



Appeal Decision

Site visit made on 18 October 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 20 October 2023

Appeal Ref: APP/W0530/C/22/3302723

Land off Whines Lane Farm track, Whines Lane, Over CB24 5PT

- 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 Alexander McNeir against an enforcement notice issued by South Cambridgeshire District Council.
- The enforcement notice was issued on 10 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed use of open-air storage and residential use. To include the siting of a caravan used for residential purposes, the storage of motor vehicles and associated paraphernalia, storage of building materials and the construction of a wooden structure.
- The requirements of the notice are:
 - i) Cease the use of the siting of a residential caravans.
 - ii) Remove the caravans from the land in perpetuity.
 - iii) Remove associated domestic paraphernalia from the land in perpetuity.
 - iv) Remove all motor vehicles and associated paraphernalia from the land in perpetuity.
 - v) Removal all building materials from the land in perpetuity.
 - vi) Remove all structures from the land in perpetuity.
 - vii) Lay the land to grass seed.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (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.

Decision

1. It is directed that the enforcement notice be corrected by,

- (1) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice, and (2) deleting all of the words in paragraph 3 and replacing them with '*without planning permission, the change of use of the land from agriculture to a mixed open-air storage, residential and agriculture use including the siting of caravans used for residential purposes, the storage of motor vehicles and associated paraphernalia, storage of building materials, and the construction of structures*',

and varied by,

- (3) deleting all of the words in paragraph 5 and replacing them with 'i) *Cease the mixed use of the site as a mixed open-air storage, residential*

and agriculture use; ii) Remove all residential caravans from the land and remove all associated domestic paraphernalia from the land; iii) Cease use of the land for storage purposes including the removal of stored vehicles, caravans, tyres and a cement mixer and including associated paraphernalia; iv) Remove all building materials from the land; v) Remove all buildings/structures from the land other than (a) the 'field shelter' and 'barn' marked in the approximate positions on the plan annexed to the notice and (b) the fencing around the paddocks; vi) Remove all debris and materials from the land arising from compliance with steps i) to v) above, and vii) Restore the land to its condition before the development took place by grading and levelling the soil and by the sowing of an MG5 grass seed mix to those areas where development is required to be removed', and (4) deleting all of the words in paragraph 6 and replacing them with 'the steps required in paragraph 5 i) to vi) above must be carried out within six months of notice taking effect and the step required at 5 vii) above must be carried out within 12 months of the notice taking effect'.

2. Subject to the above corrections and variations, the appeal is 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.

Procedural Matter

3. My site visit revealed that the site had changed since the notice was issued. Some of the motor vehicles had gone and the portable toilet had gone. Furthermore, some additional fencing had been erected to create individual paddocks for the keeping of livestock and grazing of horses. The main parties agreed on the site visit that none of the fencing, either when the notice was issued or subsequently, was more than two metres in height above ground level.

The Notice

4. The evidence is that when the notice was issued there were two residential caravans on the site and three tourer caravans stored on the site. In addition, three vehicles were being stored on the land (i.e., Gran Tourino motor car, a Land Rover, and a BMW) as distinct from being parked. There were also a number of items on the site including a barn, three field shelters, a wooden shed, fencing to paddocks, fences to a chicken enclosure, two sheds on pallets within the chicken enclosure, fences to a duck enclosure, fences to a rabbit enclosure, rabbit hutches on pallets, two dog kennels, fences to two dog enclosures, 6 moveable water tanks, a wind turbine attached to a scaffold pole, solar panels on a dog kennel and a 'portable' toilet. Furthermore, the evidence is that a hay bailer, horse box, pallets, used tyres and a cement mixer was on the site.
5. The local planning authority does not dispute the appellant's claim that the site was historically used for agricultural purposes. I find, on the evidence that is before me, that when the notice was issued the site was in use for a mixture of residential, storage and agricultural uses. The Council does not dispute agricultural use of at least part of the site and indeed states in its statement of case that *'the Council accepts that the moveable structures set out in the appellant's statement of case at 3.13 do not meet the definition of*

development and there is no breach of planning in respect of those items except in the case of the alleged moveable field shelters and moveable sheds. The Inspector is invited to ascertain clearly from the site visit whether these are indeed readily moveable structures and the nature of their fixing to the ground as they appear permanent’.

6. The appellant states at paragraph 3.13 of his statement of case that the following structures on the site are moveable and used in relation to the existing agricultural use of the land: 3 moveable field shelters; two moveable sheds on pallets within the chicken enclosure; moveable rabbit hutches on pallets, 6 moveable water tanks and a portable toilet.
7. I shall return to the above matters later in this decision. However, the breach of planning control does not accurately reflect the fact that when the notice was issued the appeal site was one single planning unit in mixed agricultural, residential and storage use. Furthermore, the breach of planning control refers to *‘the siting of a caravan used for residential purposes’*, when in fact the undisputed evidence from both parties is that two residential caravans were on the land. In addition, the breach of planning control refers to the *‘construction of a wooden structure’* when the requirements of the notice refer to *‘remove all structures from the land in perpetuity’*.
8. I have considered whether it would be possible to correct the breach of planning control to reflect the fact that the appeal site was in a different mixed use when the notice was issued and so that it includes the words *‘siting of caravans used for residential purposes’* and *‘the construction of structures.’* I am satisfied, having considered the appellant’s evidence and grounds of appeal, that correcting the breach of planning control in this way would not cause injustice to any of the main parties. I shall accordingly correct the breach of planning control by deleting all the words in paragraph 3 of the notice and replacing them with *‘without planning permission, the change of use of the land from agriculture to a mixed open-air storage, residential and agriculture use including the siting of caravans used for residential purposes, the storage of motor vehicles and associated paraphernalia, storage of building materials and the construction of structures.’*

Reasons

Ground (c) appeal

9. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
10. The appellant’s claim under ground (c) is that some of the ‘structures’ are moveable, and hence are not buildings, and are being used for an agricultural purpose. On this basis, the claim is that these ‘structures’ do not amount to development of the land. This is in the context of section 55(2)(e) of the Act which states *‘the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used’* shall not be taken for the purposes of this Act to involve development of the land.
11. The Courts have held that three primary factors are decisive in considering whether something amounts to a building. These factors are size, permanence and physical attachment. To assist me in considering the different grounds of

appeal, the Council has provided me with an annotated Google earth plan showing all of the uses/structures/buildings on the land when the notice was issued. For the avoidance of doubt, my reasoning below takes the names of such uses/structures/buildings from the labels on such a plan.

12. In respect of agricultural uses on the site (excluding the barn and shelter considered as part of the ground (d) appeal and which are immune from enforcement action), this relates to the following: field shelters, wooden shed, fenced paddocks, chicken enclosure, two sheds on pallets, duck enclosure, rabbit enclosure and rabbit hutches on pallets. The fenced enclosures (including paddocks) used in connection with the keeping of livestock and grazing of horses are not development by virtue of s.55 of the Act. There is no dispute that the fencing is no more than two metres in height above ground level and hence is permitted development by virtue of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
13. There is no evidence that the dog kennels and dog enclosures are being used for an agricultural purpose. As a matter of fact and degree, I find that the dog kennels, field shelters, two sheds on pallets, and a wind turbine attached to a scaffold pole are buildings/structures (s.336 of the Act defines a structure as also being a building) on the basis that there is no credible evidence before me that they were ever intended to be moved around the site, or that they have in fact ever been moved.
14. Furthermore, there is no evidence to indicate that these buildings/structures were not constructed/erected on the site. While some of the buildings/structures are not physically attached to the ground, I find that the evidence is that a significant period has passed whereby they have not been moved around the site. The appellant does not provide any details in terms of an intention to move these structures/buildings. Overall, I find the size and permanence considerations to be decisive in this case and hence the aforementioned are buildings.
15. In respect of agricultural use of some of the above buildings, the appellant claims that they are permitted development by virtue of Class A of Part 6 of Schedule 2 of the GPDO. The erection of buildings is not permitted by virtue of Class A of Part 6 in so far that buildings are only permitted subject to first applying for prior approval. It is not possible to apply Class A of Part 6 GPDO permitted development rights retrospectively as prior approval must be sought '*before beginning the development*'. Therefore, planning permission is required for the said buildings.
16. I have not been provided with the actual size of the agricultural land/unit in hectares, but even if the site was less than five hectares and hence Class B of Part 6 of Schedule 2 of the GPDO was relevant, this only permits the extension or alteration of an agricultural building. It does not expressly permit the erection of an agricultural building. Therefore, whether Class A or Class B of Part 6 of Schedule 2 permitted development rights are applied, planning permission is required for all identified agricultural buildings on the site.
17. In respect of the hay bailer, horse box, six water tanks, rabbit hutches on pallets and portable toilet on the site, I find, for the avoidance of doubt, and as a matter of fact and degree, that these are uses of land. Some are on wheels and hence can be easily moved and others could very easily be moved owing to

their size and lack of physical attachment to the land. There is no evidence before me to indicate that the above are not being used in connection with horse grazing, the production of hay as animal fodder, or in terms of the keeping of livestock on the land. To the extent that the evidence indicates that they are being used for such agricultural purposes, they do not amount to development by virtue of s.55 of the Act. In any event, the notice as issued does not attack any agricultural use of the land in terms of the listed requirements.

18. For the above reasons, I find that the claims made by the appellant in terms of this ground of appeal that some of the listed facilities on the site are uses of land and not buildings are not well founded. They are buildings and planning permission is required for them either because they are not being used exclusively for agricultural purposes or because agricultural permitted development right conditions or limitations have not been met.
19. As regards the bricks on a pallet, used tyres and cement mixer, the appellant considers that they are being kept on the land for '*engineering operations enabling the agricultural use of the site*'. Reference is made to filling in potholes. The appellant claims that the aforementioned materials and equipment are permitted development by virtue of Class A of Part 6 of Schedule 2 of the GPDO permitted development rights '*as they are reasonably related to engineering operations enabling the agricultural use of the site*'.
20. Class A of Part 6 states that permitted development is '*the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of—(a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit*'. The appellant does not provide a reasonable explanation as to why tyres, a cement mixer and bricks on a pallet are reasonably needed for the purposes of agriculture. Furthermore, the filling of potholes within the lane that serves the site would not be on agricultural land. As a matter of fact and degree, I find that the tyres, cement mixer and bricks on a pallet (i.e. building materials) are being stored on the land in conjunction with the storage of vehicles. They are not permitted development in respect of Part 6 of the Schedule 2 GPDO permitted development rights.
21. In respect of the above matters, the ground (c) appeal fails. However, I conclude that the ground (c) appeal succeeds in so far that the hay bailer, horse box, six water tanks and portable toilet do not amount to development based on their associated use of the land for agricultural purposes and hence planning permission is not required for them. Furthermore, the fencing, associated with agricultural use of the land, is permitted development by virtue of Class A of Part 2 of Schedule 2 of the GPDO.

Ground (d) appeal

22. 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

23. The claim made by the appellant is that one caravan has been on the site since 2012 and has been continuously occupied for residential purposes for more than ten years. He also states that a barn, as labelled in the appellant's Google Earth images, was built by him and his brother in 2010 and so in operational development terms is immune from enforcement action as it has been in situ for more than four years. Similarly, the appellant claims that a field shelter, as labelled on Google earth images dated October 2008 and September 2012, was erected in about 1990, and so in operational development terms is immune from enforcement action as it has been on the site for more than four years.
24. The notice was issued on 10 June 2022. In respect of the use of the site for the siting of a residential caravan, the appellant would need to demonstrate that any such caravan had been on the land and used continuously for residential purposes for ten or more years up to 10 June 2022. While the appellant has provided some digital imagery/aerial photography, which he claims shows a caravan on the land, the earliest image is dated September 2012. There are no such details of an alleged caravan between 2008 and September 2012. On this basis alone, there is sufficient doubt about the claim of ten years continuous use of the land for the siting of a residential caravan. Indeed, ten years has not been proven in terms of digital imagery/aerial photographs for the siting of any residential caravan on the land.
25. The above uncertainty is compounded as the Council's aerial photograph dated 2018 shows only one caravan to the side of the barn. The appellant has commented as part of the appeal that this caravan was being stored at this time. The appellant also claims that a further caravan had been brought onto a different part of the land and used for residential purposes. However, the Council's aerial photograph does not show a second caravan and so this casts doubt about the appellant's claim in his statutory declaration of the use of the site for the continuous siting of any residential caravan on the land.
26. The appellant's Google Earth image purports to show two residential caravans and one stored caravan to the south of the site. However, the quality of the digital image is very poor. Even if the image did show two residential caravans on the land at this time, the Council's aerial photographs do not show any such residential caravans and its images are much clearer. Either way, the evidence casts doubt about continuous residential use of the site even if there had been occasional or intermittent residential use in 2018.
27. In addition to the above, the Council has provided publicly available social media evidence which, in my judgement, casts doubt about the appellant's claim that he was living on the site in 2014. The evidence indicates occupation of a new home well away from the appeal site. The appellant states that he did occupy different premises at this time, but that it was only for three weeks while training was being undertaken as part of his job. The evidence is not sufficiently precise and unambiguous in respect of the alleged training activity. This claim is not, for example, corroborated by the those that employed him or any others that may have attended the alleged training event. In any event, the evidence before me is not sufficiently precise in terms of continuous residential occupation of the land between June 2012 and September 2012.
28. Furthermore, the above doubts are corroborated in terms of a representation from a resident in Over who states that there has not been continuous residential use of the site for ten or more years. While the appellant has

submitted 'septic waste removal invoices' dated 15 March 2013 and 8 May 2015 respectively, there are no such invoices submitted in 2012 and, furthermore, septic waste removal does not, in any event, provide evidence on its own of continuous use of a residential caravan on the land. It is also noteworthy, in any event, that there are only two septic waste removal invoices and this casts doubt about use of the site for continuous residential purposes after 2015.

29. The appellant claims that a field shelter was erected in about 1990. In his statutory declaration, he comments that '*one of the field shelters was built (from doors) by my grandad around 30 years ago*'. The aerial photographs are not very clear, but the appellant's Google Earth image, dated October 2008, does appear to show the roof of some sort of structure. On my site visit, I was able to see that the shelter was in a similar position to that shown in the aforementioned Google Earth image. It was indeed built from wooden doors. The Council do not provide any evidence to contradict or refute the claim made by the appellant in respect of this shelter and, furthermore, there are no third party or other representations casting doubt about construction of the shelter in about 1990.
30. While the shelter is not visible in more recent aerial photographs, this is not surprising given that it is now covered by vegetation. In my judgement, the evidence is that the shelter has been in situ for many years and has not been moved. Its degree of permanence in terms of its current siting is such that I find, as a matter of fact and degree, that it is a building and not a use of land. In this regard, the evidence is that it has a permanent character rather than a fleeting character. It would be very difficult to move the field shelter around the site without having to dismantle it each time. I consider that it is more likely than not that it was constructed on the site as distinct from being brought onto the site. These are decisive matters irrespective of whether the said building is or is not physically attached to the ground. On the balance of probability, I find that the shelter is a building, and is immune from enforcement action as it was constructed on the land more than four years ago.
31. I was able to see on the site visit that a barn had been erected on the land. This is to the north of the appeal site and is shown in the Council's aerial photograph dated 2013 and in the appellant's Google Earth image dated September 2012. The same building is shown in the Council's aerial photographs dated 2018 and 2020. On the balance of probabilities, I find that the barn is immune from enforcement action as it was constructed on the land more than four years ago.
32. For the above reasons and on the balance of probability, I find that when the notice was issued the barn and field shelter were immune from enforcement action as they had been on the land for more than four years. However, I find on the balance of probability that ten years continuous use of the land for the siting of a residential caravan has not been proven. I therefore conclude that the ground (d) appeal succeeds only in part. Given this conclusion, I shall vary the requirements of the notice so that they do not relate to the field shelter and barn. In the interests of precision, I shall also identify the said 'barn' and 'shelter' on a substitute plan annexed to the notice.

Ground (a) appeal and the deemed planning application

Background and main issue

33. The appeal made under ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. The corrected breach of planning control is *'the change of use of the land from agriculture to a mixed open-air storage, residential and agriculture use including the siting of caravans used for residential purposes, the storage of motor vehicles and associated paraphernalia, storage of building materials and the construction of structures'*.
34. As part of the consideration of the ground (c) and (d) appeals, I have found that some of the structures on the land are immune from enforcement action and that some facilities and/or equipment on the land is being used for an agricultural purpose and hence is not development requiring planning permission. This deemed planning application relates to the remaining development which is unauthorised.
35. I have considered the reasons for issuing the notice and the main issues are the effect of the breach of planning control on i) the development plan strategy for the area and, in particular, compliance or otherwise with policies S/7 and H/19 of the South Cambridgeshire Local Plan 2018 (LP); ii) the character and appearance of the area including landscape character; iii) best and versatile agricultural land, and iv) the living conditions of the occupiers of nearby residential properties in respect of noise.

Policies S/7 and H/19 of the LP

36. The appeal site falls outside the 'Development Framework' of Over. It is within land designated as countryside. Policy S/7 of the LP states that *'outside development frameworks, only allocations within Neighbourhood Plans that have come into force and development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside or where supported by other policies in this plan will be permitted'*.
37. In respect of other policies and residential use of the site (i.e., the caravans), the appellant claims that it is supported by policy H/19 of the LP. However, I do not find that residential use of the site can be supported with reference to policy H/19 of the LP in so far that while the appellant states that livestock is sold, I have no information before me to indicate that agricultural use of the site would remain financially viable. I have no details, for example, of the sale or purchase of livestock such as receipts (e.g., from the stated market), invoices or accounts.
38. Furthermore, even on a temporary basis, there is an absence of evidence to justify residential use of the site in terms of policy H/19(2) of the LP in so far that there are insufficient details before me to demonstrate a firm intention and ability to develop the enterprise or that the enterprise has been planned on a sound financial basis. The appellant states that he needs to be on site to care for the animals and for security purposes. It is not, however, clear why a permanent presence is needed on the site in terms of caring for the animals and why this could not reasonably take place by visiting the site each day from alternative accommodation elsewhere in the locality.

39. The appellant has provided no objective evidence to demonstrate that livestock has ever been at risk of being taken or indeed any other security risks. Furthermore, it might be that other options could, in any event, be explored by the appellant to increase security at the site such as the use of CCTV. Indeed, on the site visit the appellant indicated that he did have CCTV on the site.
40. The appellant claims that there are '*no suitable properties*' available that could be occupied by those that use the site. However, it is not clear what is meant by '*suitable*' and, furthermore, there is no actual evidence before me of any search for existing and alternative premises/accommodation being carried out, whether that be for sale, or to rent, and within a reasonable distance of the appeal site.
41. For the above reasons, I do not find that the continued use of the land for any residential purpose, whether it is on a temporary or permanent basis accords with the requirements of policies S/7 or H/19 of the LP. Furthermore, there is conflict with paragraph 80 of the National Planning Policy Framework 2021 (the Framework) in so far that the siting of one or more residential caravans on the land has resulted in the provision of isolated homes in the countryside, and the evidence does not support a claim that there is an essential need for a rural worker to occupy the appeal site.

Character and appearance

42. The appeal site falls within an area of countryside which is predominantly undeveloped and open. There is a clear distinction between the built-up area of Over and the more rural character of the land that surrounds the appeal site and beyond. Some boundary trees and vegetation exist in this part of the countryside and including alongside the long Whines Lane Farm Track that leads to the appeal site. This adds positively to the overall experience of passers-by of a more rural, undeveloped and tranquil countryside environment when leaving the more built-up development of Over. These attributes add distinctively to the landscape character of the area.
43. The structures, buildings and facilities on the land that are unauthorised and require planning permission have a very temporary and out of character appearance. There is a lack of design synergy to the structures/buildings on the land as a whole. Owing to their construction and appearance, they do not add positively to the character and appearance of the countryside. Furthermore, the siting and storage of caravans, building materials, wind turbine and motor vehicles has unacceptably urbanised the appeal site to the detriment of the wider countryside setting.
44. There is a distinct lack of planning on the site with the various structures, buildings and uses of land positioned on a very ad-hoc basis and harmfully encroaching into a wide tract of countryside land. While it may be possible to provide some additional planting on the site, firstly no such details are before me, and secondly any planting would take some time to reach maturity, would not endure forever, and would not be capable of fully screening the harmful development. In addition, the mixed use of the site has the potential to generate increased comings and goings on the site, when compared solely to an agricultural use, and I do not doubt that over time there has been some harm caused to what was previously a more tranquil and peaceful countryside environment.

45. Overall, I find that the breach of planning control causes significant harm to the character and appearance of the area, including to landscape character. I do not find that this harm could be suitably mitigated by providing additional landscaping. Therefore, I conclude that the development does not accord with the design, character and appearance requirements of policies HQ/1 and NH/2 of the LP.

Loss of agricultural land

46. The change of use of the land to a mixed use has, at least in part, resulted in the loss of agricultural land. The Council state that the land is classified as Grade 2 (i.e., very good quality) agricultural land. This has not been disputed by the appellant. I acknowledge that some of the land does appear to be used for agricultural purposes as part of a mixed use. Nonetheless, the residential and storage uses have resulted in the loss of some Grade 2 agricultural land.
47. For the above reasons, I conclude that the breach of planning control conflicts with policy NH/3 of the LP and paragraph 174(b) of the Framework. The land is not allocated for development in the LP and the appellant does not put forward sufficient justification in need or sustainability terms to override the protection and loss of best and most versatile agricultural land on the site and the area as a whole.

Noise

48. While I do not doubt that use of the site has intensified in recent years and hence harm has been caused to the otherwise tranquil character of the countryside in this regard, I am nonetheless satisfied that the degree of noise and disturbance arising from residential and storage use of the site on the occupiers of nearby residential properties, including comings and goings along Whines Lane and past existing dwellinghouses, could reasonably be controlled by the imposition of conditions limiting the number of residential caravans on the site, by controlling the type/location of storage (including number of vehicles that could be stored) and in terms of permitting an acceptable/agreed generator that adheres to acceptable noise limits.
49. Furthermore, the appellant's suggestion of adding additional noise insulation to those structures where dogs are kept would also seek to minimise any potential harmful impacts from a noise point of view.
50. Overall, and subject to the imposition of several necessary conditions, I do not find that the breach of planning control would have a materially harmful impact on the occupiers of nearby residential properties in terms of noise. Therefore, the development would be capable of according with the noise requirements of policy SC/10 of the LP.

Ground (a) appeal conclusion

51. While it would be possible to suitably address noise issues by way of the imposition of planning conditions, I conclude that the development causes significant harm to the character and appearance of the countryside, including to landscape character. Furthermore, the mixed-use development fails to accord with the requirements of policies S/7 or H/19 of the LP and, in particular, the use of the site for residential purposes has not been reasonably justified. This harm is compounded because of the loss of Grade 2 agricultural

land and the conflict with policy NH/3 of the LP. The latter are matters of overriding concern.

52. I therefore conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails, and the deemed planning application is refused.

Ground (f) appeal

53. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
54. The claim made by the appellant under ground (f) is that the Council could have opted for various measures to mitigate adverse impacts from the breach of planning control such as landscaping, screening, applying noise insulation to the sheds used by animals, the removal of stored items such as wooden pallets and used tyres, imposing limits on the number of residential caravans that can be stored on the site. I have considered these matters as part of the ground (a) appeal and for the reasons outlined do not find that they would fully overcome the planning harms identified and there would be conflict with identified development plan policies.
55. Notwithstanding the above, I have already corrected the allegation in the notice and as part of the consideration of the ground (d) appeal have found that some buildings/structures are lawful. As currently drafted the requirements in the notice are not precise and do not reflect my conclusion in respect of the ground (d) appeal. Furthermore, the notice, as currently drafted, requires the removal of *'all motor vehicles and associated paraphernalia from the land'*. This is an excessive requirement as it would prohibit the parking of a motor vehicle on the land in associated with an authorised use (i.e., an agricultural use). This requirement should relate to the permanent removal of all vehicles (including caravans) that are being stored on the land including all associated paraphernalia.
56. The requirement at paragraph 5 (vii) of the notice states *'lay the land to grass seed'*. This is not a precise requirement. In the interests of precision, and without injustice being caused to the main parties, this should read *'Restore the land to its condition before the development took place by grading and levelling the soil and by the sowing of an MG5 grass seed mix to those areas where development is required to be removed'*.
57. Given the corrected allegation in the notice, and my findings in respect of the various grounds of appeal, it follows that the requirements of the notice should be varied in the interests of precision. I shall append a substitute plan to the notice and shall delete all the requirements in the notice at paragraph 5 and replace them with: -
- (i) *Cease the mixed use of the site as a mixed open-air storage, residential and agriculture use.*
 - (ii) *Remove all residential caravans from the land and remove all associated domestic paraphernalia from the land.*

- (iii) *Cease use of the land for storage purposes including the removal of stored vehicles, caravans, tyres and a cement mixer and including associated paraphernalia.*
- (iv) *Remove all building materials from the land.*
- (v) *Remove all buildings/structures from the land other than (a) the 'field shelter' and 'barn' marked in the approximate positions on the plan annexed to the notice and (b) the fencing around the paddocks.*
- (vi) *Remove all debris and materials from the land arising from compliance with steps i) to iv) above.*
- (vii) *Restore the land to its condition before the development took place by grading and levelling the soil and by the sowing of an MG5 grass seed mix to those areas where development is required to be removed'.*

58. To the extent that the requirements of the notice are imprecise, and to an extent excessive in terms of attacking all structures on the land in the context of my reasoning above, including my ground (d) conclusion, I find that the ground (f) appeal succeeds. The notice is hereby varied in terms of the requirements in paragraph 5 as detailed above.

Ground (g) appeal

59. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.

60. The compliance period in the notice is six months for all requirements. The appellant claims that 12 months is required to find alternative accommodation in Over and owing to the breeding cycle of his animals. The latter is not reasonably substantiated but, in any event, I do not find that six months is an unreasonable period by which to ensure compliance with the varied requirements of the notice.

61. I acknowledge that in upholding the corrected/varied notice, it means that the occupiers of the site will lose a home. However, I find that the compliance period of six months to vacate the site is a fair and justified balance between the need to remedy the breach of planning control in the legitimate public interest and the significant interference with Article 8 rights as contained within the European Convention on Human Rights as incorporated into the Human Rights Act 1998. In this case, I find that the interference would be proportionate and necessary in the public interest.

62. I acknowledge that there are certain times of the year when it is better to apply grass seed, and this is in late summer to early autumn. The application of grass seed can only take place when the other requirements have been complied with. The notice takes effect from the date of this appeal decision. I shall vary the timescale for the requirement to apply grass seed to the areas where development has been required to be removed. This shall be varied from six to twelve months. I am satisfied that no injustice would be caused to the main parties in varying the compliance period in this way. The notice shall accordingly be varied so all of the wording in paragraph 6 is deleted and replaced with *'the steps required in paragraph 5 i) to vi) above must be carried*

out within six months of notice taking effect and the step required at 5 vii) above must be carried out within 12 months of the notice taking effect'.

63. I conclude that in respect of above, the ground (g) appeal succeeds in part.

Conclusion

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR



Substitute Plan

This is the plan referred to in my decision dated:

By D Hartley, BA(Hons), MTP, MBA, MRTPI

Land at: Land off Whines Lane Farm track, Whines Lane, Over, CB24 5PT

Reference: APP/W0530/C/22/3302723

Scale: Not to scale

