



Appeal Decision

Site visit made on 15 March 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/E0915/C/213283649

**Land north of Gateshaw Hill Farm, Field 5716,
Beck View, Cumrew, Cumbria CA8 9DG**

- 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 Martin Rigby against an enforcement notice issued by Carlisle City Council.
 - The enforcement notice, numbered SJS/20/0116 EC-EN, was issued on 1 September 2021.
 - The breach of planning control as alleged in the notice is as follows:
 - (a) Unauthorised development of a wooden lambing shed.
 - (b) Unauthorised development of shipping containers.
 - (c) Unauthorised development storage of vehicles.
 - (d) Unauthorised outbuildings and caravans.
 - The requirements of the notice are as follows:
 - (a) Remove the wooden lambing shed in its entirety.
 - (b) Remove all containers from the land.
 - (c) Remove all vehicles from the land.
 - (d) Remove all outbuildings and caravans.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on grounds (a), (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on grounds (f) and (g). Otherwise the appeal is dismissed. The enforcement notice is, therefore, upheld as varied. See formal decision below.

Background information

The appeal site and its surroundings

2. The appeal site forms part of Field No 5717 (1.66ha) at Cumrew and is approximately 14 miles south-east of Carlisle. The field lies within the open countryside and within the North Pennines Area of Outstanding Natural Beauty (NPAONB). The land is accessed via an existing field gate located to the west of the C1042, which connects Gateshaw Mill with the junction of the B6413 road leading from Newbiggin towards Cumrew.

3. The field is bounded by Cumrew Beck to the east and woodland to the north, west and south. The land surrounding the site is undulating resulting in the majority of the field, except the site entrance, being obscured from public view. The Council indicates that the field is let on a short term tenancy (agreement dated August 2020) to a shepheress from Brampton which is approximately 11km from the appeal site.

4. At the time of my visit I noted that the 83m² portal steel framed building which had been granted approval (16/0012/AGD) on 21 June 2016, had been more or less

completed. The agricultural determination had granted permission for two metal storage containers to be placed within the barn for the secure storage of agricultural equipment. These had initially been out in the open on the land but have now been placed inside the new building and are now therefore, lawful for planning purposes. The chalet-shaped wooden lambing shed has a footprint of 18.5m² and is constructed from horizontal timber cladding. It has a mono-pitch, metal, profile roof and is 3.6m in height. Approximately 50% of the floor area is lofted over. There is a small timber shed and a small metal shed on the northern boundary.

5. There was only one unauthorised vehicle still on the land, as well as a small caravan which is not the subject of the enforcement notice. In October 2020 the Council had responded to complaints regarding 2 caravans, 3 vans, 1 horse van, 2 metal storage containers (now in the new building), assorted sheds and the wooden lambing shed/chalet/workshop being on the land.

6. It had also been reported that someone was living on the site. This may have been the appellant but, at the time of my visit, the only sign of anyone living on the land relates to a small green caravan, which the shepherdess uses as overnight accommodation when the rare breed sheep are lambing.

7. A Land Registry search indicates that the appellant has been the owner of the site since 4 July 2018. A Council visit, on 14 October 2020, established that the lambing shed was fitted with a mezzanine floor, a wood-burning stove, a solar panel, a tv aerial, a sink and other domestic equipment. These items have now been removed. The appellant had explained to the Council that he had built the structure under what he thought were permitted development rights in relation to the storage of tools and to enable work to be carried out on the approved barn. At that time the appellant indicated that he had 10 ewes on the land; that he intended to breed them and that occasionally he 'stayed over' at the site, if there was a problem with the ewes.

8. On 9 November 2020 the Council wrote to the appellant requiring the removal of one caravan (leaving one for animal feed and shelter); the removal of all untaxed and un-insured vehicles and the removal of the wooden workshop/chalet all within 2 months of the date of the letter. The Council also required the removal of the metal containers within 6 months of the date of the letter. At the time of my visit the other caravan had been removed; all but one of the vehicles had been removed and, as indicated above, the metal containers had been placed within the new approved barn.

9. A retrospective planning application was made on 8 January 2021 for the '*erection of wooden lambing shed*'. The application was assessed on the basis that the land had been let on a short-term tenancy (dated August 2020) to a shepherdess from Brampton (approximately 11km from the site). It had been indicated that it was an expanding business, in which the appellant is stated to have a growing interest, involves the breeding of rare and minority breeds of sheep. The building was intended for the breeding programme; for hay and straw storage; for the adoption and hospitalization of pre-mature/infirm and rejected lambs; for medicine and specialist feeds storage and as emergency sheltering.

10. An independent land agent was commissioned by the Council to establish the agricultural need for the building. The full report is attached to the Council's appeal statement. In summary it found that there were several areas of construction which were inappropriate and unnecessary; that the building was oversized and that there was not a justifiable agricultural need for the building.

11. The agent has clarified that a licensee is required to adhere to the '*Farm Animal Welfare Council's 'five freedoms*' (hunger and thirst, discomfort, pain, injury or

disease, fear and distress). It is stated that this will normally require a keeper to ensure that there are adequate facilities to deal with lambing ewes and may result in the need to provide adequate shelter at lambing time. However, given the very small numbers involved and the relatively short period of lambing (about 3 weeks) a temporary structure such as a small poly tunnel or field shelter would be feasible or suitable as an alternative to a permanent building.

12. It is indicated that the partially constructed portal steel framed building on the land could be used to house the lambing ewes, as Paragraph D (3)(b)(ii) of the General Permitted Development Order 2015 (GPDO) gives provision for temporary accommodation in a building for animals normally kept outdoors if they are sick, giving birth or newly born, or to provide shelter against extreme weather conditions.

13. The retrospective application for the wooden lambing shed was refused on 23 March 2021 for the following reasons:

1. The application site lies within the open countryside unrelated to an existing farm steading or group of buildings. In such a location policies SP2 and EC12 of the Carlisle District Local Plan 2015-2030 require justification of the need for the building to be sited in the location specified. Whilst the land is being used for the grazing of 8 ewes no specific functional need has been identified for the building to be located on the site subject of this application particularly as the existing previously approved general purpose agricultural building on the land could be used for housing and lambing the small number of ewes kept on the land as the General Permitted Development Order 2015 (as amended) gives provision for temporary accommodation in a building for animals normally kept outdoors if they are sick, giving birth or newly born, or to provide shelter against extreme weather conditions. In such circumstances the Council does not consider that there is a functional need for the building to be in the exact location specified. The principle of the proposed lambing shed is therefore contrary to criteria 2 of policy EC12 of the CDLP and criteria 8 of policy SP2 of the CDLP.

2. The application site is located in the open countryside unrelated to an existing farm steading or group of buildings. Whilst the materials of the proposed shed (wood and profile metal sheeting above) assimilate into the sites rural setting it is clear that the size of the proposed building is larger than what is required for the alleged need and the design is not acceptable for its intended use particularly with the building having cladded internal walls and incorporating a wood burning stove and sink. The building also appears to include a significant amount of domestic paraphernalia including a retractable washing line, tv aerial and planting boxes. In such circumstances the design of the building does not add to the justification of need and remains predominantly domestic in character and does not relate visually to the agricultural setting. In such circumstances the design and scale of the building is not justified and not acceptable in this context. The scale and design of the proposal is therefore contrary to criteria 2 and 3 of policy EC12 of the CDLP which seeks to ensure that design and materials used for agricultural buildings reflect the overall character of the area. The proposal is also contrary to the objectives of the NPPF (in particular paragraphs 127 and 130).

Relevant Policy

14. The development plan is the Carlisle District Local Plan 2015-2030. Relevant Policies are: SP2(Strategic Growth and Distribution), SP6(Securing Good Design), EC12(Agricultural Buildings), IP3(Parking Provision), CC5(Surface Water Management and Sustainable Drainage Systems),

HE1(Hadrian's Wall World Heritage Site), CM5(Environmental and Amenity Protection), GI1(Landscapes), GI3(Biodiversity and Geodiversity) and GI6(Trees and Hedgerows).

15. The National Planning Policy Framework is a major material consideration, and the most relevant sections are: 2 (Achieving sustainable development); 12 (Achieving well-designed places); 15 (Conserving and enhancing the natural environment) and 16 (Conserving and enhancing the historic environment). Planning Policy Guidance is also relevant.

The appeal on ground (c)

16. To be successful on this ground it is necessary for the appellant to demonstrate that there has not been a contravention of planning control. The Council indicates that the appellant was advised that a 'prior approval' application would be necessary. No such application was made and there is no other planning approval in place for the wooden lambing shed, the other two sheds or the storage of vehicles on the land. Nor are any of these items covered by any permitted development rights. It follows that there have been several contraventions of planning control.

17. Although the appellant claims that the two shipping containers were allowed as part of the approval (16/0012/AGD) granted for the 83m² general purpose steel framed barn, this was on the basis that the storage containers were to be placed within the barn for the storage of agricultural equipment. The permission was not granted on the basis that they could be free-standing on the land and outside of the barn. It follows that these two containers did not benefit from planning permission when they were on the land and outside of the new building.

18. Thus, when the notice was issued it was evident that the above contraventions had occurred and that no permissions were in place and that there were no permitted development rights for any of the unauthorised developments. It follows that the appeal must fail on ground (c).

The appeal on ground (a)

The main issues

19. The main issues in this appeal are as follows:

- Firstly, whether or not there is an agricultural need for the lambing shed, the containers and the other items referred to in the enforcement notice and,
- Secondly, the effect of the above on the character and appearance of this part of the open countryside within the NPAONB.

Reasons

The agricultural need

20. Having considered the land agent's report it is clear that there can be no agricultural need for the wooden lambing shed. The newly approved (16/0012/AGD) and now substantially completed, steel-framed farm building is clearly sufficient to house any rare breed sheep, associated feed, hay and straw and agricultural tools. This was allowed on the basis that it did serve an agricultural purpose.

21. I agree with the Council that there can be no requirement for the wooden lambing shed, various old vehicles, outbuildings, sheds and caravans on the land, with the exception of 1 small caravan for bait, shelter and occasional overnight stays for the shepherdess. There is clearly a need for the containers for secure storage of agricultural equipment, machinery, tools and foodstuff but these had been granted permission on the basis that they were to be kept inside of the new building. On a

previous visit the tenant had informed Council Officers that they were storing classic cars but I did not note any such vehicles on site.

22. As indicated by the Council, in such a location policies SP2 and EC12 of the CDLP requires justification of the need for such building(s) to be sited in the location specified. Whilst it is accepted that the land is being used in relation to the keeping of the rare breed sheep, no specific functional need has been identified for the wooden lambing shed. This is particularly the case since the newly approved general purpose agricultural building on the land could be used for housing and lambing the small number of ewes kept on the land.

23. The GPDO gives provision for temporary accommodation in a building for animals normally kept outdoors if they are sick, giving birth or newly born, or to provide shelter against extreme weather conditions. In this case, therefore, I agree with the Council that there is no functional need for the lambing shed (or the unauthorised vehicles and the two small sheds) to be in this particular location within the NPAONB. The principle of the proposed lambing shed is, therefore, contrary to policies EC12 and SP2 of the CDLP and of the CDLP and criteria 8 of policy SP2 of the CDLP the appeal must fail on this first issue.

Effect on character and appearance

24. The NPPF attaches great importance to the design of the built environment and section 12 seeks to achieve good design. Amongst other things it seeks to ensure that developments add to the overall quality of an area; that they are visually attractive; that they are sympathetic to local character and history and that they establish or maintain a strong sense of place. The NPPF also states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

25. Policy GI1 (Landscapes) of the CDLP seeks to protect landscapes from excessive, harmful or inappropriate development. Proposals for development are assessed against the criteria presented within the Cumbria Landscape Character Guidance and Toolkit (CLCGT). This identifies the appeal land as falling within sub category 11a) foothills. The key characteristics of this landscape sub-type are set out in the CLCGT and the overall vision is to conserve and enhance the landscape by, amongst other things, ensuring that new farm buildings are integrated into the landscape by careful siting and design.

26. Having carefully noted the location of this site within the open countryside, despite the fact that there are limited views of the unauthorised developments from the road, I share the Council's concerns about the overall effect on the landscape. In my view the wooden lambing shed is an obtrusive and very poorly designed building which detracts markedly from the character and appearance of this part of the open countryside in the NPAONB. The two smaller sheds add to the overall clutter on the site and also detract from the character of the NPAONB.

27. The buildings do not integrate with any nearby existing agricultural buildings and the clumsy chalet-type design of the lambing shed certainly does not respect the local landscape character. I agree with the Council that the design and scale of the building is not justified and is not acceptable in this context. The scale and design of the proposal is contrary Policy EC12 of the CDLP which seeks to ensure that design and materials used for agricultural buildings reflect the overall character of the area. The proposal is also contrary to the objectives of the NPPF.

28. I have noted the appellant's comments on the design, size, position and need for the wooden chalet building and the contention that the traditional 'closed board'

design is essential to maintain the correct environment for sick or new-born lambs by creating protection against prevailing winds. I also note the point that 'Yorkshire boarding' might not be suitable for hospitalisation and adoption purposes due to its more open construction.

29. However, there is nothing to stop parts of the new building being lined or insulated in order to provide the correct environment for hospitalisation purposes; lambing and the preparation of supplements and medication. Water can still be harvested from rainfall adjacent to the new building and this could also be provided with solar panels. I disagree completely with the appellant that the wooden chalet is '*aesthetically in keeping in keeping with the environment*'.

30. I have also noted the comments regarding the size, position and need for the wooden chalet and the fact that the current flock size will increase. However, the new building is relatively spacious and, if there is an agricultural justification to have more space in the future, then the appellant is not precluded from seeking further permissions for agricultural buildings on the land.

31. In conclusion on this second issue I find that the wooden lambing shed, the two other small sheds, the unauthorised vehicle(s) are all contrary to policies SP2 and EC12 of the CDLP and to section 12 of the NPPF. I do not consider, therefore that planning permission should be granted for the retention of the wooden chalet building, the two small sheds or the storage of vehicles on the land. The appeal, therefore, fails on ground (a).

The appeal on ground (f)

32. Because the containers have been positioned within the new building, I consider that the requirement to '*remove all containers from the land*' is excessive. As they are now within the new building and were granted approval on that basis, they are lawful for planning purposes. I shall, therefore, amend the requirements by deleting requirement (b) as set out in the notice and the appeal on ground (f) succeeds to this limited degree.

33. However, I do not consider that the other requirements are excessive. Having identified the harm caused by the other matters enforced against, I consider that all other requirements need to be retained as drafted. Whilst accepting that some vehicles and a caravan have been removed it is necessary to ensure that the other requirements are kept in place in order that the Council retains control if any vehicles, caravans or other storage sheds are returned to the site.

The appeal on ground (g)

34. The period for compliance with the notice is 3 months and not just 1 month as initially understood by the appellant. I have also noted the Council's comments that in effect the appellant has had much longer to comply. However, on this point an appellant has a right to appeal and any compliance period will only commence on the date of the appeal decision.

35. In this case, therefore, I have considered whether or not 3 months from the date of this decision is a reasonable period for compliance with the notice. The appeal has failed on ground (a), although there has been a limited success on ground (f). Taking into account the fact that the appellant may well have to adapt the new building to make it more suitable for the keeping, hospitalisation and lambing of the ewes, I consider that a 6 month period of compliance is appropriate and necessary.

36. Again, therefore, I shall vary the notice by increasing the compliance period to 6 months in order that the appellant has more time to ensure that the new building is

suitable for purpose. It follows that the appeal also succeeds to a limited degree on ground (g).

Other matters

37. As indicated by the Council, there are no issues with regard to the impact of the unauthorised developments upon highway safety, biodiversity, drainage or archaeological assets. It is also the case that the remote location of the site means that there are no adverse impacts from the operations of this agricultural site upon the living conditions of the occupiers of any residential properties. Nevertheless, these favourable findings cannot outweigh the significant harm I have identified which is caused to the character and appearance of the NPAONB by the wooden lambing shed, the two small sheds and the unauthorised vehicle(s).

38. In reaching my decision I have taken into account all of the other representations made by the Council, the Appellant, the Cumrew Parish Council and others (in the application to retain the lambing shed). However, none of these carries sufficient weight to alter my conclusions on the main points at issue and nor is any other factor of such significance so as to change my decision.

Formal Decision

39. The appeal is allowed in part on ground (f). I direct that, in section 5 of the enforcement notice (**What you are required to do**), the notice be varied by deleting in full requirement No 5(b) *'(b) Remove all containers from the land'*.

40. The appeal is allowed in part on ground (g). I also direct that, in section 6(a) of the enforcement notice (**Time for Compliance**), the number '3' before the word *'months'* is deleted and the number '6' is inserted therefor.

41. Otherwise the appeal is dismissed, and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector