



Appeal Decisions

Hearing Held on 24 January 2023

Site visit made on 25 January 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/N1730/C/21/3283185

Appeal B Ref: APP/N1730/C/21/3283186

Land Adjacent Five Acres, Broad Oak, Odiham, Hook, Hampshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Kim Buckland (Appeal A) and Mr Kevin Buckland (Appeal B) against an enforcement notice issued by Hart District Council.
 - The enforcement notice was issued on 7 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission:-
 1. the change of use of the Land to use for the stationing of a wooden mobile home structure, as shown in the approximate location coloured yellow on the attached plan, used for permanent residential accommodation and associated operational development to facilitate the change of use including:-
 - a. Raised decking and supporting plinth upon which the wooden mobile home structure is located;
 - b. The installation of a vortex sewage treatment plant;
 - c. Two sheds on land adjacent to the wooden mobile home structure;
 - d. Raised flower beds and a small shed to the rear of the wooden mobile home structure.
 - The requirements of the notice are:
 1. Cease the unauthorised use of the Land for the siting of the wooden mobile home structure.
 2. Remove the wooden mobile home structure from the Land.
 3. Remove from the Land the raised decking and supporting plinth upon which the wooden mobile home structure was located.
 4. Remove from the Land the vortex sewage treatment plan.
 5. Remove from the Land the two sheds that have been placed on the land adjacent to the wooden mobile home structure.
 6. Remove from the Land the raised flower beds. All resultant materials to be removed from the Land.
 7. Remove from the Land the small shed to the rear of the wooden mobile home structure.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the enforcement notice be:

- Corrected by deleting the words "Land Adjacent Five Acres Broad Oak Odiham Hook Hampshire, shown hatched in pink on the attached plan ("the Land")" under section 2 of the enforcement notice (the land to which the notice relates) and its replacement with "Broad Oak Alpaca Farm, Broad Oak Lane, Odiham, Hampshire, RG29 1AG, shown hatched in pink on the attached plan ("the Land")".
 - Corrected by deleting the words "on land" under point 1.c) of section 3 of the notice (the breach of planning control alleged).
 - Corrected by deleting the words "on the land" under point 5) of section 5 of the notice (what you are required to do).
 - Varied by deleting the words "6 months" within section 6 (time for compliance) and its replacement with "10 months".
2. Subject to these corrections and variation, the appeals are dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

3. At the Hearing, an application for costs was made by Hart District Council against Mrs Kim Buckland and Mr Kevin Buckland. This application will be the subject of a separate Decision.

Procedural matters and matters concerning the notice

4. During the Hearing I raised the question whether the site address on the notice (as stated in the banner heading above) is correct, as the appellants' appeal form and other documents refer to the site as Broad Oak Alpaca Farm, Broad Oak Lane, Odiham, Hampshire, RG29 1AG. Since both parties raised no objection, I will correct the address on the notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.
5. For Appeal A, the fee was paid on the ground (a) application, and therefore that appeal is proceeding on grounds: (a), (f) and (g). However, for Appeal B, the fee was not paid, and therefore this appeal will proceed on grounds (f) and (g) only.
6. The appellant has indicated that they are seeking planning permission for the temporary siting of a mobile home for a 3-year period, to support the essential need of an agricultural worker to live on site, through their ground a) appeal. Since this also formed part of the appellants appeal on ground (f), I have dealt with this under the ground a) appeal only, to avoid repetition.
7. Furthermore, additional matters raised by the appellants under grounds (f), stating that the enforcement notice is unclear and physically impossible to comply with are not matters for ground (f), but are actually matters relating to the validity of the notice. I shall therefore deal with these matters here. In particular, the appellants state that they raised concerns with the Council solicitors regarding the use of 'Land,' 'land' and 'LAND' used within the notice and have not received any response as to what is required to comply.

8. In relation to the use of 'LAND' under section 2 of the notice, given that this relates to a heading, this is clear and unambiguous. However, the use of 'land,' under point 1.c) of section 3 of the notice (The breach of planning control alleged) and under point 5) of section 5 of the notice (what you are required to do) is poorly worded and unnecessary. However, the additional use of the word 'land' does not render the notice unclear. For clarity, it is necessary to correct the allegation and the requirements to remove unnecessary words referring to 'land' but retaining the effect of what the Council is trying to achieve. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.

Appeal A on ground (a), the deemed planning application

Main Issues

9. The main issues are:

- 1) whether there is an essential need for a rural worker to live permanently at the site; and
- 2) the effect of the development on highway safety.

Reasons

Essential need for a rural worker

Background

10. The appeal site, excluding any areas of rental land, is approximately 2.7 acres and laid to agricultural grazing as agreed at the Hearing. There is also no dispute that the alpacas were introduced onto the appeal site in March/April of 2019. The wooden mobile home structure arrived at the site in January 2020. Following this, a retrospective planning application (ref: 20/00233/FUL) was refused for the 'change of use of land to allow the siting of a temporary rural workers dwelling' (the wooden mobile home structure) in April 2020. The current appeal seeks to overcome the reasons for refusal in that application.

Policy considerations

11. The Development Plan in place is the Hart Local Plan, 2020 (LP). Most relevant to this appeal is Policy NBE1 (Development in the Countryside Development) of the LP, which states that "development proposals within the countryside (the area outside settlement policy boundaries and designated Strategic and Locally Important Employment Sites, as defined by the Policies Map) will only be supported where they are a) meeting the proven essential need of a rural worker to live permanently at or near their place of work". As the site lies outside of any settlement boundary and any designated Strategic and Locally Important Employment Sites, the parties agreed that it is located in the countryside.
12. In support of Policy NBE1, Paragraph 224 of the LP, sets out the following criteria that will be taken into account when assessing need, which is considered below:
- whether there is a clear functional need for the person to be readily available on the site or nearby at most times;

- the worker is fully or primarily employed on the site;
 - the business is financially sound and has a clear prospect of remaining so;
 - the dwelling sought is of an appropriate size commensurate with the established functional requirement; and
 - the need cannot be met by an existing dwelling on the unit or by other existing accommodation in the area.
13. Furthermore, paragraph 80 of the National Planning Policy Framework, 2021 (Framework) states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply: a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
14. This is supported by the Planning Practice Guidance (PPG) which also sets out that the functional need as well as the degree to which there is confidence that the enterprise will be viable for the foreseeable future are both factors that may be relevant when considering whether there is an essential need for a rural worker. The PPG also states that "in the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period."
15. In that light I will now turn to the various criteria set out in Policy NBE1.
- Whether the worker is fully or primarily employed on the site and there is a clear functional need for the person to be readily available on the site or nearby at most times
16. I heard that Broad Oak Alpaca Farm has been successfully operating from the site since early 2019, with Mrs Buckland fully employed on the site, and that she and Mr Buckland have been living at the property during this time. A sight and sound argument to underpin the essential need for the rural workers dwelling was also advanced. This principally concerns the welfare needs of the alpacas.
17. At the time of the Hearing, I was told that the total number of alpacas was 28 breeding female alpacas permanently located at Broad Oak Alpaca Farm, with 5 male alpaca and 10 cria kept offsite on other land somewhere else in Bentley and Dippenhall, respectively. However, no further specific details were provided of this other land, in terms of location or distance away from appeal site.
18. I accept that alpaca breeding is not a straightforward process. Males need to be brought onto site in a controlled manner and cannot be left with females. Crias also need to be kept away once weaned which means males and crias are kept on separate parcels of land.
19. The breeding process involves mating, post mating, birthing, and nursing. Births may take place at any time and problems may occur. The process following birth is time critical with mother and cria needing careful attention. At times early intervention may be necessary.
20. However, there is nothing to support the view that there is no birthing season. Indeed, the agricultural appraisal sets out that "*Typically a birthing season for*

any farm can start as early as April and run through to August/September," which is also reflected in the letter from Westpoint Farm Vets (WV) and the fact that males are brought onto site in a controlled manner.

21. Moreover, alpacas have been on site since 2019 and no information has been provided regarding births, times, or dates. Thus, there is very little to support the view for an onsite presence throughout the year in respect of breeding.
22. Furthermore, the evidence indicates that the gestation period of an alpaca is 11.5 months plus or minus 30 days. Therefore, the controlled mating of the alpacas is likely to take place at a broadly similar time of the year as birthing. Whilst there may therefore be a seasonal requirement for a rural worker to be present on site, this would appear to be limited for a number of months of the year, during mating, birthing, and nursing.
23. In terms of the 'line of sight' I accept that alpacas, being prey animals, hide their illnesses. However, the entire herd is not permanently based at the appeal site, with fifteen alpacas, both male and cria (accounting for over one third of the herd) being predominantly grazed on other land for much of the year away from Broad Oak Alpaca Farm. As such, a considerable number of the standard man days would similarly be expected to be off-site away from the appeal site. Therefore, on the evidence currently before me, and from all that I heard, there simply cannot be an essential functional need for a rural worker to live permanently at Broad Oak Alpaca Farm to manage the herd.
24. There is also some doubt as to the size of holding and stock ratios. An unsigned letter from WV dated 25 May 2021 states that the *"the grazing paddocks at the farm are managed well with the advised stocking density of 5-7 alpacas per acre.* However, that is some 19 months old, and it is unclear how many alpacas were on the farm at that time. Indeed, the 5 to 7 alpacas for 2.7 acres of farmland would equate to 13 to 19 alpacas, well below 28 breeding females currently on the farm at the time of the Hearing. Furthermore, given that there are 28 breeding female alpacas, the total number could potentially be over 50 in a year, well in excess of the recommended stock ratios for alpacas for this farm.
25. Whilst higher densities are acceptable and normal on farms so long as supplementary feeding is provided through haylage, the letter from WV clearly goes on to state that *"where this ratio is required to be increased, then supplementary feeding, regular paddock cleaning (of faecal matter) and faecal egg counting would allow for an increase in animals per acre.* It also highlights the health concerns regarding higher numbers of animals and states when overstocked parasites can become a real issue with alpacas as they are so sensitive to worm burdens.
26. However, there is little before me demonstrating that regular paddock cleaning of faecal matter and faecal egg counting are conducted routinely. In the absence of any substantive evidence regarding this, I am not convinced the site is suitable for the number of animals currently on the land. In addition, given the age of the vet letter, it is unclear if the circumstances that applied then remain the same as today. Furthermore, only the first page of that letter has been submitted and this is unsigned I can therefore only attach limited weight to this letter.

27. The numbers of animals, and where they are kept for most of the year is different to that previously stated in the last refused application in 2020. In particular, in the previous application it was stated that there were only circa 18 alpacas and also that they would be kept at the appeal site for a maximum of 90 days per calendar year, with the animals being located elsewhere for the majority of the year.
28. As such, the other rented land for grazing appears to be important for the needs of the farms. Furthermore, the maximum of 90 days onsite per calendar year also suggests that the mating/birthing/nursing period is seasonal rather than all year round. This conflicting information about the number of animals on the farm, the needs for additional grazing land, and how the farm operates, cast doubts over the requirements, in terms of the land that is required to support the enterprise and the functional needs of the farm in terms of standard man days, both on site and off site.
29. Therefore, with concerns regarding the size of the holding and stock ratios and the need to maintain the land in good agricultural condition; differences in the way the alpacas are said to be managed now and previously, together with the lack of clear evidence of previous birthing experiences at the farm, it has not been satisfactorily demonstrated that there is a clear functional need for the person to be readily available on the site or nearby at most times.

Whether the business is financially sound and has a prospect of remaining so

30. The agricultural appraisal states that the farm generates revenue from a number of routes. Primarily, the breeding of alpacas for live sales, producing fibre, yarn, garments and rugs, external education, therapy visits and alpaca experiences, hay crop sales, logs, and alpaca compost. Furthermore, any males that remain unsold and surplus to the business will enter the national food chain, although this is expected to be on a very minimal basis.
31. The financial forecast appended to the agricultural appraisal outlines the predictions over year 1 (2020), year 2 (2021) and year 3 (2022). However, given that we are now in 2023 and that the business has been operating from the appeal site since early 2019 (approximately 4 years), it is noteworthy that no actual certified financial accounts or sales figures have been submitted as part of this appeal to demonstrate whether these forecasts and predictions are running to plan.
32. The farm is not registered at Companies House; nor are there any Council tax records, nor record of community holding number; nor precise details of where the other rented land is for the keeping alpacas. I also heard that visitors can only pay by cash.
33. The farm has been offering 'alpaca visitor experiences' in 2022, and as part of this venture received 60 visitors. Based on the stated charge per visitor, the actual revenue received from the 'alpaca experiences' is significantly lower than those referred to in the financial forecasts. Furthermore, this activity is not an agricultural activity.
34. Additionally, no substantive evidence was presented in terms of the other revenue streams mentioned above (for example, live sales of alpacas, fibres, yarn, garments, rugs, external education). As such, there is very little

evidence to demonstrate that Broad Oak Alpaca Farm is bona fide a rural enterprise, operating as trade of business.

35. I appreciate that the Covid-19 pandemic and associated lockdowns occurred during this time. However, restrictions only occurred for part of this 4 year period and does not justify the failure to provide any certified financial account information since early 2019. Planning permission is sought for a dwelling for a temporary trial period of 3 years. Nevertheless, Broad Oak Alpaca Farm has been in existence since early 2019, and the mobile home has already been on site for 3 years, which would appear to have already been a reasonable amount of time to account for the agricultural business.
36. Despite the initial financial investment, energy, and commitment from the appellant to set up this venture, there is a distinct lack of financial evidence over recent years to demonstrate that the business is financially sound and has a clear prospect of remaining so.

Whether the dwelling sought is of an appropriate size commensurate with the established functional requirement

37. I accept that the mobile home meets the needs of the appellant's family, and also that customers can come into the dwelling to use the toilet facilities and have a coffee when visiting the farm. However, I have already found that the need for the permanent dwelling on this site is questionable, and the size of the two bedroom, two bathroom dwelling (approximately 114sq.m) is excessive for the functional needs of this farm. It follows that I am not convinced that the dwelling is of an appropriate size commensurate with the functional requirements of the farm.

Whether the need can be met by an existing dwelling on the unit or by other existing accommodation in the area.

38. There are no other dwellings on the farm or buildings that could be converted to residential use. At the time of the Hearing there were 1107 properties on the market for sale at less than £280,000 (which is below the national average house price) and 277 rental properties available with rental values of up to a maximum of £1200 a month, both within a ten mile radius of the site advertised on Rightmove. Furthermore, Zoopla were advertising 944 properties for sale at under £275,000 also within a ten mile radius of the site.
39. Whilst the majority of these are not within line of sight of site, I have already found that it has not been demonstrated that there is an essential functional need for a dwelling on this site, and there are a large number of dwellings available in nearby settlements, including Broad Oak and Odiham, which could be explored by the appellant.

Other considerations

40. In support of the appeal a number of other planning permissions and appeal decisions¹ have been referenced. However, those decisions have not been

¹ Appeal references: APP/P/1133/A/12/2188539; APP/Y3940/A/13/2200283; 2068527; 2115187; 2075800; 2080523; 2083511; 2123085; 2128486; 2103514; 2121583; APP/C3430/C/13/2209280; APP/P3040/A/12/2175713; APP/G1630/A/13/21956954 APP/T3725/A/07/20549715; APP/P2114/A/09/21167786.

provided, and therefore, I cannot be certain that the circumstances which led to those approvals in various locations across the country are this appeal. With regard to the approval by South Downs National Park Authority at Broadlands Meadow in Petersfield from the limited information provided, that related to a dwelling of only 51sq.m in area, which is significantly smaller than the current appeal development (approximately 114 sq.m). As such, that scheme is not comparable and does not lend support for the current appeal development.

41. I acknowledge that there are circumstances where farming and the welfare of animals can require a functional need for a rural worker to be living on or near the site. However, each case must be decided upon its own merits and particular set of circumstances. For the reasons outlined above, this has not been demonstrated on this occasion.

Conclusion on whether there is an essential need for a rural worker to live permanently at the site

42. Whilst there is support in the Framework for a prosperous rural economy, such development should be sensitive to its surroundings. Therefore, having regard to the functional requirements of the business and the financial aspects, an essential need for a rural worker to live permanently at the site has not been demonstrated. Consequently, the development is contrary to Policy NBE1 of the LP, which seeks the aforementioned aims.

Highway safety

43. With regard to the width of the highway outside the site, during my site inspection, I observed that Broad Oak Lane has a clear white painted line along the centre of the road with sufficient space for two vehicles to pass.
44. However, when vehicles enter or exit the appeal site, owing to the limited set back of the existing vehicular gates from the carriageway, there is the potential that larger vehicles or those towing a trailer may obstruct the carriageway, resulting in safety concerns for any oncoming vehicles.
45. These concerns could be overcome by a condition requiring the details of new access gates, which are sufficiently set back from the carriageway, to be submitted and approved in writing. Given the site layout I am satisfied that a scheme could be agreed, which would ensure that the highway would remain clear and unobstructed at all times.
46. Therefore, subject to that condition, the development would not have a harmful effect on highway safety. In this respect the development would comply with Policy INF3 of the LP, which states that development proposals will be supported that: provide safe, suitable, and convenient access for all potential users; and do not have a severe impact on the operation, safety, or accessibility of the local or strategic highway networks.

Other matters

47. I have considered the effect of the development on the setting of the Basingstoke Canal Conservation Area (CA). However, in light of the separation distances from the CA, and the single storey nature of the development, I find no harm in this respect.

Overall conclusions and planning balance

48. Planning permission is sought for a dwelling for a temporary trial period of 3 years. However, Broad Oak Alpaca Farm has been in existence since early 2019, and the mobile home has already been on site for 3 years, which is reasonable amount of time to account for the agricultural business and to demonstrate a functional need for the accommodation. The development is located in the countryside and is contrary to the development plan and no material considerations indicate that planning permission should be granted. The appeal on ground (a) must therefore fail and the application for permission deemed to have been made will be refused.
49. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. Furthermore, the appellant and her partner, moved from a property, and I am not persuaded on the evidence before me that similar accommodation could not be returned to. Subject to consideration of ground (g), the interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the countryside.

Appeals A and B on ground (f)

50. The appeals on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
51. The enforcement notice requires the unauthorised use of the mobile home structure to cease and the removal of the associated operational development. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
52. I have already dealt with concerns regarding the validity of the notice, and subject to minor corrections, I am satisfied that the notice is clear and unambiguous. I have also considered the planning merits of granting planning permission for a temporary period under the appeal on ground (a). In light of my findings, it is not excessive to require the residential use to cease and to remove the mobile home and associated operational development.
53. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
54. On this basis, the ground (f) appeals fail.

Appeals A and B on ground (g)

55. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellants ask that the time for compliance is extended from 6 months to 12 to 18 months. In particular, the

appellants state that the alpacas require an onsite presence for care, and if they are required to move away, they will be forced to sell the alpacas, and that this will take time to limit any economic loss and ensure the animals are not harmed. They also state that there may be Covid-19 lockdowns to consider.

56. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements, and since the appeal was lodged, we are now in a different situation with the pandemic, with the removal of lockdowns and social distancing restrictions. I have found under the ground a) appeal that it has not been satisfactorily demonstrated that there is an essential functional need for a dwelling on this site and the requirements of the notice do not require the herd of alpacas to be sold. As such, the 12 to 18 months requested to comply with the notice is disproportionately excessive and would perpetuate the breach of planning control.
57. However, I have already noted that my decision will involve an interference with their human rights. 10 months would strike a more reasonable and proportionate balance and would provide additional time for the appellants to find alternative accommodation and carry out the necessary remedial works. Furthermore, 10 months would also coincide with winter months and outside of any birthing and nursing period for alpacas when they are more likely to require more care. I shall therefore extend the period from 6 to 10 months for compliance with the notice.
58. To this extent, the ground (g) appeals succeed, and I will vary the notice accordingly.

Conclusions

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

R Satheesan

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Tony White, White Planning

FOR THE LOCAL PLANNING AUTHORITY:

Maxine Lewis, Planning & Enforcement Team Leader, Hart District Council
Sharon Whittaker, Planning Enforcement Officer, Hart District Council

FOR THE HIGHWAY AUTHORITY:

Ray Alborough, Senior Agreement and Planning Officer, Hampshire County Council

INTERESTED PERSONS:

Rowina Coleman	Neighbouring resident
Helen Flemming	Neighbouring resident
David Kirkpatrick	Neighbouring resident
Richard Coleman	Neighbouring resident
Will Mouger	Neighbouring resident
Elaine Alderton	Neighbouring resident

Documents submitted during the Hearing

1. Policy INF3 (Transport) of the Hart Local Plan, 2020.
2. Email from Pam Verdon, Chair of the Planning Committee, Odiham Parish Council dated 19 January 2023.