
Appeal Decision

Site visit made on 7 December 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 January 2022

Appeal Ref: APP/J1860/C/21/3281872

Land on the east side of Pensax Road, Stockton on Teme, Stourport-on-Severn (known as Stockton Meadow) WR6 6XG

- 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 Diane Bradbury against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 13 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised material change of use of the land from agricultural to a mixed use of agricultural and for the siting of a mobile home and hot-tub for leisure/recreational purposes as approximately marked blue on the attached plan.
- The requirements of the notice are 5.1 Cease the use of the land for the siting of a mobile home and hot-tub for leisure/recreational purposes ; 5.2 Remove the mobile home and hot-tub from the land as edged red on the attached plan; 5.3 Restore the land to its original condition before the breach took place.
- The period for compliance with the requirements is 4 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part, and the notice is varied accordingly but upheld, in the terms set out in the Formal Decision below.

Preliminary Matters

1. I have taken the postcode for the appeal site in my banner heading above from the appeal form since none was stated on the enforcement notice.
2. The appellant originally made an appeal under grounds (b) and (f) but subsequently sought to change the grounds to ground (f) only. The appellant later requested to submit an appeal under ground (c) also, and this request was accepted. However, I consider that the representations made by the appellant relate to both grounds (b) and (c). I therefore treat the appeal as proceeding under grounds (b), (c) and (f). I do not consider that any prejudice would result to any party as a result of this in view of the representations made covering effectively both grounds (b) and (c) and given the overlap between these.
3. The appellant in her final comments introduced some new evidence/argument not previously referred to. The Council was therefore given an opportunity to comment upon this but no response was received.

The appeals on grounds (b) and (c)

4. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. The onus of proof rests with the appellant, the relevant test of the evidence being on the balance of probability.
5. The appellant appears to acknowledge that the siting of the hot tub occurred as a matter of fact and that it represented a material change of use. The appellant has now removed the hot tub from the site. The appellant's appeal on grounds (b) and (c) therefore relates only to the siting of a mobile home on the land.

The appeal site

6. The appeal site is a small holding of around 1 hectare used by the appellant for the breeding of llamas. An open fronted stables building is towards the southwestern boundary, with the mobile home positioned to the north of the stables and close to the western boundary.

Parties' submissions

7. The appellant contends that the mobile home is used for purposes which are ancillary/incidental to the agricultural use of the land, rather than for leisure/recreational use. The appellant's argument is then that no material change of use has therefore occurred in respect of the siting of the mobile home. The appellant refers to the leading case of *Wealden*¹ in support of her position.
8. The Council's submission is that the purposes for which the mobile home is used, as described by the appellant, should not be considered ancillary/incidental to the agricultural use of the site. The Council also submits that the mobile home is not reasonably required for a holding of the size of the appeal site on a year round basis, bearing in mind the presence of an existing stables building on site. It highlights an appeal decision² in support of its position.
9. Essentially what I must determine then is whether the use of the caravan as described by the appellant is for leisure/recreational purposes or is for purposes ancillary/incidental to the agricultural use of the land.

Whether use for leisure/recreational purposes

10. The appellant has explained that the mobile home is used by herself as an agricultural worker for shelter and also for the storage of medicines, tools and small equipment connected to the keeping and breeding of llamas.
11. To substantiate her claim that the mobile home is used for shelter, the appellant has explained the particular welfare requirements related to the breeding and rearing of llamas. The appellant outlines that llamas are induced ovulators, meaning that their breeding necessitates intensive monitoring, and that their extended gestation and variable calving periods mean that birthing dates are hard to predict, and so daily monitoring is required. The appellant submits that young cria also require regular care over their first few weeks to

¹ *Wealden DC v SSE & Day* [1988] JPL 268

² Ref: APP/M2270/C/05/2002565

ensure that they are feeding properly, and can require two hourly bottle feeding if not. The consequence of these welfare requirements is apparently that the appellant can be at the site for many hours at a time, and occasionally overnight if a llama is in labour or unwell.

12. The Council offers no detailed evidence to counter the submissions by the appellant related to the particularly intensive husbandry requirements related to llamas. Further, the claim that the mobile home is used for shelter rather than recreational/leisure use corresponds with what I saw inside the mobile home at my site visit – namely equipment and products related to the keeping of llamas, along with minimal items in connection with the use of the mobile home for shelter by the appellant.
13. As regards the appellant's submission that the mobile home is used for the storage of medicines, tools and equipment associated with the agricultural use, she explains that storage of equipment and medicines could not be appropriately accommodated within the existing stables building on site, hence use of the mobile home. The appellant clarifies that the stables building is open fronted, and so could not be appropriately secured.
14. Further, the appellant comments that since the stables is used for the llamas' shelter, medicines cannot be kept within it in case the llamas accidentally gained access to them. The timber construction of the stables building also leads the appellant to be concerned that medicines stored within the building would be at risk of spoiling, and potentially at risk from rodents also. This evidence corresponds with what I saw of the stables building and regarding the contents of the mobile home at my site visit.
15. The Council seeks to argue that the use of a mobile home for shelter/storage as described by the appellant is not 'reasonably required' in view of the size of the holding and availability of the stables building. However, the question is not whether the use of the mobile home as described is reasonably necessary, but rather whether it is in fact used for purposes ancillary/incidental to agricultural use. I find as a matter of fact and degree on the evidence before me that the appellant has demonstrated on the balance of probability that the mobile home is so used.

Whether mobile home used for ancillary/incidental agricultural purposes

16. The Council does not suggest that the use of the mobile home for a purpose ancillary/incidental to the agricultural use would represent a material change of use. Thus, it appears to acknowledge that such a use would not be development requiring planning permission as defined in section 55 of the Town and Country Planning Act 1990 as amended.
17. Rather, the Council submits that use of the mobile home for shelter by the appellant as an agricultural worker is not 'directly' ancillary to the agricultural use of the land. However, I share the appellant's view, as supported by the *Wealden* case that such a use is directly and ordinarily functionally related to the agricultural use of keeping livestock, and so represents an ancillary/incidental use. This can be contrasted with the use of the hot tub on site, which, although may have been for a therapeutic reason, does not represent a purpose in connection with agricultural use which is ordinarily found, but rather has a personal purpose connected to the appellant in particular.

18. As regards the appeal decision cited by the Council, as referred to above, I consider that this can be distinguished from the present appeal for a number of reasons. For example, the agricultural use in the earlier appeal was related to blackcurrant growing, and so the likelihood of the caravan being used for shelter in that situation is very different from the present appeal in view of the particular husbandry requirements of the llamas as outlined. Indeed, the Inspector in that decision found as a matter of fact that neither the caravan nor mobile home in question were being used in connection with agriculture.
19. The appeals on grounds (b) and (c) therefore succeed to the extent outlined above. I shall not quash the notice since it is proper that the allegation and requirements in relation to the leisure/recreational use of the hot tub remain. I shall therefore vary the notice to remove reference to the leisure/recreational use of the mobile home in the allegation, along with the related references in the requirements. I consider that I can make such variations without injustice to either party since these would be the expected consequence of the appellants' appeals on ground (b)/(c) succeeding.
20. Since the appeal has succeeded on grounds (b) and (c) insofar as sought by the appellant, the appeal on ground (f) does not fall to be considered.

Conclusion

21. For the reasons given above, I conclude that the appeals on grounds (b) and (c) succeed in part as outlined above. I shall vary the enforcement notice accordingly, prior to upholding it.

Formal Decision

22. The appeals on grounds (b) and (c) succeed in part, and it is directed that the notice is varied accordingly by:
- In paragraph 3, deletion of the wording 'mobile home and';
 - In paragraph 5.1, deletion of the wording 'mobile home and'; and
 - In paragraph 5.3, deletion of the wording 'mobile home and'.
23. Subject to these variations the enforcement notice is upheld.

V Bond

INSPECTOR