



Appeal Decision

Site visit made on 18 October 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/E2340/C/23/3317527

Land at Field 3665 Lane Top, Winewall, Pendle

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Michael Langley against an enforcement notice issued by the Pendle Borough Council.
 - The enforcement notice was issued on 24 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a horse stable on Green Belt land in the approximate position marked with a cross on the attached plan.
 - The requirements of the notice are:
 1. Permanently remove the horse stable from the land.
 2. Permanently remove from the land all building materials, rubble and associated materials arising out of compliance with 5.1.
 3. Restore the land to its original condition before the breach took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal proceeds on the grounds set out in section 174(2) (b) and (g) of the Act.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Appeal on ground (b)

2. An appeal on ground (b) is a claim that the alleged matters (those matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact. “Not occurred” in ground (b) is past tense. Hence, in this case the appellant must show that prior to the issue of the notice on 24 January 2023 a horse stable had not been erected.
3. In legal grounds of appeal the evidence is tested on the balance of probabilities¹, and the onus of proof falls to an appellant². An appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.
4. Planning permission (Council Ref: 21/1000/FUL) for an agricultural building was granted on 21 February 2022 and the Council acknowledge that the appeal building in purely physical terms was built in accordance with that planning

¹ *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

² *Nelsovil v SSE* [1962] 13 P&CR 151

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

permission by mid-year 2022. However, they argue that it has at all times been built and used for equine purposes (a horse stable) rather than for agriculture.

Analysis of evidence

5. The appellant's evidence is set out in the relevant parts of his appeal form, submitted statement, and within his own and his wife's Statutory Declarations (SD).
6. In summary, their evidence is that the building was erected and completed as an agricultural building by 29 May 2022, that it was first used for storage of materials, equipment, vehicles and machinery related to agricultural activities on the adjoining land and in relation to an additional parcel of agricultural land to the south, outside of the red line on the enforcement notice plan. Items stored include agricultural machinery, tools, feedstuffs, medical items, hay bales, and a tractor. A horsebox trailer kept within the building is also used for transporting other animals kept on the land. They further state that as a new agricultural building and enterprise they needed to build up livestock over time, dependent upon finance, availability, and quality and that this is ongoing. They state that the first animals on the land were 40 chickens and 8 ducks in July 2021, followed by 10 sheep and 2 cows in November 2021. It is stated that livestock on the land are housed in the building within the internal partitions when required.
7. Various photographs are appended to the SDs showing the interior of the building, dated as taken both before and after the enforcement notice was issued. Those dated before the notice was issued show the layout of stalls and storage of items referred to in the SDs, including one dated 4 January 2023 showing goats housed within the stalls. Those photographs dated after the notice was issued include images of calves in the stalls (March 2023) and sheep in the fields (April 2023).
8. It is also stated that they own 4 horses and a pony which graze land within their wider land holding. At the end of October/beginning of November 2022⁴ they brought the horses into the building during extreme weather conditions, but that this was not then or intended to be on a permanent basis.
9. Overall, I find the appellant's evidence is consistent with his case that the building was erected in accordance with the planning permission and used for agricultural purposes from its completion in May 2022 to at least the end of October 2022.
10. Against the appellant's evidence the Council refer to complaints about "development at the site"⁵, however no detail or records of those complaints have been submitted for me to consider.
11. Council officers first inspected the building internally on 8 December 2022 (some 6 months following its completion and first use). In their statement the Council say no animals were present inside the building other than the appellant's dog. No evidence in the form of a contemporaneous record or photographs of the visit are before me to examine, however it is said the building "was kitted out to house horses in the stalls that had been erected" and that tack was present. I am unclear as to what features or items "kitted

⁴ The SD's state 2021 which must be a drafting error as the building was not completed until May 2022.

⁵ Council Statement of Case, para. 5.4

out” refers to in support of the Council’s assertion that the stalls were used solely for horses. That aside, the Council’s evidence overall does not diminish or make less probable the appellant’s evidence and his account of the building having been constructed as an agricultural building and being used for such purposes until at least October/November 2022 when horses were brought inside. The submissions from third parties also do not provide any such contradictory evidence of the internal use of the building during the 6 or so months following its erection.

Conclusion

12. There is no convincing evidence before me, either from the Council or from third parties, that contradicts the appellant’s account of how the building was used during the 6 month period of time immediately following its completion. Consequently, having regard to all of the evidence before me and on the balance of probabilities, I find the matters stated in the notice which may give rise to a breach of planning control (the erection of a horse stable) has not occurred.
13. Following on from the above, based on the evidence before me, it is not clear whether a material change of use of the building (or of a wider planning unit) occurred in October/November 2022, or, if it did so, whether it had ceased prior to the issue of the notice. Consequently, for these reasons it is not possible for me to correct the notice allegation to one of a material change of use as that would potentially result in injustice to one or both of the main parties who have not argued such a case, and which could give rise to alternative grounds of appeal.
14. For these reasons the appeal on ground (b) succeeds and the notice is quashed.
15. In these circumstances the appeal on ground (g) does not fall to be considered.

Thomas Shields

INSPECTOR