



Appeal Decision

Site visit made on 6 November 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Levelling Up Housing and Communities

Decision date: 13 November 2023

Appeal Ref: APP/A2335/C/22/3300311

Field at Netherbeck, Carnforth, Lancashire

- 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 Andrew Thompson against an enforcement notice issued by the Lancaster City Council.
- The breach of planning control as alleged is as follows:
The material change of use of the land and buildings from agricultural use to a mixed use of agriculture, livestock haulage contractors, storage and parking of commercial vehicles/trailers, siting of containers (approximate position marked in purple on plan at Appendix B) and operational development comprising the formation of a vehicle inspection pit (approximate position marked in yellow on plan at Appendix B) and an area of hardstanding (approximate position marked in green on plan at Appendix B).
- The requirements of the notice are as follows:
 - (a) Cease the use of the land and buildings contained within the land edged red for agricultural livestock haulage contractor.
 - (b) Permanently remove all vehicles/trailers associated with the agricultural livestock haulage contractors from the land.
 - (c) Permanently remove the containers from the land.
 - (d) Remove the material used to form the walls of the vehicle inspection pit underground and break up the concrete plinth and cover above the ground. Remove all resultant material arising from this step from the land.
 - (e) Take up all the hardcore used to form the hardstanding and remove resultant material from the land. Re-seed with grass seed.
- The Compliance period is 6 months.
- The Appeal is proceeding on grounds (a) and (c), as set out in section 174(2) of The Town and Country Planning Act 1990.

Decision

1. The Appeal is dismissed. See formal decision below.

Introduction

The appeal site and the surrounding area

2. The appeal site (the field) is located within the open countryside approximately 1.5 km to the north-east of Carnforth; 1.4 km to the north of the village of Over Kellet and close to the junction of Kellet Lane and Netherbeck. There is a group of agricultural buildings, used in part to house livestock, and a large area of hardstanding on the land. There is also a vehicle inspection pit and several containers sited within the field which is accessed from Netherbeck. At the time of

my visit, I noted two containers, two livestock HGVs, the hardstanding area, the vehicle inspection pit and the adjacent farm buildings which, at the time, were housing a number of sheep.

3. To the west, north and east there is open agricultural land and the nearest dwelling, 'Pastordale Farm', lies approximately 130m to the south. Another farmhouse and complex, 'Hare Tarn Farm' is located some 280m to the south-west. I viewed both properties from the highway and where possible was able to see the appeal site. There is a public footpath approximately 350m to the north of the site and this links with others which criss-cross this part of the countryside. I also viewed the site from the adjacent roads including seeing it from the Borwick direction.

Planning History

4. There is a complex planning history to the site, the details of which are set out in the Council's appeal statement. Various applications date back to 2014 and involve agricultural buildings, extensions, and an agricultural worker's dwelling. The latest applications, for a change of use (COU) from agricultural land to an agricultural livestock haulage depot and HGV maintenance building (20/00912/FUL) and an Outline application for an agricultural worker's dwelling (21/00705/OUT) were refused in 2020 and 2021 respectively. Another application in 2022 was made for the erection of an extension to an existing agricultural building to form a roof over the existing yard (22/00770/FUL). The reasons for refusal of the latest COU application are set out in the Council's appeal statement.

The farming unit and the appellant's business

5. The appellant confirms that he is the joint owner of R A Thompson Haulage Limited, together with his wife and that the nature of the business, incorporated in 2004 and as registered, is '*mixed farming and freight transport by road*'. The business is stated to comprise a traditional farming enterprise and a livestock haulage business. It is indicated that the farming unit consists of 31 acres of owned land plus a further 42 acres of rented land.

6. It is also stated that the unit houses 30 beef cattle, which are kept for 12 months before being sold on. These are housed over winter and kept outside in the summer. The unit also holds up to 1300 sheep and these are kept for varying amounts of time and are ultimately sold on for use within the food chain. There are three agricultural buildings on the site together with an undercover area. These are conventional agricultural buildings consisting of a portal frame structure with concrete panel and timber boarded walls.

7. The agricultural livestock haulage business deals with the movement of livestock which include movements from farm to farm; movements following sale/purchase of livestock; movements from farm to abattoir; movements from farm to market and movements within farm units. There are 7 HGVs associated with the livestock haulage business and these are specifically for livestock transport and are not suitable for general haulage use. The HGVs are stored on the farm unit.

8. It is explained that when an HGV arrives on site animals are unloaded, fed, watered and sorted (according to length of time on site) and then bedded or released into the fields. The vehicle will then remain on site and be cleaned ready

to leave the next day. It is indicated that the animals unloaded at the site are the appellant's own stock and that no third-party stock is kept at the site, except in case of emergencies. In the region of 700-1000 of the appellants own animals are moved each week.

9. The business employs 8 full-time members of staff, (including the Appellant, his wife) and 3 part-time staff. The employees' roles include HGV drivers, farm labourers, accounts/admin staff, a full-time mechanic and an apprentice. The business does not operate on a 9-5 basis. It operates early in the morning to late in the evening. Vehicles leave the site, fully loaded, early in the morning. Some vehicles will remain off site for up to a week at a time before returning with new stock. During this time the vehicles will collect, deliver and move animals on behalf of third-party farmers across the country. Other vehicles will return in the evening of the same day to unload new stock.

The appeal on ground (c)

10. To be successful on this ground it must be shown that there has been no breach of planning control. This could be on the basis that there is a planning permission in place for all that is alleged in the enforcement notice; that planning permission is not required because the alleged breach constitutes permitted development, or that it constitutes primarily an agricultural use.

11. From the appeal submissions; the planning history of the site and my site inspection, I agree with the Council that the use being carried out on the site is a Sui Generis mixed use comprising the use of the land in part for agriculture and in part as an agricultural haulage business. There is no dispute that HGVs (stated to be 7 No) are kept at the site and maintained there.

12. Like the Council, I acknowledge that when livestock is kept at the site for long periods, as opposed to only being on site for a short period whilst in transition, then the use of the land would be agricultural. However, with the haulage and distribution use involving 7 HGVs, together with their maintenance on site and the manner in which the appellant's agricultural haulage business operates, this is far from any of normally acknowledged basic agricultural use of the land. The use as carried out by the appellant cannot, in my view, be described as primarily agricultural. As a matter of fact and degree it is clear that the mixed use of the land has resulted in it not being perceived as straightforward agricultural land and that the Haulage business has significantly changed the character of usage of this agricultural land.

13. ADAS had also concluded that the primary activity of the business appeared to be the haulage of livestock with animals being purchased and immediately (or within a short window) sold to other farms. It was considered that this was more akin to a logistical and warehousing use with the main activity of the applicant being as a livestock dealer and the site acting as a depot for the HGVs in addition to a collection centre for the animals.

14. The fact that the appellant had submitted several applications for a COU *'for a change of use (COU) from agricultural land to an agricultural livestock haulage depot and HGV maintenance building'*, reinforces my view that planning permission is required for the overall use being carried out on the land. Both the

Council and the appellant recognize that planning permission is required.

15. Whilst acknowledging that some of the developments on the land could constitute permitted development in relation to a normal agricultural use, this cannot be the case for a Sui Generis mixed use. In the absence of a planning permission for what is alleged in the notice, and because none of the elements of the Sui Generis use constitutes permitted development, it follows that the appeal must fail on ground (c).

The appeal on ground (a)

The Main Issues

16. The main issues are as follows:

1. The principle of the development in this countryside location.
2. The effect on residential amenity.
3. The effect on the character and appearance of this rural area.

Relevant Policy

17. The relevant development plan policies are set out in the Lancaster City Local Plan Part Two: Review of the Development Management DPD (DM DPD) (adopted 29 July 2020) and are as follows: DM14 (Proposals Involving Employment Land and Premises); DM29 (Key Design Principles); DM46 (Development and Landscape Impact); DM47 (Economic Development in Rural Areas); DM57 (Health and Well-Being) and DM60 (Enhancing Accessibility and Transport Linkages).

18. The National Planning Policy Framework (NPPF) is a major material consideration, and the relevant sections are as follows: Section 6 (Building a strong, competitive economy); Section 9 (Promoting sustainable transport); Section 12 (Achieving well-designed places) and Section 15 (Conserving and enhancing the natural environment).

The principle of development

19. Having visited the site and considered all of the written submissions, I agree with the LPA that, on balance, the overall characteristic of usage of the land is more akin to storage and distribution uses rather than to any of the normally accepted agricultural uses. Whilst acknowledging that there is a definite agricultural use when the appellant's animals are kept on the land, the haulage elements of the business would, as indicated by the LPA, usually be expected to be located within an urban area rather than a rural area on agricultural land.

20. I also agree with the LPA that the mixed use of the land raises a number of issues in this rural area including the impacts on the sustainability of the location. These impacts include the number of movements by HGVs and staff access along unlit and relatively narrow rural roads with no footways and limited verges and the general impact on the character of this part of the countryside.

21. Policy DM14 of the DM DPD also indicates that proposals for employment premises should preferably be located on allocated employment sites and, where this is not practical or achievable, they should be located within, or be

well connected, to the main urban area or sustainable settlements. This is not the case in this instance. The policy also expects such proposals to comply with other policies relating to biodiversity, impact on landscape and sustainability. In this case this mixed use on a greenfield site cannot be said to be in a sustainable location.

22. I accept that Policy DM48, relating to the diversification of agricultural premises, indicates that that proposals will be supported where they seek to diversify the rural economy where it is demonstrated that significant economic benefits exist from the diversification of the farm holding without generating adverse impacts on the environment. However, this also sets out that any diverse proposals should remain ancillary to the existing agricultural use and retain the farm enterprise as the primary business. In my view the farming use, that is the keeping of the appellant's livestock on the land, cannot be said to be the '*primary*' business use. Nor can the haulage business be reasonably described as being ancillary to the agricultural use of the land.

23. With regard to the principle of this haulage use, albeit it with clear links to agriculture, I agree with the LPA's conclusion that it is '*unacceptable in this unsustainable location within the open countryside, divorced from any built-up areas and served by a rural highway network*'.

24. As indicated by the LPA, although rural diversification projects may be acceptable in the countryside, in this case it does not involve the establishment of a new enterprise to support an existing agricultural business. Instead, it appears to be the relocation of a haulage business to this site, and one which has expanded over relatively recent years. Although the proposal would maintain the business in the countryside, I do not consider that this use amounts to a rural diversification project. In conclusion, I consider that the principle of the development as carried out on the site is contrary to the relevant policies within the development plan and the NPPF both of which promote sustainable patterns of development.

The effect on residential amenity

25. During my site visit I noted the positions of the nearest other residential properties and I have taken into account the evidence relating to train times in conjunction with the times and pattern of usage of the haulage business. I am also aware of the complaints relating to previous applications regarding noise generated by the haulage use. However, the noise assessment report established that the background noise levels which, whilst slightly influenced by the M6 motorway, are still low and concludes that there is not likely to be a significant impact on residential properties.

26. I accept that there are still concerns regarding the nature of the noise generated by the haulage use being unpredictable and unusual in certain respects. I also acknowledge that it may not be clear if the noise assessment is truly representative of everyday activities at the site.

27. However, having regard to normal agricultural practice which includes the use of heavy machinery and tractors, maneuvering, loading and unloading of livestock etc., I am not convinced that the noise generated by the additional

haulage use will generate levels of noise and disturbance which are unacceptably over and above those to be expected from a busy farming environment.

28. I accept that there could be disturbance during night-time hours in respect of light from vehicles and from the illumination of external areas to allow haulage operations to be undertaken. However, any working farm environment especially during the winter months is likely to require artificial lighting in and around the farm buildings and farmyard.

29. On the basis of the evidence before me, therefore, and taking into account all of the submissions, I do not consider that the levels of noise or light pollution will be such so as to be unreasonably unacceptable for those living close to the appeal site. I, therefore, find in the appellant's favour with regard to this second issue.

Effect on character and appearance

30. Having seen the site from both near and distant viewpoints and having seen the extent of the hardstanding, I share the LPA's concerns about the effect that the unauthorised use has had on the character and appearance of this part of the open countryside. The combination of hardstanding, vehicles and other structures has resulted in a significant encroachment into the countryside, where previously there had been no buildings at all and a discreet access. The agricultural land had comprised a network of undulating fields mostly bound by hedgerows.

31. I acknowledge that agricultural buildings are generally large and that hard surfaced areas are required around such buildings. However, when viewed from both near and distant viewpoints the appeal site is perceived more as a typical commercial vehicle depot, as opposed to a typical farm steading. Although at the time of my visit there was only one HGV parked on the hardstanding it was clearly visible from the road leading from Borwick. This was despite the fact that the hedgerow had been allowed to grow much higher than the boundaries to other adjacent fields.

32. As indicated by the LPA, the agricultural element of the development is an appropriate use in the open countryside. But this has been significantly altered by the introduction of the haulage use. Although the farm buildings are not overly prominent within the landscape the visual elements of the haulage use are not acceptable. The LPA has also raised concerns about some of the boundary treatments and the gate, although it accepts that some issues have been resolved.

33. However, it is indicated that some elements still do not appear to comply with conditions on a previous consent and that when the second building was approved, conditions were imposed requiring the applicant to replace metal fencing and gates with wooden ones and required the planting of hedges that had previously been removed. These conditional requirements had been imposed in order to preserve the rural character of the site.

34. The LPA indicates that the area of hardstanding has been significantly increased in order to provide a parking and turning area for the HGVs. A series

of aerial photographs show how the site has changed over time. It seems clear from these that this extensive area hardstanding is required specifically in relation to the operations of the haulage business and its associated vehicles and containers. I agree with the LPA that this has significantly altered the character and appearance of the site and has resulted in a harmful intrusion into the open countryside. As indicated above I noted two HGVs on the site and others will be particularly noticeable during the winter months.

35. I noted that part of the development is screened by the overgrown section of hedgerow. However, when viewed immediately adjacent to the site and its access the buildings and the open area are clearly visible. The one large HGV (parked on the hardstanding) was clearly visible over the hedge and some more distant views of the site can be gained from the north. To the south, the land rises which opens up more views across the site and the development from the highway. This is particularly the case close to the nearby dwelling, Pastordale.

36. The red HGVs appear particularly prominent and incongruous within the landscape and the submitted photographs of the site over a number of years demonstrate the harmful impact on the rural character of the area. I agree that some elements are typical of an agricultural use. However, I agree with the LPA that the presence of the HGVs and the extensive hardstanding create a more industrial character within the open pastoral landscape and that this is harmful to the character and appearance of this part of the open countryside.

37. Policy DM46 indicates that the Council will support development that is in scale and keeping with the landscape character and is appropriate to its surroundings in terms of siting, scale, massing, design, materials, external appearance and landscaping. Policy DM29 relates to design and sets out that new development should make a positive contribution to the surrounding landscape and should contribute positively to the identity and character of the area through good design.

38. Having seen the development I consider that it is contrary to both policies, as well as to NPPF policies which stipulate that developments should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and that decisions should ensure that developments are sympathetic to local character, including the landscape setting.

39. In conclusion on this issue, therefore, I share the LPA's concerns that the development as carried out has resulted in an unacceptable urbanising of the site and that this causes significant harm to the intrinsic character and appearance of this part of the countryside.

Overall conclusion

40. Although I have found in the appellant's favour on the second issue, I have concluded that the principle of the unauthorised development being carried out and its effect on the character and appearance of this part of the open countryside are unacceptable for the reasons set out above. These other two issues far outweigh my conclusions on the second issue.

41. It follows that I do not consider that planning permission should be granted for what is alleged in the enforcement notice: that is: *'The material change of use of*

the land and buildings from agricultural use to a mixed use of agriculture, livestock haulage contractors, storage and parking of commercial vehicles/trailers, siting of containers and operational development comprising the formation of a vehicle inspection pit and an area of hardstanding'. The appeal on ground (a) fails.

Other Matters

42. In reaching my decision I have considered all of the other matters raised by the main parties and others. These include the full planning history of the site; the various Officer Reports; the initial appeal submissions; the detailed statements and any later submissions. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and the main issues in the ground (a) appeal. Nor is any other factor of such significance to change my decision that the appeal should be dismissed.

Formal Decision

43. The Appeal is dismissed, and the enforcement Notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector