



Appeal Decisions

Hearing Held on 13 April and 3 August 2021

Site visit made on 4 August 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal A: Ref APP/Y3615/C/19/3235847

Appeal B: Ref APP/Y3615/C/19/3235848

Land at Plot D, Land to east of Wanborough Woods, Westwood Lane, Wanborough, Guildford GU3 2JN registered at HM Land Registry under title number SY853140 and also known as Land on the west side of Westwood Lane, Wanborough, Guildford

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Mohammad Fam and Appeal B is made by Mr Joseph Fam against an enforcement notice issued by Guildford Borough Council.
 - The enforcement notice was issued on 23 July 2019.
 - 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 use for the storage of non-agricultural items.
 - The requirements of the notice are to:
 1. Cease the use of the land for non-agricultural storage purposes;
 2. Remove from the land all non-agricultural items/paraphernalia being stored on the land including but not limited to a horsebox, JCB excavator, building equipment and materials, timber, trailers and motor vehicles.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeals A and B are each dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Guildford Borough Council against Mr Mohammad Fam and Mr Joseph Fam. This application is the subject of a separate Decision.

Procedural Matters

3. On the same date as the notice in the appeal before me, the Council issued a notice in relation to the construction of a 2-storey timber building on the site. No valid appeal was made against that notice.
4. The appellants did not attend the hearing on 13 April 2021, having not given prior notice of any anticipated absence. The hearing was adjourned in the interests of fairness, and resumed on 3 August 2021. The site visit was conducted the following day, with the appellants declining permission for Mr Callender to attend on behalf of Wanborough Parish Council.

Ground (b)

5. For the appeals to succeed under this ground, the appellants must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred.
6. As this is a legal ground of appeal, the burden of proof is on the appellants (as confirmed in the case of *Nelsovil*¹) to demonstrate that any storage of items occurring on the land up to the issue of the notice on 23 July 2019 was ancillary to agricultural use.
7. The Council has highlighted that non-agricultural items/paraphernalia being stored on the land included (but were not limited to) a horsebox, JCB excavator, building equipment and materials, timber, trailers and motor vehicles.

Horsebox

8. The appellants told the hearing that the horsebox was used in connection with a horse being kept. I have seen no evidence that any horse was put to use in farming the land or turned out solely for the purpose of grazing that land (with the Council giving evidence that hay was being brought onto the land for feed). Therefore, I find that the horse was not connected with agricultural use and the horsebox was a non-agricultural item stored on the land.

JCB excavator

9. The appellants have said that the use of this equipment is “agricultural” but have not provided any substantive evidence showing how it was used or of any connection to their asserted agricultural activities involving the raising of chickens, the production of eggs and the growing of shrubs and fruit trees (even were I satisfied that such activities were being undertaken prior to the notice being issued). Therefore, I find that the JCB excavator was a non-agricultural item stored on the land.

Building equipment and materials, timber

10. The appellants say that these items remained (as a “left-over supply”) from when the 2-storey timber building on the site was erected. Evidence from the Council indicates that the structure was complete on 17 June 2019 and it is not clear for what purpose(s) the materials remained on site.
11. It is the appellants’ case that the building was put to an agricultural use, including a hatchery on the upper floor and the lower floor being used for storage for livestock equipment. However, I have seen a large amount of evidence from third parties and council officers who state they had never seen agricultural use of the land or building while under the appellants’ control. Conversely, they point to the installation of a shower and a toilet in the building and their assertions of residential use as opposed to agricultural use are supported by observations of night-time lights and apparent overnight stays.
12. Further, visiting council officers did not observe poultry (or other livestock, given that the horse was not used as such) either inside or outside the building before the notice was issued including visits undertaken on 26 February 2018, 16 April 2018, 19 July 2018, 3 October 2018, 22 November 2018, 15 February

¹ *Nelsovil v MHLG* [1962] 1 WLR 404

2019 and 17 June 2019 (when it was also noted for the first time that “six fruit trees had been planted to the front of the building, as well as some laurel hedging”). While officers on that visit observed a small free-standing aviary containing canaries (which are not livestock for the purposes of s336 of the Act) they did not observe chickens and the Parish Council has given evidence that there was no visible introduction of chickens until after the notice was issued (in a pen outside the building). Photographs submitted with the appeal form on 22 August 2019 show chickens inside what appears to be the building but they are undated and I have seen no substantive evidence that they were taken before the notice was issued on 24 July 2019.

13. In the face of a multitude of evidence from the third parties and council officers indicating the absence of agricultural use of the building and site, the appellants have provided very limited evidence demonstrating such a use (notwithstanding the burden of proof being upon them). Despite saying they ran a business commercially supplying eggs and small trees (including to at least one other business), they have provided no associated documents, accounts, records or receipts in evidence. This I find surprising were the stated use to have occurred. Taking all into account, I find on the balance of probabilities and upon the available evidence that the land and building’s use at the time the notice was issued was not agricultural. Accordingly, the various items stored on the land including those said to be left-over from the structure’s construction (including timber and building equipment and materials) were non-agricultural.

Trailers and motor vehicles

14. The officer records for the 17 June 2019 site visit note that 2 cars and a small van were upon the site (with a trailer visible in the accompanying photographs), and state it appeared that they had no connection with any agricultural use of the site and were being stored on the land. The appellants have not provided evidence to dispute this, and their confirmation at the hearing that vehicles have been removed suggests that they agree as a matter of fact that this part of the notice allegation had occurred.

Conclusion

15. For the above reasons, the appellants have not satisfied me on the balance of probabilities that the matters stated in the notice have not occurred. Therefore, Appeals A and B are dismissed and the notice is upheld.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mohammad Fam (appellant)

Joseph Fam (appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Joanna Searle, Senior Compliance Officer – Planning

Darren Gregory, Compliance Officer – Planning

Delwyn Jones, Specialist Lawyer (Planning & Regeneration)

INTERESTED PERSONS:

Stephen Callender, Vice-Chairman – Wanborough Parish Council