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## Appeal Decision

Site visit made on 14 July 2021

**by S A Hanson BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 October 2021**

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### **Appeal Ref: APP/P0119/C/20/3262533**

#### **Land Adjacent to Baugh Farm, Fouracre Crescent, Downend, Bristol**

- 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 Ms Daveene McCallion against an enforcement notice issued by South Gloucestershire Council.
  - The enforcement notice, ref COM/20/0469/UNT/2, was issued on 5 October 2020.
  - The breach of planning control as alleged in the notice is *Without planning permission, the change of use of agricultural land to a mixed use comprising: agriculture, allotments, storage (including, but not limited to, vehicles and waste materials), commercial pet exercising, residential (through the residential use of caravans or other vehicles adapted for human habitation) and leisure/amenity uses; and the creation of hardstanding to facilitate the use by the importation and the laying of crushed stone/gravel.*
  - The requirements of the notice are 1. Cease the use of the land for storage and remove all stored items (including, but not limited to, vehicles and waste materials). 2. Cease the use of the land for pet exercising. 3. Cease the residential use of the land and remove any caravans or other vehicles adapted for human habitation, and any other paraphernalia associated with the residential use. 4. Cease the leisure/amenity use of the land, and remove any paraphernalia associated with the leisure/amenity uses. 5. Remove all areas of hardstanding and remove the material from the land. 6. Restore the land to its condition before the breach took place.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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### **Decision**

1. It is directed that the enforcement notice be varied by:
  - i) *The deletion of step 2 of paragraph 5 of the notice (What you are required to do).*
2. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld.

### **Application for costs**

3. An application for costs was made by South Gloucestershire Council against Ms Daveene McCallion. This application is the subject of a separate Decision.

### **Preliminary matters**

4. Under section 55 of the 1990 Act the use of land for agriculture or forestry does not constitute development and a notice does not need to specify what

can lawfully take place on the land. Planning permission would not be required to use any land for allotments of an agricultural nature. If an allotment's use is non-agricultural, for example as a leisure plot, then permission would normally be required.

5. The development is also the subject of a separate appeal under s78 of the 1990 Act against the decision issued by the Council for application ref P20/23839/F for "change of use of land to residential use (Class C3) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) in association with Baugh Farm and retention of hardstanding area (retrospective)" which was refused by notice dated 25 February 2021. This is the subject of a separate decision under ref APP/P0119/W/21/3272294.

### **Background**

6. The appeal site comprises an angular shaped piece of land of approximately 0.36 hectares. To aid the identification of different parts of the land, the appellant's statement provided a plan which divided the site into three parcels labelled areas 1, 2 and 3. Since these have been used by both the appellant and the Council, I shall do likewise.
7. To the west, the site adjoins residential properties which, positioned on a higher level, overlook the site. To the south is the appellant's dwellinghouse Baugh Farm, a grade II listed building, and its former outbuildings (now converted to independent dwellings), and to the east, residential development. To the north of the site and bounded by mature vegetation is the A4174 ring road and adjacent pedestrian and cycle path. A public right of way runs beside the extreme southern edge of the site.
8. The land was purchased from the Council in 2016. There is no dispute between the parties that the site forms one planning unit and that its lawful use is for agriculture, being former farmland.

### **The appeal on Ground (b)**

9. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the notice have not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The appellant must demonstrate that there has not been a material change of use of the land from agricultural to a mixed use comprising agriculture, allotments, storage purposes, commercial pet exercising, residential and leisure/amenity with the laying of crushed stone/gravel to create an area of hardstanding to facilitate the use. The burden of proof falls to the appellant and the test of the evidence is on the balance of probability. The planning merits of the matter alleged do not fall to be considered.
10. The appellant's case appears to hang on the issue of the proposed use of the site for allotments. I observed at my site visit that at the north end of area 1 close to the boundaries with the residential properties on Bury Hill View, a small area had been utilised for vegetable growing. A makeshift raised bed contained some vegetable planting, but the area was mainly covered with wild vegetation. This part of the site was littered with timber pallets, pots, some of which contained plants, sacks of compost and a partially constructed timber 'polytunnel' structure.

11. Evidence provided by interested parties show that the site had been advertised for use as 40 individual private allotments available to rent. However, the appellant says that the notice and the pandemic halted the progress of the preparation of the site for the allotment use and the existence of the items such as timber pallets, pots, planters, plastic sheeting etc that are present on the site were part and parcel of the proposed allotment use. That may have been the appellant's intention, however, the appellant's agent confirms that an allotment use had not occurred at the time of the notice.
12. Photographs taken by the Council in the days prior to issuing the notice show materials and items, including Heras fencing, tarpaulin and sheeting, timber roof trusses, liquid containers, plant pots, buckets, tables, timber pallets, plastic storage boxes, items of domestic furniture such as a bath, chairs and tables and play equipment including a slide. Submissions from neighbours, which include photographs, show vehicles parked on the site, with claims of their use for overnight accommodation, and activities of a domestic/leisure nature, such groups barbequing and individuals cycling. The appellant acknowledges some barbecues/picnics have occurred along with the occasional ball game with the children, and that the residential use of vehicles, which have since been removed from the site, had occurred on "one or two occasions", but they believe that the level of activity was not to a degree that would be considered a material change of use of the land.
13. There appears to be no dispute that there was activity by commercial dog walkers who it is claimed undertook some tasks to secure the land with fencing in preparation for their activities. Although information from interested parties shows commercial vehicles at the site and states that the use was taking place over a period of 5/6 months, there is no convincing evidence to show that "walking activities" occurred. Nevertheless, I am informed that these 'works' ceased following direct communication<sup>1</sup> with the company outlining matters concerning access to the site.
14. Photographs also show the large quantity of material brought on to the site to form an area of hardstanding around the entrance to the site in area 1. I observed at my site inspection the loose stone with areas where vegetation had grown through. The creation of this area is not disputed by the appellant and it forms part of the development proposal which is subject to the s78 appeal which is also before me.
15. I also observed items that would typically be associated with a domestic garden (a slide, garden chairs, hammocks strung between trees, a sit-on toy tractor, several plants in ornamental pots) and items that would be questionable concerning their use in association with the agricultural use of the site (stacks of pallets, a bathtub, plastic sheeting, a large kerosene tank, digger buckets/scoops, builders' bags, a sofa, Heras fencing, roof trusses, rolled up domestic flooring, metal supermarket baskets, bread crates and plastic containers). Such observations serve to support the Council's contention that the site has been used for purposes not of an agricultural use and I have not seen anything to suggest that they are an unfair representation of the alleged use of the land.

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<sup>1</sup> Representations by James Weaver & Kelly Jones

16. From the evidence provided and on the balance of probability, it is clear that the development as alleged, with the exception of the commercial pet exercising, had occurred at the time the notice was issued.
17. The appeal on ground (b) succeeds to this limited extent and I shall correct the notice accordingly and vary the requirements as necessary. I am satisfied that no injustice will arise to either of the main parties in me so doing<sup>2</sup>.

### **The appeal on ground (c)**

18. For an appeal ground (c) the burden of proof is on the appellant and the relevant test of the evidence is the *balance of probabilities*. S.174(2)(c) sets out the basis for an appeal on ground (c) and states "*that those matters (if they occurred) do not constitute a breach of planning control.*" The reference to "*those matters*" is to the matters set out in the breach of planning control alleged by the notice.
19. Before considering the appeal on ground (c), it is worth setting out some background to the permissible uses. The land is agricultural and that is its sole lawful use. Agriculture encompasses horticulture and the full definition is given at s336 of the 1990 Act "*'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*". Although horticulture is not separately defined, it is generally considered to be the cultivation of an orchard or nursery, flowers, fruits, vegetables and ornamental plants.
20. It is on this basis that I concur with the Council's assessment that, as a matter of fact and degree, the use of the land at the time the enforcement notice was issued was used, at least in part, for purposes more akin to a domestic garden than that associated with a typical agricultural use. Items that have been placed on the land are not being used in connection with an agricultural use and are therefore being stored on the land. Furthermore, the domestic items and associated paraphernalia, including the evidence of the land being used for social gatherings, relaxation and play, serve to substantiate the Council's allegation that there has been a material change of use of the land.
21. Planning permission is required for the material change of use from agriculture to the mixed use identified. For these reasons, and having considered all matters raised, I conclude that the appeal under ground (c) should fail.

### **The appeal on ground (f)**

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of

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<sup>2</sup> 176(1)(a) of the 1990 Act

any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

23. The notice attacks the material change of use of the land from agriculture to a mixed use. The appellant pointed to the fact that step 2 which requires the cessation of the use of the land for pet exercising could prevent them from exercising their own dog on the land. Since the notice has been varied to remove step 2, this requires no further consideration.
24. The steps require the removal of domestic paraphernalia and items that are not used in association with the agricultural use of the land. Step 6 does no more than require the land to be restored to its condition before the breach took place. As the landowner, the appellant is in the best position to know what this was, and the requirement is perfectly valid.
25. The appellant considers the requirement regarding the removal of the hardstanding to be imprecise particularly as the ground surface is said to be close to rock in places. They suggest that a written description or plan to show the extent of the hardstanding that is required to be removed should have accompanied the notice. From what I observed on the ground, the imported stone could be seen between the vegetation growth around the entrance to the site, and it was reasonably clear as to the extent of its coverage. Furthermore, with the exchange of statements there appeared to be no disagreement between the parties regarding the application plan produced by the appellant to indicate what they considered to be the area of hardstanding. In this respect, I consider that step 5 which requires removal of areas of hardstanding is unambiguous.
26. Given my findings above, the requirements to cease any use other than the established use for agriculture and the removal of the hardstanding do no more and no less than what is necessary to remedy the breach of planning control. Furthermore, the notice does not affect the lawful use of the land and accordingly, I do not agree that it is necessary to change the requirements as suggested by the appellant. Accordingly, the ground (f) appeal fails.

### **The appeal on ground (g)**

27. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant argues that 2 months is insufficient time in which to comply with the requirement to remove the hardstanding. They say this is due to access issues, uncertainty around the location of the hardstanding and the difficulties in employing contractors to undertake the work in the current climate. An extended period of four months is requested to remove the hardstanding and restore the land. No objection is raised regarding two months for compliance with the remaining requirements relating to the material change of use of the land.
28. With most restrictions now relaxed, I see no particular difficulties in complying with the requirements of the notice and I am therefore satisfied that two months, with the Council's powers of discretion under s173A of the Act, if considered necessary, would be reasonable. The appeal on ground (g) fails.

*S A Hanson* INSPECTOR