



Appeal Decision

Site visit made on 6 April 2021

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 14 April 2021

Appeal Ref: APP/X1118/C/20/3262727

Oaklands Poultry Farm, Land on north-east side of Hillands, West Anstey, South Molton EX36 3PH

- 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 L Chappell against an enforcement notice issued by North Devon District Council.
 - The enforcement notice, numbered ENF10687, was issued on 9 October 2020.
 - The breach of planning control as alleged in the notice is the siting of concrete pads, erection of mobile poultry houses with feed silos and creation of internal tracks.
 - The requirements of the notice are:
 1. Dismantle and/or remove all concrete pads, poultry houses, feed silos and internal tracks from the land edged red on the plan attached to the notice;
 2. Dismantle and remove all other buildings and structures associated with the operation of the poultry farm (except from the building edged blue on the plan) from the land;
 3. Remove any rubbish and/or debris resulting from compliance with steps 1 and 2 from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: Appeal dismissed and notice upheld subject to correction and variation.**
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Procedural matters

1. The Council has indicated that the number of concrete pads on the site amounts to 20 and not to 10 as set out in Part 4 of the notice. The appellant's agent has confirmed the number of pads is 20. I note that neither the allegation nor the requirements of the notice specify the number of pads and there would be no injustice to the appellant in the notice being corrected in the second paragraph of Part 4, 'Reasons for Issuing the Notice', by replacing 'ten concrete pads' with '20 concrete pads', which is what I intend to do.
2. Where legal grounds of appeal are argued, such as in grounds (c) and (d), the onus of proof is on the appellant and the level of proof is on the balance of probabilities.
3. Ground (a) matters are not before me in this appeal and I am only able to consider the validly made grounds of appeal indicated in the heading above and considered below.

Appeal Site and Planning Background

4. The appeal site consists of over 26 hectares of agricultural land in open countryside some 4.2 km distant from the Exmoor National Park boundary and it is not within any protected landscape character type. A track leads from the B3227 to a brooder house which serves the poultry houses the subject of the notice. The poultry house are all of a similar appearance and are distributed within the site generally following the contours. Each poultry house is 19.5m long, 9m wide, with a ridge height of 2.9m and having a capacity for 2000 organic, free range chickens. Each poultry house has two 10m by 20m concrete pads and they can be moved between the pads for cleaning and when new batches of chickens are introduced. The chickens have access to external paddock space adjacent to the houses. Feed silos of 3.6m in height are adjacent to the poultry houses.
5. The appellant has been operating a poultry business on the appeal site for four years. The concrete pads, sheds and tracks were constructed in 2017 as the second stage of the development of the site following planning permission for a brooder house for the rearing of chicks in May 2017 (ref 62753). Retrospective permission was sought for the sheds but the five applications were dismissed on appeal on 11 May 2020¹. The Inspector expressed concerns over the effect of the development on the character and appearance of the area, particularly the layout of the sheds and the finishes used and the lack of either an ecological or habitats assessment.
6. On 29 September 2020 the appellant re-submitted five new retrospective applications each for the construction of four concrete pads to site two mobile poultry houses each (Ref 71990 and /91, /92, /93 and /94). I am advised that the applications were accompanied by a landscape report setting out details for a shelterbelt, and a habitat survey, a protected species assessment and other information regarding the impact of the development. The applications were declined to be determined by the Council under s70A as they had been received within two years of dismissed appeals and it was not considered that there had been any significant changes to the original applications that would overcome the refusals.
7. The appellant has been refused permission to apply for a judicial review of the Council's decision to decline to determine the five new applications. On 22 February 2021 Timothy Corner QC, sitting as Deputy Judge of the High Court, in refusing the application, accepted the Council's defence relating to two particular factors. Firstly, the appeal inspector did not think that landscaping could mitigate the harm to the character and appearance of the area even if the ecological concerns had been satisfied. Secondly, the Council was entitled to think that the new application was similar to the one dismissed by the inspector even though a different landscaping scheme was proposed.
8. In respect of the enforcement notice, the appellant has been prevented from appealing on ground (a) (that planning permission should be granted for what is alleged in the notice). Under the provisions of s174(2A), an appellant's ability to rely on ground (a) is withdrawn where an application has been made for the development covered in an enforcement notice, where the application was yet to be determined.

¹ APP/X1118/W/19/3227309; 3230844; 3230845; 3230846; 3230930

9. The appellant has requested the Planning Inspectorate to stay the enforcement appeal proceedings pending the JR application and in anticipation of the expected appeals against the refusal or non-determination of the five new applications being able to be considered together with the enforcement appeal. In the event, this is now an academic consideration in the light of the refusal to permit an application for a judicial review.
10. I can understand the position of the appellant, particularly in the light of what appears to have been an acceptability of the generality of the proposals by the planning officer in accepting the first phase brooder house and the inevitable need for poultry houses in the second phase. Notwithstanding the fact that the appellant 'jumped the gun' by carrying out the erection of the poultry houses, feed silos, concrete pads and tracks before seeking permission, he has subsequently sought to overcome the Inspector's dismissal reasons by re-submitting the applications with remedial measures. The appellant now finds that these applications have not been considered, and is effectively barred from re-submitting them until 11 May 2022, unless he is able to submit applications that are sufficiently dissimilar to the declined applications such that the relevant provisions of the Act do not come into play.

The appeal on ground (c)

11. The appellant's appeal on this ground is that there has not been a breach of planning control, and, or in the alternative, that the notice is defective, as it mingles items which may constitute a breach and those which do not.
12. It is argued that the broiler sheds and associated equipment are used exclusively for the keeping of livestock, they do not amount to 'development' under s55 and that planning permission is not required. It is also argued that additionally, the broiler shed and associated equipment are moveable structures that are permitted under Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO). Furthermore, the internal tracks lack the permanence to constitute development, or in the alternative are permitted at common law.
13. I note that the Council refers to these arguments being totally contrary to the appellant's case in the previous appeals in which he acknowledged that he should have not developed the site without planning permission, despite the positive response from the Council regarding his intentions. Notwithstanding this earlier position, the appellant is not prevented from pursuing different arguments on points of law in this case.
14. In the Woolley Chickens case² it was held that chicken sheds or mobile poultry units were development in the meaning of s55 and there are clearly parallels with the current appeal. The 10 pre-fabricated poultry units in that case were of comparable dimensions to those in this appeal, were not fixed to the ground and could be moved across the ground on skids. Having regard to that case, I consider that, as a matter of fact and degree, the poultry houses and associated development subject to this appeal represent buildings through their size, permanence and physical attachment to the ground, albeit that they have the capacity to be moved between the concrete pads.. They cannot be classed as 'temporary buildings and uses' as collectively and individually they have a

² R(Save Woolley Valley Action Group Ltd) v Band North East Somerset Council [2012] EWHC 2161 (Admin)

permanent visual impact on the character and appearance of the countryside landscape.

15. Although the appellant indicates that he will rely on further or other provisions of the GDPO to demonstrate that the matters alleged do not form a breach, no elaboration of his case or reference to caselaw has been provided. Nor is there any explanation of how the tracks may be permitted under common law.
16. In respect of the claim that the notice is defective, it is not unusual for an appellant to argue that an allegation may include elements that do not need planning permission under ground (c), but this does not mean that a notice is defective or a nullity.
17. The appellant has failed to show on the balance of probability that there has not been a breach of planning control, nor has it been demonstrated that the notice is defective.
18. The appeal on this ground fails.

The appeal on ground (d)

19. The appellant claims is that it is too late to take enforcement action in respect of the track that runs from the brooder house south to the bottom field which has been in situ since at least 2006 and is therefore immune from enforcement action under the four year time limit for such action.
20. Although the appellant says that this is evidenced by Google imagery, no such images have been submitted as part of the appellant's case.
21. As the onus rests with the appellant to demonstrate his case and this has not been done, the appeal on this ground fails.

The appeal on ground (f)

22. An appeal on this ground is that the steps required to be taken exceed what is necessary to remedy any breach of planning control, primarily because the reasons for the notice are undermined by the evidence submitted in support of the applications.
23. The appellant considers Step 1 to be disproportionate given the reasons for the notice as landscaping and the ecological and habitats assessment can be addressed without the need to dismantle the existing development.
24. I assume the applications referred to by the appellant are those that the Council has declined to determine in which case the material accompanying those applications has not been made available to me and does not form part of this appeal. The Inspector in the previous appeal was unequivocal regarding the significant impact of the development in the landscape and had reservations that landscaping would acceptably mitigate the harm and that the development would remain as an incongruous arrangement of buildings. However, revised landscaping and other proposed mitigation measures have not been assessed as part of this appeal (and in any event would normally have formed part of an appeal under ground (a)) and the extent of the degree of mitigation they would provide is unknown.
25. The appellant considers Step 2 to be disproportionate as implementing the requirement would effectively prevent the appellant operating any poultry

business on the land, rendering the brooder house redundant to the needs of business. It is claimed it would remove existing rights to use the land at common law and statute (including pursuant to the GDPO). It is pointed out that a poultry farm can operate on land with no permission (subject to the permitted use).

26. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
27. The requirements do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with.
28. The appeal on this ground fails.

The appeal on ground (g)

29. An appeal on this ground is that the compliance period of six months is too short and that a period of 12 months would be reasonable in order to carry out the necessary requirements.
30. The appellant refers to difficulties associated with weather and ground conditions in the winter months when the ground is soft and rainfall is high. Whilst this may be the case the appellant's views were expressed in respect of the winter of 2020/21 which has now gone by and such concerns would not necessarily apply over the next six months.
31. The appellant refers to the enterprise being on a two crop notice operating on a 77 day cycle based on a rolling programme producing 3000 birds a week to meet contractual arrangements. The site produces some 10% of the weekly regional commitment of two national retailers. Additionally, the crop cannot be sold as organic until each bird is 71 days old and therefore birds not at the end of the cycle would have to be marketed as non-organic at a lower price. The monthly value of sales to the business is £66,000.
32. In view of the nature of the business and its implied contribution to agricultural and rural sustainability, the business arguments carry some weight. Additionally Covid-19 restrictions continue to have an effect on many aspects of the economy. Although these restrictions are currently being lifted, there is no certainty as to when life will return to a degree of normality. Consequently, although it is not in the long term public interest for the development to continue without the benefit of planning permission for longer than is absolutely necessary, in view of the unique circumstances surrounding this case, a 12 month compliance period would be appropriate.
33. The appeal on this ground succeeds.

Conclusions

34. For the reasons given above I conclude that a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Decision

35. It is directed that the enforcement notice be corrected by the deletion of the words "ten concrete pads" and the substitution of the words 'twenty concrete pads' in the second paragraph of Part 4 of the notice; and varied by the deletion of the compliance period of 6 months and its replacement with 12 months in Part 5 of the notice. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector