr Panting's evidence and could have been anywhere between 100 and 250. He said that after he had moved to the appeal site, these pigeons were locked away and not allowed to fly. Therefore, while Mr Colegate had to accept that only eight pigeons are visible in his photographic evidence, the appellant's own evidence is that, had he looked inside the building, he would have seen many more.
38. In oral evidence Mr Panting explained that he had sold or given away most of the pigeons by October or November. That suggests that a significant number were still being kept at the appeal site when the notice was issued.
39. Reviewing all this evidence, my conclusion, on the balance of probabilities, is that pigeons were being kept at the appeal site both in the period before the notice was issued and, on balance, at the date when it was. Furthermore, as Mr Panting himself said in written evidence, this activity was his hobby and thus a leisure pursuit. Moreover, he told Mr Colegate that the caravan was stationed to provide a mess facility in association with that use.
40. For all these reasons, I consider that part of the (corrected) breach under challenge, namely a material change of use of land from agriculture to a leisure plot and the keeping of pigeons, to be correct. To that extent, the appeal on ground (b) fails.
41. However, in order to assess the remaining grounds of appeal it is necessary to review if the alleged breach of planning control as a whole does accurately describe the circumstances at the issue date.
42. I turn first to the use of the mobile home. As already noted, the purpose for which the mobile home has been stationed on the land needs to be stated. Mr Panting accepted that he stayed overnight in the mobile home on one occasion and explained why. Photographs provided by local residents indicate use of the mobile home very late into the evening. However, these post-date the issue of the notice and, notwithstanding the points put by the Council in closing, Mr Davies confirmed that the Council did not seek to allege a residential use of the mobile home in this notice.

43. Although as the appellant's case has evolved the stated reason has changed from facilitating the hobby use to supporting an agricultural use, the purpose, a mess facility, has been consistent up to the issue date of the notice. I shall therefore use the power available in s176(1) of the Act to correct the breach in those terms.
44. Next, I turn to the agricultural use of the appeal site. The appellant's written and oral evidence is that there have been poultry on the site since mid-April 2020. The numbers have varied and it seems that avian flu restrictions imposed by Defra is the explanation for why none are visible ranging free in any of the photographs. Mr Panting further explained that the purpose of the sheep, which are clearly shown in the Council's photographs of 19 June, is to keep the grass short so that when the chickens are able to range freely about the site, the eggs that have been laid will be visible.
45. I acknowledge that Mr Colegate states that Mr Panting made no mention of any agricultural use of the land at the April visit. However, as Mr Colegate did not enter the building, where Mr Panting claims the chickens would have been seen in one section of it, the Council cannot produce any evidence of its own to contradict that of the appellant.
46. The Council argues that any agricultural use of the land is *de minimis*. While a matter for him and not strictly necessary given that his evidence was sworn, the appellant produced no documentation at all such as accounts, receipts for the purchase of poultry or registration of the enterprise with the relevant regulatory authorities. The appellant explained that very few of the eggs produced have been sold, with most being given to family and friends and neighbours. He also confirmed that the enterprise was making a loss. In my view, the current activity would be best described as hobby farming but that is, nevertheless, agriculture as defined which was accepted by the Council witnesses. Mr Davies agreed that 'agriculture' should be added as part of a mixed use to the breach of planning control alleged.
47. While the appeal on ground (b) fails on the basis made, I shall nevertheless correct the alleged breach of planning control to read:

*Without planning permission, the making of a material change of use of land from agriculture to **a mixed use of agriculture and a leisure plot and the keeping of pigeons and the construction of a building/pigeon loft and the construction of a large hardstanding for the parking of vehicles on the land and the siting of a static caravan to provide a mess facility** which individually and collectively facilitate that change of use*
48. As confirmed by the Council, the corrected breach still alleges material changes of use (the mixed use and the siting of the caravan), operational development (the construction of the building/pigeon loft) and engineering operations (the construction of the hardstanding). The 'pick and mix' approach of the appellant to the ground (a) appeal remains open. A correction in those terms cannot therefore, cause injustice to the appellant, in my view.

### **Appeal A: The s174 appeal on ground (c)**

49. As with the appeal on ground (b), the onus of proof on this ground rests on the appellant. There is no dispute that the appeal site is a single planning unit and

it is an agreed matter in the Statement of Common Ground that the lawful use is agriculture.

50. The appeal on this ground is predicated on the use of the land being solely agriculture. That is unequivocally the position advanced in the appellant's closing submissions. For the reasons set out in the consideration of the ground (b) appeal, the appellant has failed to substantiate that key argument.
51. In the Addendum to my pre-Inquiry note I drew the attention of the parties to the judgement in *Lyons*<sup>2</sup>. Put simply, where, as here, a planning unit is in a mixed use of agriculture and another primary use, the rights conferred by Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) are not available. Regarding the siting of the mobile home, no authority was produced to support a contention that any use to which it might be put could be ancillary to a mixed use.
52. The appeal on this ground as put cannot therefore succeed. In the light of *Lyons* no alternative case on this ground could have been put and the correction of the alleged breach to include a mixed use cannot cause injustice to the appellant, in my view.
53. The appeal on ground (c) therefore fails.

### **Appeal A: the appeal on ground (a) and the deemed planning application**

#### *Main issues*

54. The terms of the deemed planning application are defined by the breach of planning control alleged, as corrected. It relates to the development that was persisting at the date when the notice was issued, not the development that exists when the decision is made, if different.
55. In this case, as set out in the 'Background, chronology and context' section above, circumstances on the ground now are quite different. In particular, the pigeon loft building in place when the notice was issued was destroyed and a much smaller building has been erected, albeit on the same base. Further development has taken place which is not directly referenced in the breach of planning control alleged.
56. Given the Council's confirmation that the appellant's 'pick and mix' approach to this ground of appeal was still available, I asked that the appellant to make absolutely clear in closing submissions what part(s) of the breach of planning control is/are the subject of the deemed planning application.
57. In paragraph 6 of the closing submissions it is confirmed that the ground (a) appeal is being pursued only on the basis that the smaller building now present could be permitted. This is on the basis that s177(1)(a) of the Act allows the grant of planning permission in relation to the whole or any part of the matters alleged. In its closing submissions, the Council agreed that this was a possible approach and was, indeed, why any argument that the correction to the breach alleged could cause injustice to the appellant could not succeed.
58. In the same paragraph it is also recognised by the appellant that Appeal B seeks planning permission for agricultural development and '...is therefore more

---

<sup>2</sup> *Lyons v Secretary of State for Communities and Local Government* [2010] EWHC 3652 (Admin)

appropriate means of permission being granted for the activity on site.’ This seems to me an acknowledgement that permission is being sought for a building in connection with a mixed use which the appellant does not intend to pursue. Nevertheless, the appeal on ground (a) was not withdrawn and I must determine it on the narrow basis now being pursued.

59. In the light of this, I consider the main issues to be:

- (a) The effect of the development on the character and appearance of the area including the street scene; and
- (b) Whether the development is consistent with the settlement strategy in the adopted development plan

*The effect of the development on the character and appearance of the area including the street scene*

60. The appeal site is at the junction of Kews Lane and the B4421 which runs between Newent and Ross-on-Wye. The B4222 forms a cross-road junction with these two highways and what I recorded as Stony Lane but which is shown on some maps as Wood Lane almost forms a fifth leg of the junction.
61. Prior to the development taking place, the appeal site was an open field with some trees present on ground that rises quite steeply from both the B4221 and Kews Lane. Stony Lane also rises from the B4221 with the result that the appeal site is, in my judgement, very prominent in view from many public and private vantage points and is also seen as part of the street scene or backdrop when viewed from the highway.
62. The appeal site lies within the Kilcot and Gorsley Hill Farmland character area (LCA) as defined in the Council’s supplementary planning guidance<sup>3</sup>. Kilcot is characteristic of the LCA being a very small settlement where the majority of dwellings are isolated brick-built properties along the lanes. The undeveloped field is typical in both character and appearance of the LCA exhibiting both a sense of exposure on the hillside and the rolling landform of fields, albeit small in this case, used either for grazing or crops.
63. The appeal building has been positioned at what is virtually the highest part of the appeal site. It is therefore exposed and very prominent in many views. As erected the building had the appearance of what it was; a pigeon loft. This is not a building design that would typically be found in the countryside. It is a building more usually found in an urban or semi-urban setting in association with a leisure use. Indeed, that is precisely where it was located before being moved to the appeal site.
64. The deck on which it stood is very prominent and not typical of structures within the LCA. That remains in its entirety and supports the smaller structure for which planning permission is now sought and others erected since the notice was issued and thus outside the scope of the permission now sought. The deck is therefore an integral part of the structure. I appreciate that the structure is made largely from timber but do not consider that a condition requiring it to be painted would mitigate the effect of what is an uncharacteristic and quite a ramshackle building on the landscape character and appearance. Choosing a palette that consistently blends a structure into

---

<sup>3</sup> Landscape Character Assessment: Gloucestershire and Forest of Dean: Forest of Dean Landscape Character Assessment November 2002

the landscape in all weather and light conditions and the leaf cover that changes with each season is notoriously difficult.

65. While the building and the part of it rebuilt may well be of a design which functionally serves the mixed use, it amounts to a new development which does not take account of the important landscape characteristics of the site and fails to conserve, preserve or otherwise respect them. Harm is therefore caused, as the appellant accepted should be the conclusion in such circumstances, and there is therefore conflict with policy CSP.1 of the Forest of Dean District Council Core Strategy (CS), adopted in February 2012.
66. Furthermore, the building and its supporting structure take no obvious account of or any references from local character or the local distinctiveness of building styles or materials. Whether it is visually attractive on its own terms is a matter of subjective judgement. However, my view and that of some local residents making representations is that it is not. I therefore consider that, on this main issue, the development also conflicts with policy AP4 of the Forest of Dean District Council Allocations Plan (AP) adopted in June 2018.

*Whether the development is consistent with the settlement strategy in the adopted development plan*

67. While the focus of CS policies CSP.4 and CSP.16 and AP policy AP1 may well be the distribution and location of new housing, their wording is such that they clearly apply to all new development within the Forest of Dean District. In the first instance at least, I have found, on the balance of probabilities, that the purpose of the erection of the pigeon loft was a leisure use and that this remained a part of the mixed use up to and including the date the notice was issued.
68. This is a use of land that the development plan seeks to accommodate within settlements for the reasons set out in the supporting text to the policies. Indeed, prior to the relocation of the pigeon loft, it was located within the market town of Newent. Kilcot does not have a designated settlement boundary and is therefore considered to be within the open countryside.
69. The development for which planning permission is sought is therefore contrary to the development strategy set out in the development plan policies cited above.

### *Conclusion*

70. For the reasons set out above the appeal on ground (a) does not succeed and planning permission for the application deemed to be made shall not be granted.

### **Appeal A: The s174 appeal on ground (f)**

71. An appeal on this ground is that the requirements exceed what is necessary to remedy the breach of planning control or the injury to amenity. The onus is on the appellant to suggest what less onerous or other steps may be substituted while still achieving the Council's objective in issuing the notice. This ground of appeal now relates to the requirements set out in the notice as it will be amended. The only material change made is to delete reference to the green mesh fencing in requirement (iv) as set out in the banner heading above.

72. No point is taken against requirements (i) and (iii) since these relate to the leisure use which the appellant argues either never took place at all or was transient. However, the breach as corrected now refers to the keeping of pigeons but in the amended notice put forward by the Council, requirement (i) still refers to ceasing the use of the land for the breeding of racing pigeons. This may have been an oversight on the part of the Council. Nevertheless, I believe that varying the requirement to match exactly the breach could be interpreted as widening its scope which could be argued as causing injustice to the appellant.
73. The basis for the case against the removal of the mobile home (requirement (ii)) is the failed ground (c) argument that its use as a mess room is ancillary to the use of the land which has been found to be a mixed use, not solely agriculture.
74. The case made in closing submissions against requirement (iv), the removal of the hardstanding, is not understood. On the one hand, it appears to be suggested that this has not occurred as a matter of fact when the appellant's evidence has been consistent that the area was laid out, or re-stoned, as he put it. On the other hand, it is suggested that this 'could have been associated with' the agricultural use of the site. That, again, seems to be a re-run of the failed ground (c) case that this was development permitted by Schedule 2, Part 6, Class B of the GPDO.
75. In relation to requirement (v), the demolition of the building, I have set out above why this aspect of the development carried out is contrary to the development plan. Requiring its removal is therefore necessary to achieve the Council's purpose in issuing the notice. Any variation which leaves the building in place, as suggested by the appellant, would defeat the purpose of the notice. That cannot be the outcome of an appeal on this ground since it would be tantamount to a grant of planning permission in circumstances where the appeal on ground (a) has failed.
76. The final two requirements were discussed at the Inquiry and are, in my view, open to interpretation. In particular, what is meant by 'regrade the land evenly' is uncertain in the absence of a ground levels plan. The Council accepted in evidence and the appellant confirmed in closing submissions that these two could be deleted and the notice varied by substituting the words 'restore the land to its condition before the breach took place.'
77. Although the appellant's case was put in different terms, to that limited extent only, the appeal on this ground succeeds and the requirements of the notice will be varied.

#### **Appeal A: The s174 appeal on ground (g)**

78. An appeal on this ground is that the period allowed to carry out the requirements of the notice is too short. No evidence was advanced as to why the required steps themselves should take longer than the three months allowed. Rather, the case was made that ground conditions would make it difficult to do so now and that animal welfare issues, namely the requirement for the poultry to be kept indoors during the avian flu outbreak, would prevent their movement off-site.

79. This decision will be issued as Spring begins so the three months will cover what is normally drying weather and a good time for seeding with grass. I do not therefore consider this a reason to extend the period.
80. I do, however, acknowledge that the animal welfare issue carries considerable weight and shall therefore extend the period allowed for compliance to six months.
81. The appeal on this ground therefore succeeds to that extent and the period for compliance will be varied.

### **Appeal A: Overall conclusion**

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

### **Appeal B: the s78 appeal**

#### ***Introduction and procedural matters***

83. The circumstances in which the planning application was submitted and dealt with by the Council are set out in the 'Background, chronology and context' section. The application seeks planning permission for 'works' already carried out. Those works are said to be in connection with the agricultural use of the land, not the mixed use that I have concluded through the consideration of Appeal A was taking place at the date of the application.
84. Late on the Friday before the Inquiry opened during the following week, the appellant submitted revised details. In summary, the appellant sought to revise the building for which planning permission was sought to that now on site and to expand the uses for which the caravan is sited from 'mess room' to mess room, farm office, incubation purposes and storage of feed. This was to reflect the reduced capacity of the rebuilt building to accommodate these uses. Amended elevation drawings and block plans were submitted to reflect these proposed changes.
85. Annexe M to the 'Procedural Guide: Planning Appeals-England' dated November 2020 states that the appeal process should not be used to evolve a scheme. Rather, a fresh application should be submitted to the local planning authority. In opening, the Council objected to the late revisions and I declined to accept them, in accordance with the Procedural Guide.
86. Appeal B therefore proceeded on the basis of the application as submitted to the Council. As the proposed use of the land that gives rise to the works carried out is different, this appeal can therefore be distinguished from that which was the subject of the Appeal A ground (a) appeal.
87. However, in the very brief supporting statement and in more detail in the Appeal B appeal statement, the appellant sets out his view that the mobile home is stationed for a purpose ancillary to the agricultural use and is thus not development; works to the access are *de minimis* and thus not development; the hardstanding is permitted by Schedule 2, Part 6, Class B of the GPDO; and the fence is permitted by Schedule 2, Part 2, Class A of the GPDO.

88. The correct procedure to establish whether this view is correct is to submit an application pursuant to s191 or s192 of the Act as appropriate. The appellant explained why this had not been done.
89. The appellant accepts that since no application was made for prior approval before the shed was erected, as required by Schedule 2, Part 6, Class B of the GPDO, planning permission is required for that structure. However, by the time of the Inquiry, that building had been destroyed as set out above. Being unable to have the revised scheme considered, the position therefore was that the appellant pursued an application for a building that he had no wish to construct.
90. Nevertheless, the appellant chose not to withdraw the appeal and I must therefore determine the planning application before me. As I understand it, each of the 'works' is a discrete element for which planning permission is sought. Both parties agreed that I could issue a split decision if that was the outcome of my considerations.
91. For the avoidance of doubt, I shall consider the shed/building as originally erected on the supporting platform as an integral part of the structure. The mobile home shall be considered as stationed for use as a mess room only. I shall consider the works to the access and the provision of the hardstanding as a single operation. In addition, I shall take the extent of this to be as shown on revised Drawing B Rev A dated Feb 21 as I understand it to be agreed that the submitted Drawing B is inaccurate. Finally, notwithstanding my comment above about the correct procedure, on any view I believe the fence would be regarded as permitted by Schedule 2, Part 2, Class A of the GPDO. I do not propose to consider that further.

### ***Main issue***

92. The use/proposed use of the appeal site in this appeal is agriculture. Whether the use of the land is consistent with the development plan settlement strategy is not, in my view, an issue for consideration. The main issue is, therefore, the effect of the development on the character and appearance of the area including the street scene. The character and appearance of the area has been set out in the context of the LCA in paragraphs 60 to 66 above and I do not repeat that here. Each 'works' for which planning permission is sought is considered in turn.

### ***The shed***

93. I have already considered the shed in relation to the Appeal A appeal on ground (a), although that was largely in respect of the smaller building for which deemed planning permission was sought. In this appeal the shed is as originally re-assembled on transfer from Newent. It is therefore larger than that considered in Appeal A and the impacts are correspondingly greater. There is no need to rehearse that assessment here.
94. For the reasons set out in that assessment, the shed that is the subject of Appeal B conflicts with CS policy CSP.1 and AP policy AP4.

### ***The mobile home***

95. The courts have held that where a structure, including a caravan, is placed for a purpose ancillary to the agricultural use of the land, the fact that it may be

inappropriate both in function and design for agricultural use has no bearing on whether it can nevertheless be construed not to be development by virtue of s55(2)(e) of the Act. That, however, is not a factor I can consider since the appellant has sought express planning permission for the placing of the mobile home.

96. The mobile home is a relatively large unit in context. Indeed, the appellant confirmed that it was larger than required for the initial purpose it was bought to serve (a mess room) but it was available and at a very good price. The consequence, however, is that its effect on the character and appearance of the area including the street scene is proportionate to its actual size, design and materials.
97. Although it is set lower down the slope of the appeal site, its design, size and light colour mean, in my view, that it is just as prominent in the view as the shed higher up the slope. Its presence therefore raises the same issues and, for the same reasons as set out in paragraph 64, I do not consider that painting it a different colour, as suggested by the appellant, would have any material effect on its impact in the street scene and the wider area.
98. I appreciate that caravans are seen in the countryside in association with agricultural units but they are likely to fall within the scope of s55(2)(e) as set out above. Where specific planning permission is sought, as here, their effect must be judged against the relevant development plan policies.
99. In this case, it takes no account of the important characteristics of the local environment and fails to conserve, preserve or otherwise respect them. The design is functionally appropriate for a mobile home, that is as somewhere to live, but it pays no heed to the local character of the area or the traditional styles and materials that are used in the locality for all kinds of buildings. For all these reasons, the placing of the mobile home conflicts with CS policy CSP.1 and AP policy AP4.

#### *The access/hardstanding*

100. For the avoidance of doubt, I am considering the effect of the area marked 'hardstanding (stoned)' on Drawing B Rev A Feb 21 only and not the area marked 'stoned path'.
101. The stoned area is shown on the Council's photographs as being very similar in appearance to the surface of Kews Lane which it connects to. It appears very little different to any other stoned access to an agricultural field or, for that matter, a residential property accessed from a similar category of highway.
102. The Council has not explained why it considers this element of the development applied for conflicts with the development plan, if indeed it does believe that.
103. In my view, the hardstanding is both characteristic of the area and laid out in materials that are also typically found in the locality. This element of the development carried out does not therefore conflict with CS policy CSP.1 or AP policy AP4 and planning permission shall be granted for it.

## **Conditions**

104. Several conditions were put forward and agreed in the Statement of Common Ground. I have considered these in the light of the limited development that I am granting planning permission and the advice in the Planning Practice Guidance. Where necessary, I have adjusted the wording for clarity.
105. The 'plans' condition is required to ensure the development is carried out as approved. In this case, the plans are limited to the location plan and the block plan referred to above that accurately shows the area of hardstanding.
106. The only other condition of those suggested that remains relevant is that which requires prior approval of any external lighting. In my view, this should bite on the whole site, not just the area of hardstanding, given the prominent location of the site and the close proximity of adjoining properties. The living conditions of these occupiers would be harmed by inappropriately sited and/or directed lighting.
107. Finally, it was agreed during the discussion of conditions at the Inquiry that it was necessary in the interests of preventing mud and other debris washing onto the highway that a surface water drainage condition should be imposed. Although the hardstanding has already been laid out, the Council would be able to take enforcement action if no scheme is submitted for approval or, ultimately, approved.

## **Appeal B: Conclusion**

108. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter (the access/hardstanding) and refuse to grant planning permission on the other part (the shed and the mobile home and, for completeness as planning permission is not required, the fencing). The requirements of the upheld notice that is the subject of Appeal A will cease to have effect so far as inconsistent with the permission which I will grant under Appeal B by virtue of s180 of the Act.

*Brian Cook*

Inspector

## **APPEARANCES**

### **FOR THE APPELLANT:**

Sioned Davies of counsel

She called

Peter Tufnell DipTP  
MRTPI

Principal Tufnell Town & Country Planning

Michael Panting

Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Peter Wadsley of counsel

He called

Barrie Davies BA DipTP  
MRTPI

Director, Asbri Planning Ltd

Stephen Colegate BA,  
MA, MRTPI

Principal Planning Officer, Enforcement and  
Appeals