



Appeal Decisions

Site visit made on 10 January 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Appeal A Ref: APP/P2935/C/22/3297343

Land at Williams Farm, Kiln Pit Hill, Consett, Northumberland, DH8 9SB

- 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 1990 Act as amended).
- The appeal is made by Ms Nicola Minett against an enforcement notice issued by Northumberland County Council.
- The notice was issued on 21 March 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from agricultural for the stationing of 2 caravans including a structure linking the caravans for residential purpose as shown in the approximate position and outlined in red on the attached plan.
- The requirements of the notice are to: (i) Cease the use of the Land for residential purposes; (ii) Remove the 2 caravans including the structure linking the caravans (outlined in red on the attached plan) from the Land; and (iii) Restore the Land to its condition before the breach took place.
- The periods for compliance with the requirements are: (i) 52 weeks for step 5(i); (ii) 52 weeks for step 5(ii); and (iii) 56 weeks for step 5(ii).
- The appeal is proceeding on the ground set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/P2935/C/22/3297344

Land at Williams Farm, Kiln Pit Hill, Consett, Northumberland, DH8 9SB

- 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 1990 Act as amended).
- The appeal is made by Ms Nicola Minett against an enforcement notice issued by Northumberland County Council.
- The notice was issued on 21 March 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a building used to house parrots and other animals, as shown in the approximate position and outlined in blue on the attached plan; the erection of a corrugated steel barn, as shown in the approximate position and outlined in green on the attached plan; the erection of 2 timber structures to accommodate birds as shown in the approximate position and outlined in yellow on the attached plan; and the construction of an area of hardstanding as shown in the approximate position and outlined in purple on the attached plan.
- The requirements of the notice are to: (i) Remove the building (outlined in blue on the attached plan) from the Land; (ii) Remove the 2 timber structures (outlined in yellow on the attached plan) from the Land; (iii) Remove the corrugated steel barn (outlined in green on the attached plan) from the Land; (iv) Remove the area of hardstanding (outlined in purple on the attached plan) from the Land; and (v) Restore the Land to its condition before the breach took place.
- The periods for compliance with the requirements are: (5i) 24 weeks for step 5(i); (5ii) 24 weeks for step 5(ii); (5iii) 12 weeks for step 5(iii); (5iv) 12 weeks for step 5(iv); and (5v) 16 weeks for step 5(v).
- The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary Decision Appeal A: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Summary Decision Appeal B: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Joint Procedural Matters

1. Whilst Appeals A and B relate to separate enforcement notices, different buildings/structures in different uses and are proceeding on different grounds, they concern the same 'Land' and the same Appellant. Therefore, to avoid duplication, I have dealt with them together in one decision letter.
2. At the time of my site visit, full access into the buildings/structures housing the birds was restricted due to bird flu. Nevertheless, I am satisfied that I was able to view all parts of the land I needed to in order to determine the appeals.
3. Representations have been submitted by an interested party highlighting alleged consistent and continuing unregulated activity on the site for several years and referencing other planning appeals on the wider Schoolhouse site. Nonetheless, of themselves, these are not matters for my consideration in determining the appeals before me on the grounds pleaded.

Appeal A: APP/P2935/C/22/3297343

Procedural Matters

4. At sub-paragraph 3.1.1 of the Enforcement Notice (the notice) the alleged breach of planning control is stated as 'the material change of use of the Land from agricultural for the stationing of 2 caravans including a structure linking the caravans for residential purpose'. However, at sub-paragraph 4.1, the period within which the alleged breach of control is said to have occurred is 4 years. Under section 171B(2) of the 1990 Act as amended, the only material change of use to which a time limit of 4 years applies is the change of use of any building to use as a single dwellinghouse. By definition, a caravan is not a building, so section 171B(2) cannot apply to the stationing of a caravan(s) and this alleged breach. The breach of planning control alleged therefore falls within the description of any other breach of planning control set out in section 171B(3) of the 1990 Act as amended, in relation to which no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Consequently, the notice as drafted is invalid.
5. The power under section 176(1)(a) of the 1990 Act as amended provides that a notice may be corrected provided that no injustice would be caused by doing so. The correction of the notice would change the time limit from 4 to 10 years. The Appellant's case is based upon demonstrating the stationing of the caravans and their continuous residential use since December 2017, a period of a little over 4 years prior to the notice being issued. Given my findings below that, on the balance of probabilities, the Appellant has not shown the caravans' continuous residential use since that time, it logically follows that the Appellant cannot demonstrate their continuous residential use for 10 years prior to the notice being issued. On this basis, I am satisfied that no injustice would be caused by correcting the notice in the above respect.

6. With regard to paragraph 3 and the description of the matters which appear to constitute the breach of planning control, in precise terms, the 'linking structure' is not part of the 2 caravans and, as such, is not stationed on the land. In the interests of clarity, I will therefore correct the notice at sub-paragraphs 3.1.1 and 5(ii) by deleting the word 'including' and substituting it with the word 'plus' to separate out the 2 caravans from the linking structure.
7. At paragraph 5 the notice includes three requirements and at paragraph 6 includes three times for compliance. However, there is an ambiguity in relation to the times for compliance, with sub-paragraphs 6(ii) and 6(iii) both referencing 'step 5(ii)'. This matter has not been raised by the Appellant. I am satisfied that it is merely an error on the Council's part and that the time for compliance 6(iii) is meant to relate to 'step 5(iii)'. Therefore, I will correct the notice with the third time for compliance referencing 'step 5(iii)'.
8. Having regard to section 176(1)(a) of the 1990 Act as amended, I am satisfied that no injustice would be caused by correcting the notice in the above respects.

The appeal on ground (d)

9. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. On this ground of appeal the onus is on the Appellant to make out their case to the standard of the balance of probabilities.
10. In this context and having regard to the corrections set out above, I consider the main issue to be, whether the Appellant has demonstrated on the balance of probabilities that the 2 caravans enforced against have been stationed on the Land and continuously used for residential purposes for more than 10 years before the date of the issue of the notice, i.e., more than 10 years before 21 March 2022, so as to be immune from enforcement.
11. The Appellant contends that the 2 static caravans plus the linking structure have been stationed on the land since December 2017 and continuously occupied thereafter. With reference to the time limit stated by the Council in the notice, the Appellant declares that, as this period exceeds 4 years, the development is immune from enforcement action.
12. Documents submitted in support of the Appellant's case include an 'applicant statement' by Mr Addison confirming that the 2 caravans were put on the site in December 2017; that they were then immediately occupied; and that they have been occupied continuously ever since¹. This is corroborated by a written invoice for the sale of two static caravans in December 2017² and several signed and dated letters from suppliers of materials, services and/or livestock to the farm which state that Mr Addison and family have been living in the caravan(s) since 2017³. Also submitted are a business plan for Williams Farm⁴; a receipt for payment of council tax at the caravan at Williams Farm for the

¹ Applicant Statement, William Addison, dated 15 December 2021.

² Carruthers Leisure, sale of caravans, dated 11 December 2017.

³ Stanley Burn Reclamation, dated 7 April 2022; R Todd, dated 6 April 2022; Corkhills Industrial Services, dated April 2022; Ravenside Farm, dated 5 April 2022; B A Autos, dated 4 April 2022; Billy Telford – sale of tractor, dated 10 January 2018; and AHDB forms for movement of pigs dated 20 April 2019, 03 June 2019, 24 January 2021 and 4 August 2021.

⁴ Dated 16 November 2020.

billing year 2019⁵; and a letter from Healey Parish Council dated 14 May 2020, regarding application ref: 20/01116/FUL which refers to the caravans having been 'in situ without consent for nearly two years'.

13. However, the evidence and declarations, particularly the caravans' continuous use for residential purposes, are directly contradicted by the Council's evidence. This includes an email from the Appellant on 17 December 2018, confirming that 'nobody is living there' and that the caravans were only used occasionally when they had been working late. Also, the response to a Planning Contravention Notice, dated 15 April 2020, which states that the 2 No. caravans and canopy roof between them had been sited on the land in approximately 'January 2020', that the caravans were used for 'welfare changing and security for farm worker' and that there was 'no residential use'⁶. Also, a record of a meeting on site on 21 July 2021 where Mr Addison advised that he did not live in the caravans on site.
14. No comments and/or information have been provided by the Appellant which explains these substantial discrepancies between the parties' evidence.
15. Taking the above into account, it is feasible that the 2 caravans were purchased in December 2017 and, with the linking structure, were positioned on site at some point between then and mid-2018. Moreover, from my observations on site, it appeared that they are currently being used for residential purposes, as opposed to welfare changing and security for farm workers.
16. Nonetheless, the limited corroborative evidence provided as part of the appeal, which is fundamentally inconsistent with previous responses to enquiries by the Council, does not adequately confirm when the caravans' stationing and use for residential purposes commenced. Moreover, even if I accepted that the stationing and use started in December 2017, which, from the evidence available to me, I do not, the Appellant's case does not adequately show that the use has been continuous since that time.
17. The Appellant's inability to demonstrate 4 years of the caravans' stationing and continuous use before the date of the issue of the notice, clearly means that they cannot show their stationing and continuous use for 10 years before the date of the issue of the notice.
18. I note the comments made by Mr Addison regarding the farm business and the need for him to be on site 24 hours a day to manage the livestock, some of which is of high value, as well as the lack of reasonably priced properties in the area. However, the planning merits of the stationing of the caravans and their use for residential purposes may only be considered pursuant to ground (a), where that is pleaded and the fee has been paid. That is not the case in this instance and these matters are not within the remit of my considerations in the context of an appeal on ground (d).
19. I therefore find that the Appellant has not demonstrated on the balance of probabilities that the 2 caravans enforced against have been stationed on the Land and continuously used for residential purposes for more than 10 years

⁵ Payment on 25 February 2020 for billing year 2019.

⁶ ASP and Associates – Response to PCN dated 15 April 2020. The PCN was stated on the certificate of service to be dated 28 February 2010 and dated 28 February 2019, but hand written signed and dated on the certificate of service 28 February 2020.

before the date of the issue of the notice, i.e., more than 10 years before 21 March 2022, so as to be immune from enforcement.

20. Accordingly, the appeal on ground (d) fails.

Appeal B: APP/P2935/C/22/3297344

Procedural Matters

21. In its statement, the Council declares that it has now changed its view regarding the 'area of hardstanding' shown outlined in purple on the plan. It now considers that it benefits from Permitted Development Rights as per The Town and Country Planning (General Permitted Development) (England) Order 2015⁷ (the GPDO). From the evidence before me, I have no reason to disagree. Therefore, I will correct the Enforcement Notice (the notice) and remove the following in their entirety: the breach of planning control alleged at sub-paragraph 3.1.4; the requirement at sub-paragraph 5(iv); and the time for compliance at sub-paragraph 6(5iv).

22. Having regard to section 176(1)(a) of the 1990 Act as amended, I am satisfied that no injustice would be caused by correcting the notice in the above respects.

The appeal on ground (c)

23. The appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. On this ground of appeal the onus is on the Appellant to make out their case to the standard of the balance of probabilities.

24. Bearing in mind the corrections to the notice set out above, the alleged breach incorporates the erection of: a building used to house parrots and other animals (outlined in blue on the plan); a corrugated steel barn (outlined in green on the plan), and 2 No. timber structures to accommodate birds (outlined in yellow on the plan).

25. In respect of the building outlined in blue on the plan and the 2 No. timber structures outlined in yellow on the plan, the Appellant asserts that they do not require planning permission as they are not defined as 'buildings'. The Appellant states that the structures are temporary in nature; have no formal foundations; and do not have services connected to them. Furthermore, that the structures are used to accommodate animals on the farm, therefore a change of use of the land has not occurred.

26. The Council does not contest that there has been a material change in use of the land and the alleged breach is set out within the notice as being that the building/structures were erected without planning permission.

27. On site, I noted that the building outlined in blue on the plan is a single storey metal and/or timber framed, corrugated metal clad construction, with a corrugated metal mono-pitch roof; and the structures outlined in yellow on the plan are low, single storey timber framed, timber clad constructions, with mono-pitch corrugated metal roofs. The construction, design and appearance of

⁷ Schedule 2 (Permitted Development Rights), Part 6 (Agriculture and forestry), Class B (agricultural development on units of less than 5 hectares) B. (The carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of) — (e) the provision of a hard surface.

all of these building/structures could reasonably be stated to be 'informal' rather than formally prefabricated.

28. The three primary factors identified in caselaw as being decisive as to what is a 'building' are size, permanence and physical attachment⁸. None of these factors are necessarily decisive, and greater weight may be given to one over the others in reaching a conclusion.
29. The size of the building/structures is fairly modest. On this basis, and notwithstanding their 'informal' nature, I acknowledge that they could have been brought to the site partially completed, rather than having to be constructed on site. Additionally, from what I could see, whilst there is an area of concrete hardstanding with metal wire enclosures adjoining the building outlined in blue on the plan, there was no evidence that it, or the other structures outlined in yellow on the plan, were mounted on any permanent base or formal foundations. They instead appeared to be fixed onto an informal base and/or resting in place by their own weight. Nor were they formally connected to any utilities/services such as water or electricity.
30. However, the Council contends that the building/structures have already been in place for at least two years, which has not been disputed by the Appellant. More importantly, following being placed and/or constructed on site, it does not appear that they have been moved or indeed are capable of being easily moved. Furthermore, whilst I acknowledge that 'permanence' does not necessarily connote that the state of affairs is to continue forever or indefinitely, given the goals and objectives of Mr Addison in relation to the farm as outlined in the submitted business plan, it would be reasonable to conclude that it is intended that the building/structures would be permanently in one place.
31. Consequently, although the building/structures identified in the notice do not conclusively display the factors of size and physical attachment, I consider that they display a level of permanence which, in this instance, carries substantial weight and is decisive in determining that they are 'buildings'.
32. Additionally, the Council states that the land owned by the Appellant measures under 5 acres, which has not been challenged by the Appellant. Therefore, having regard to Schedule 2, Part 6, Class B within the GPDO, the buildings would not benefit from permitted development.
33. With regard to the corrugated steel barn outlined in green on the plan, the Appellant submits that the Council confirmed in 2015 that it constituted permitted development as set out in Schedule 2, Part 6, Class A of the GPDO and, as such, did not require prior approval⁹.
34. Nonetheless, I am mindful that section 174(2)(c) of the 1990 Act as amended is worded in the present tense, namely, 'that those matters (if they occurred) do not constitute a breach of planning control'. The decision relating to the steel barn is dated 19 August 2015, prior to the Appellant purchasing the land upon which the steel barn is sited in 2017 and before the barn was erected on the land at some point after its frame was made ready for collection in early 2021¹⁰.

⁸ *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.

⁹ Application Ref: 15/02339/AGRGDO, Prior notification for proposed agricultural shed, dated 19 August 2015.

¹⁰ Corkhills Industrial Services, letter dated April 2022.

35. Given that the land purchased and now owned by the Appellant measures under 5 acres, the erection of a steel barn on the land, of the dimensions stated in the application, at any time after 2017, requires to be assessed under Schedule 2, Part 6, Class B within the GPDO. On this basis, the steel barn erected at some point after early 2021, did not constitute permitted development at the time the notice was issued on 21 March 2022 and required prior approval.
36. Moreover, even if this was not the case, the permission required that the works be carried out within five years of the date of the notice. Whilst I acknowledge the delay in the fabrication of the frame due to the Covid 19 pandemic, it remains that, from the evidence presented, the steel barn was constructed after the decision expired on 19 August 2020.
37. Having regard to the above, I therefore conclude that, on the balance of probabilities, the matters stated in the notice do constitute a breach of planning control.
38. Accordingly, the appeal on ground (c) fails.

Conclusion Appeal A:

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Conclusion Appeal B:

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision Appeal A:

41. It is directed that the enforcement notice is corrected by:
- in sub-paragraph 4.1, the deletion of the word 'four' and the substitution of the word 'ten'.
 - in sub-paragraphs 3.1.1 and 5(ii), the deletion of the word 'including' and the substitution of the word 'plus'.
 - in sub-paragraph 6(iii), the deletion of the word, number and numeral 'step 5(ii)' and the substitution of the word, number and numeral 'step 5(iii)'.
42. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Formal Decision Appeal B:

43. It is directed that the enforcement notice is corrected by:
- the deletion of sub-paragraphs 3.1.4, 5(iv) and 6(5iv) in their entirety.
44. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

F Cullen INSPECTOR