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## Appeal Decisions

Site visit made on 11 April 2022 **by B S**

**Rogers BA(Hons) DipTP MRTPI**

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

**Decision date: 17 May 2022**

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**Appeal A Ref: APP/C2708/C/21/3282812 Appeal**

**B Ref: APP/C2708/C/21/3282813 Land at**

**Buckstone Lane, Sutton-in-Craven, Keighley,**

**BD20 7BD**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Keeley Reading and Appeal B by Mr Anthony Reading against an enforcement notice issued by Craven District Council.
- The notice was issued on 18 August 2021.
- The breach of planning control as alleged in the notice is 1) Alleged breach of Planning Control No.1: Without planning permission, the material change of use of the land to the mixed use of the land for agricultural, residential and commercial purposes. This includes the siting and use of a single shipping container as a 'café/shop'.  
2) Alleged breach of Planning Control No.2: Without planning permission, the erection of a shipping container structure – through the welding together of three shipping containers – for residential purposes.  
3) Alleged breach of Planning Control No.3: Without planning permission, the erection of a stable block through the addition of an extension and 'lean to' to the existing structure on the Land.
- The requirements of the notice are: Alleged breach of planning control no.1: (a) permanently cease the trade/sale of food, drink and merchandise at the site, the provision of commercial services and any other business use of the land; (b) permanently cease the residential use of the land and remove all domestic items from the land including furniture, barbeques, trampolines, children's play equipment, solar panels, satellite dishes, gas cylinders and generators from the site, (c ) remove the café/shop shipping container from the land; (d) return the land back to open grassland.  
2) Alleged breach of planning control no.2: (a) remove the shipping container residential structure from the land; (b) return the land back to open grassland. 3) Alleged breach of planning control no. 3: (a) remove the extension and lean-to forming the stable block and return the wooden structure to its previous size of a single unit.
- The periods for compliance with the requirements are: 1) Alleged breach of planning control no.1 Step 1a) 1 week, step 1b) 4 months, step 1c) 2 months step 1d) 4 months. Alleged breach of planning control no.2: steps 2a) and 2b) 4 months: Alleged breach of planning control no.3: step 3a) 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (d) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(b), (c) & (d) of the Town and Country Planning Act 1990 as amended.

## **Decision**

1. It is directed that the enforcement notice is varied by:-

i). replacing requirement 1(a) with "Permanently cease the trade/sale of food, drink and merchandise at the site, the provision of commercial services and any other business use of the Land, with the exception of an agricultural use run as a business."; and

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ii). the deletion of requirement 3)(a).

Subject to these variations, Appeals A and B are dismissed, the enforcement notice is upheld and, in respect of Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **Application for costs**

2. An application for costs was made by the Council against the appellants. This application is the subject of a separate decision.

## **The appeals on ground (b)**

3. Ground (b) is that the breach of control alleged in the notice has not occurred as a matter of fact. It is not entirely clear as to which of the 3 alleged breaches are being challenged by the appellants.
4. Turning to alleged breach no.1, the land appears to be in mixed agricultural and commercial use and the appellants acknowledge that the shipping container structure has been used for residential purposes on occasions. It is fitted with windows and is equipped with kitchen and shower room facilities and contains furniture. There is significantly more furniture, electrical goods and other indications of residential use shown in the photographs submitted by the Council. There appears little doubt that the 'café/shop' is present on site.
5. Regarding alleged breach no.2, the shipping container structure, consisting of 3 shipping containers welded together is clearly present and appears to have been used for residential purposes, as indicated above.
6. With regard to alleged breach no.3, the original stable has clearly been extended on both sides.
7. The evidence before me leads me to conclude that the appeals on ground (b) must fail.

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

8. This ground of appeal is that there has not been a breach of planning control. Whilst s.55(2)(e) of the Act provides that the use of land for agricultural purposes shall not be taken to involve development of the land, the first allegation in this case is of a mixed use, including residential and commercial purposes, which is materially different from a solely agricultural use, and

requires planning permission. There are no permitted development rights that would permit the siting of a shipping container for café/shop use.

9. There appears to have been a shipping container in the SE corner of the land in the 2016 aerial photograph. However, the 2020 aerial photograph shows that it was moved and connected to 2 additional containers to form the alleged dwelling. Given its size, permanence and physical attachment to the ground, it clearly constitutes a building. The appellants have failed to provide any evidence as to why such a building would not require planning permission, even if the alleged residential use had been disputed.
10. The original stable block has been extended at both its east and west ends, such works comprising development that would require planning permission unless otherwise provided for. The appellants claim that such works are permitted development under the terms of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015. However, even if the land was solely in agricultural use and the original building was to be considered an agricultural building, Class B does not permit development within 5 metres of the boundary of the unit, as is the case here. Accordingly, the extensions required planning permission.
11. The appeals on ground (c) fail.

#### **The appeals on ground (d)**

12. This ground of appeal relates solely to the extensions to the stable. For this ground to succeed, the appellants need to demonstrate, on the balance of probability, that the building works were substantially completed more than 4 years prior to the date of the notice, i.e. prior to 18 August 2017.
13. The appellants have submitted a photograph annotated '2017', when they purchased the land, showing an existing flat-roofed extension to the east of the stable. However, this does not show that the extension had been substantially completed prior to the relevant day and month in 2017. The aerial photographs do not assist the appellants' case as there is no extension shown on that of June 2016 and 2 extensions shown on that of June 2018.
14. Even if the appellants had been able to demonstrate the presence of the eastern extension prior to the relevant date, it has been substantially modified by raising its height and adding a pitched roof, development that would have required planning permission.
15. The appeals on ground (c) fail.

#### **Appeal A ground (a) and the deemed application.**

16. The appeal site is located in an upland area of open countryside containing a mix of moorland and grassland. It comprises a long, narrow, grassed field of some 2.3ha with a frontage to Buckstone Lane at its southern end. At its northern end, it extends to within a few metres of Wainman's Pinnacle, a prominent Grade II Listed local landmark. The site adjoins a Site of Special Scientific Interest (SSSI) and a Special Area of Conservation (SAC). To the west of the site is a small, unmade public car park.

17. The southern end of the appeal site is fenced off and contains a variety of structures listed above in the alleged breaches of planning control. In addition, there are smaller structures such as pig sties and rabbit hutches.
18. The main issues are the impact of the development on the character and appearance of the rural landscape and on the setting of Wainman's Pinnacle.

*The rural landscape*

19. Policies ENV1 and ENV3 of the Craven Local Plan (CLP) are consistent with the National Planning Policy Framework (NPPF) in seeking to respect the landscape character of the area and to promote good design which reflects local distinctiveness.
20. Turning to the first alleged breach, use of the land for agriculture would not entail development. As such, there would appear to be no restraint on the breeding and keeping of livestock, whether native rare breeds or otherwise.

However, the deemed application here is for the use identified in the breach, which is a mixed use for agricultural, residential and commercial purposes. Policy SP4 of the CLP limits proposals for new homes in the countryside. The only applicable exception that might apply here is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. However, the appellant has provided no indication that there is an essential need to live on site and no indication that the agricultural element of the use could support an agricultural worker. Therefore, I see no underlying justification for residential use here.

21. The dwelling itself is addressed in the second alleged breach. It is formed from the welding together of 3 steel shipping containers. This is a crude, obtrusive and inappropriate form of development, whose harmful impact on the wider landscape is exacerbated by its prominent and elevated siting. The associated domestic paraphernalia amplify the adverse impact of the dwelling on this rural setting.
22. The commercial uses addressed by the notice include the use of a shipping container for the sale of goods and as a café. They also include a variety of meet and greet, animal petting and group uses which appear to rely on attracting visitors to the site and the use of the container. Such uses in this case do not appear to be incidental to the agricultural use but are significant uses in their own right. My comments above about the visual impact of the dwelling apply equally to the shipping container used as a shop/café, which is an inappropriate form of development here, in such a remote and unsustainable location.
23. Turning to alleged breach 3, the original small, timber stable has been extended at either end with matching timber structures of modest size. The Council now accepts in its "Response to Ground (a)" of December 2021 that the extensions are acceptable both in principle and in design, such that there is no undue impact on the countryside and landscape, and on heritage interests. I agree and will vary the requirements of the notice such that the extensions are not required to be removed.

24. On the first main issue, I conclude that the development in alleged breaches 1 and 2 unduly harms the character and appearance of the rural landscape, contrary to the aims of the development plan and national guidance.

*The setting of Wainman's Pinnacle*

25. The second main issue is the impact on the setting of Wainman's Pinnacle. This is a stone built tower, dating from 1898, which is both a landmark and a vantage point over an extensive area of attractive upland countryside in the South Pennines National Character Area. The pinnacle's isolation in this dramatic landscape is an essential part of its character. The presence and the complete incongruity of the 2 shipping container structures and the associated domestic paraphernalia unacceptably intrude on this isolated setting.
26. Whilst, using the NPPF's terminology, the identified harm to the significance of this heritage asset is 'less than substantial', this requires the harm to be weighed against the public benefits of the proposal. In this case, I have seen no public benefit sufficient to outweigh the demonstrable harm. The development therefore is not in accordance with the NPPF and Policy ENV3 of the CLP.
27. The appellant has pointed to the presence of other nearby non-agricultural development, including leisure uses. However, this appears to be further away from the Pinnacle and less obtrusive than the development before me. In any event, it would not justify adding further inappropriate development to this prominent position in the landscape.
28. On the second main issue, I conclude that the development in alleged breaches 1 and 2 unduly harms the setting of Wainman's Pinnacle, contrary to the aims of the development plan and national guidance.

*Other Matters*

29. The Council has raised a number of other matters. The enforcement notice incorrectly alleged that the site was in the SSSI and SAC, although it is now accepted that it adjoins these designated areas. There is little evidence before me of the possible impact of the development on the biodiversity of these areas. The Council has also raised issues of residential amenity, parking provision and highway safety, communications infrastructure, water resources and contaminated land. However, given my conclusions on the 2 main issues in this case, I do not need to examine these additional matters.
30. I conclude that the appeal on ground (a) should fail.

**Ground (f)**

31. In the appellant's case, the point is made that compliance with requirement 1(a) would prevent the lawful agricultural use of the land, if run as a business. This is, in effect, a hidden ground (f) appeal, which I agree has some substance. Accordingly, I shall vary requirement 1(a) such that the lawful use for agriculture may be carried out as a business.

## **Conclusion**

32. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice, with variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*B S Rogers*

INSPECTOR