



Appeal Decision

Site visit made on 16 August 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/A1910/C/20/3257704

Land at Berry Farm, Upper Bourne End Lane, Hemel Hempstead

- 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 Mrs Rachel Wiseman against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 17 July 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of land from agricultural to, pig breeding enterprise, with associated operational development.
- The requirements of the notice are: -
 - Step 1: Cease the use of the land for housing pigs and for undertaking a pig breeding enterprise.
 - Step 2: Permanently remove from the land, the containers, fencing, caravan, water tanks, solar panels and any other materials, infrastructure and paraphernalia associated with the unauthorised use.
 - Step 3: Restore the land to the levels and conditions prior to the breach of planning control taking place.
- The periods for compliance with the requirements are: -
 - Step 1 - 3 (three) months after the date the notice takes effect.
 - Step 2 - 4 (four) months after the date the notice takes effect.
 - Step 3 - 6 (six) months after the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Procedural Matters

1. The appellant requested that I consider an alternative use, '*a dog care use, of a doggy day care and dog grooming, with the erection of stock wire fencing to contain the dogs and retention of the three temporary containers, the non-residential caravan and the septic tanks*', instead of that described in the alleged breach of planning control through the ground (a) appeal and deemed planning application. However, section 177(1)(a) of the 1990 Act does not empower the grant of permission for a development which is not the whole or part of the alleged breach. In this case the breach relates to the material change of use of land from agricultural to pig breeding enterprise with associated operational development. As such the alternative use cited above cannot be reasonably be considered to form the whole or part of the alleged breach.
2. After the appeal was lodged the appellant has stated that she cannot continue with her appeal on ground (b) as the pigs are currently on the appeal site. As

such, I have treated the ground (b) appeal as being withdrawn and I have dealt with the appeal on this basis.

The ground (c) appeal

3. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The enforcement notice is clearly directed at a material change of use of the site. The notice is headed "material change of use" and refers to ten years, which is the appropriate time limit set out under section 171B of the 1990 Act for taking enforcement action against such development. Whilst the description of the alleged breach refers to associated operational development, it is not directed at this separately, but rather only in the context of being associated with a change of use.
4. It is well-established in case law that a notice directed at a material change of use can require the removal of all works, including operational development undertaken integral to and solely for the purposes of facilitating that change of use, even where such works would, if undertaken separately, be permitted development or not involve development. The appellant's argument under ground (c) that some of the operational development does not constitute a breach of planning control is therefore misplaced. For an appeal to succeed on ground (c), the onus is upon the appellant to demonstrate, on the balance of probability that, the alleged change of use of the site does not constitute a material change of use.
5. In 2019 a planning application¹ was submitted for the '*relocation of pig enterprise, including installation of fencing, three containers, a non-residential caravan, pig yard, water tanks, silenced generator and the installation of a septic tank, hedge planting and installation of solar panels on the container roofs*'. This application was subsequently withdrawn in 2020 and I have not been provided with any of the documentation submitted as part of that application.
6. Even though the use specified within the description of the alleged breach is '*pig breeding enterprise*' the Council have stated that the pigs are bred and kept as pets or to show rather than for the production of food and that therefore the use is not agricultural. A third party has also stated that the breed of pigs seen at the site appear to be Vietnamese Pot Bellied and Kune Kune. They go on to state that these types of pigs are generally not used for the production of food and are commonly raised as pets.
7. The appellant has indicated that at the time of the planning application, she had fifteen pigs, including eleven Kune Kune pigs, two Pennywell pigs and two commercial rescue pigs and that three of these pigs were moved onto the application site. I observed that there were five relatively large pigs within the external space on the appeal site and I was told that they were all female Kune Kune pigs. Part of one of the containers was being used to house another pig which I was informed was a male.

¹ Ref No: 19/02741/FUL

8. I also observed and was informed by both parties, at the site visit, that the septic tank and water containers have been removed, the boundary fencing replaced, the containers have been clad in timber and that there were no solar panels on the site. The pigs have 2 external areas of the site to roam/graze and these areas contained a number of small, covered areas/tunnels and items such as balls. A small touring caravan is stationed on the site but was covered with a tarpaulin and did not appear to be in use at the time of my visit. The containers appeared to be used for the storage of bedding and food for the pigs and in part as shelter for them. There was also a small number of cupboards in the units and a shower/bath in one of them. The appellant's agent stated at the site visit that the containers had been bought second hand and the cupboards and shower/bath were remnants left by the previous owner. There is no evidence before me to suggest or indicate that the containers or the appeal site are being used for residential purposes and, in any case, that does not form part of the alleged breach.
9. The definition of agriculture in section 336(1) of the 1990 Act is that "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
10. There is no dispute that pigs are kept and grazed on the land. The appellant has confirmed that some pigs are kept as pets and some have been sold for meat production. In my experience you're considered to be a pig keeper even if you keep a pig as a pet and all pig keepers have to follow the same regulations with regards to registering them with the Animal and Plant Health Agency (APHA). Moreover, I have no doubt that even pigs kept as pets or used for breeding purposes, to produce pigs to be sold as pets, would eventually be sold for food production. In addition, in my experience farmers enter some of their livestock in 'shows' as well as the animals being used for food production and breeding.
11. In any case, even if the pig breeding enterprise does not fall within the definition of agriculture it does not mean that there has been a material change of use. Whether a business or activity amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there is a change in the character of the use of the land.
12. The number of pigs kept on the land is small and the appeal site is relatively restricted in size. Nevertheless, some smallholdings that are treated as an agricultural use can also be small in size and undertaken as a hobby. The visual impact of the use is similar to that of an agricultural smallholding. There is little evidence before me to indicate that the activities, comings and goings associated with this pig breeding enterprise have materially different characteristics and impacts compared to an agricultural use.
13. Based on my observations and the evidence before me, in my judgement, the use of the appeal site as a pig breeding enterprise has not, on the balance of probability, resulted in a material change of use of the land.

14. 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 as a pig breeding enterprise and/or attacking the operational development, should they consider it expedient to do so.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
16. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

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

D. Boffin

INSPECTOR