



Appeal Decisions

Inquiry (Virtual) held on 4 June 2024

Site Visit made on 6 June 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05th July 2024

Appeal A Ref: APP/U2235/C/24/3337973

Appeal B Ref: APP/U2235/C/24/3337974

Appeal C Ref: APP/U2235/C/24/3337975

Appeal D Ref: APP/U2235/C/24/3337976

Appeal E Ref: APP/U2235/C/24/3337977

New Barn Sheep Farm, Frittenden Road, Staplehurst, Tonbridge, TN12 0DL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act). Appeal A is made by Mr Michael Lott against an enforcement notice issued by Maidstone Borough Council. Appeals B-E are made by Mrs Julie Lott, Ms Anne Lott, Mr Benjamin Lott and Ms Katherine Lott respectively.
- The notice was issued on 9 January 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the land for a residential use including the erection of a dwelling and associated paraphernalia and operational works including the laying of hard standing within the area of the black hatching within the red outlined plan'.
- The requirements of the notice are to:
 - (a) Cease the use of the land for residential purposes.
 - (b) Demolish the dwelling as shown by the area of black hatching within the red line of the attached plan.
 - (c) Remove all associated paraphernalia including hard standing, plainings/shingle and any subterranean features such as oil tanks, sewage treatment tanks and utilities from the Land as shown within the red outlined plan, and return land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading, allowing the regeneration of the natural grass sward [sic].
 - (d) Remove all resultant materials, rubbish, paraphernalia, and debris from complying with step (a) and (b) above, from the Land.
- The period for compliance with the requirements is: six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (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. Appeals B-E are proceeding on grounds (c), (d), (f) and (g).

Decision

1. It is directed that the enforcement notice is corrected by:
 - Deleting the allegation in section 3 of the Notice in its entirety and replacing it with 'Without planning permission, the material change of use of the Land for a residential use, including the laying of hardstanding to the east of the dwelling'.
 - The word 'land' in paragraph a) of section 5 is replaced with 'Land'.

- The requirement at paragraph b) of section 5 is deleted.
 - The requirement at paragraph c) of section 5 is deleted and replaced with 'b) Remove the hard standing area lying to the east of the dwelling and south of the continuation of the line of the access track from the gated access to the farmyard in the north-eastern corner of the site to the north-eastern corner of the dwelling, and return it to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading, allowing the regeneration of the natural grass sward'.
 - The requirement at paragraph d) of section 5 is deleted and replaced with 'c) Remove all resultant materials and debris from complying with step (b) above, from the Land'.
2. Subject to the corrections, the Appeals A to E succeed, in part, on grounds (c) and (d). The residual development is allowed under ground (a) of Appeal A, the enforcement notice is quashed and planning permission is granted for the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the residential use of the Land, including the laying of hardstanding to the east of the dwelling on Land shown on the plan attached to the Notice and subject to the conditions listed in a Schedule attached to this decision.

Applications for costs

3. An application for costs was made by the appellants against Maidstone Borough Council. That application is subject of a separate Decision.

Procedural Matters

4. As set out above there are 5 appeals. All relate to the same enforcement notice (the Notice) and were made on grounds (c), (d), (f) and (g); additionally, a ground (a) appeal and deemed application for planning permission was made by Mr Michael Lott under Appeal A. I have dealt with the appeals concurrently unless otherwise stated to avoid repetition.
5. Prior to the Inquiry, the Court of Appeal decision of *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467 was handed down. This clarified the limitation (in *Murfitt*¹) that an Enforcement Notice could only lawfully require the removal of operational development that was ancillary in nature to the unauthorised use of land. An enforcement notice could not require the removal of operational development that has brought about the change of use when that operational development was lawful by virtue of s171B of the Act.
6. Prior to the Inquiry, in the light of the *Caldwell* decision, the Council clarified that it conceded on the ground (d) appeal insofar as it related to the lawfulness of the operational development consisting of the erection of a dwelling and the laying of hardstanding. Subsequently, I heard that the Council also conceded the appellants' appeals on ground (c), that were made only in relation to the hardstanding areas and domestic paraphernalia associated with the use of the dwelling.

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

7. Additionally, pursuant to the appellant's submissions detailing financial aspects of the appellants' agricultural enterprise on 20 May 2024, the Council advised in writing on 24 May 2024, that it did not intend to contest the ground (a) appeal.
8. Nevertheless, it is incumbent on me to decide whether or not the Council's approach on each ground was justified, not least to determine any extent of development subject to the ground (a) appeal. In conjunction with the parties' agreement that the appeals should be determined on the basis of the written submissions, at the virtual Inquiry I was able to question several of the anticipated witnesses. I have proceeded on the basis of written evidence and that provided to the Inquiry.
9. Since the service of the Notice, the Maidstone Borough Council Local Plan Review 2021-2038 (the LPR) was adopted on 20 March 2024. In place of the superseded policies referenced in the Notice, the Council have referred me to Policies LPRSS1–Maidstone Borough Spatial Strategy, LPRSP9–Development in the Countryside, LPRSP14(A)–Natural Environment, LPRSP15–Principles of Good Design, LPRQD4–Design Principles in the Countryside, and LPRCD3–Accommodation for Rural Workers of the LPR, and I have had regard to them in coming to my decision.

The Notice

10. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act) to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council. If the Notice cannot be corrected, I must quash the Notice.
11. Section 173(1)(a) of the Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control. The Notice sufficiently describes the Council's concerns in relation to the alleged change of use and associated operational development consisting of the erection of a dwelling, the laying of a hardstanding and other works (later clarified as service infrastructure). The wording in the allegation is, however, somewhat unclear as to the extent of the hardstanding the Notice is concerned with. For any reader, the final clause of the allegation introduces a degree of ambiguity as to whether it is only any hardstanding within the hatched area shown on the plan attached to the Notice, or that within the wider Land edged red.
12. The hatched area shows the approximate footprint of the building. Irrespective, the case submitted by the appellants includes reference to, and sought to justify, the wider hardstanding within the red edged site. As the appellant has pursued its case on the extent of hardstanding beyond the hatched area substantially covered by the building, I find injustice would not arise on removal of the phrase 'within the area of the black hatching within the red outlined plan'.
13. For consistency with the Section 2 definition of 'the Land', the word 'land' in paragraph a) of section 5 is replaced with 'Land'.

Ground (c)

14. An appeal on ground (c) is that planning permission is not required for the development alleged in the Notice. The Notice relates to development within the meaning set out in s55 of the Act consisting of the material change of use of the Land and the operational development of the construction of a building for use as a dwelling, including any associated works such as drainage, or other buried services, and the laying of hardstanding.
15. The ground (c) was made out only in relation to the operational development consisting of the hardstandings and other domestic paraphernalia. It is the appellant's position that such works were permitted by the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) such that no further planning permission was required.
16. There is no dispute between the main parties that the residential use of the Land had not reached the time limit set out in s171B of the Act when enforcement action could no longer be taken. Although it is the appellant's position that the building was constructed as a dwelling, following *Sumner v SSCLG* [2010] EWHC 372 (Admin), it was established that a building that is immune (4 years) does not gain any lawful use other than from the lawful use of the planning unit within which it is situated (here agriculture) and not from the purpose for which the building was intended, built or designed. Accordingly, any permitted development claim associated with the unlawful residential use of the Land is disqualified by virtue of the provision at s3(5) of the GPDO.
17. It is the appellants' position that the hardstanding was constructed under the provisions in Class A of Part 6 of Schedule 2 of the GPDO. An aerial photograph provided by the Council, dated 9 March 2014, shows the construction of a track had commenced prior to the erection of the building and therefore before its residential use had occurred.
18. The appellants' evidence explains that the width and alignment of the entrance of the track along the site's northern boundary restricted the types and sizes of vehicles and trailers able to access and manoeuvre into and out of the site. It states that the wider entrance and width of the curved track, and the angled alignment to the adjacent road, allows access by larger agricultural, feed or other delivery vehicles and trailers. This facilitates agricultural operations and bulk deliveries that would otherwise be restricted and/or more costly.
19. Although the track has subsequently been utilised in conjunction with the alleged residential use of the site, I am satisfied that at the time of its construction it was reasonably necessary for the purposes of agriculture taking place on the holding of more than 5 hectares. In the absence of evidence to demonstrate that it didn't otherwise comply with the conditions of Class A of Part 6, I find the appeals on ground (c) are successful as they relate to that track.
20. However, there is little such agricultural justification for an extended area of hardstanding to the east of the building or the domestic drainage infrastructure associated with its residential use as a dwelling. For those reasons, I find the ground (c) appeals succeed only insofar as they relate to the formation of the curved access track.

Ground (d)

21. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any such breach. The burden of evidence lies with the appellant. To be successful on this ground it would be necessary for the appellant to demonstrate that any relevant period of immunity has been achieved. The test is on the balance of probability – whether the claim is more likely than not to have occurred.
22. The appellants case on ground (d) related only to the operational development consisting of the building, associated works and the hardstanding. The relevant period in this case is 4 years prior to the date of the service of the Notice. However, *Murfitt* established the principle that an enforcement notice addressing a material change of use of land can legitimately require the removal of ancillary operational development intended to facilitate that change of use.
23. It follows, on the Council's concession on ground (d) in relation to the operational development, that it considered the building, associated works and the hardstandings to be of a non-ancillary nature and therefore fundamental to, or a primary source of the change of use. However, I do not entirely agree.
24. As a building constructed as a dwelling with associated servicing (paraphernalia) to facilitate residential use, I find those aspects of the allegation are fundamental elements to the alleged material change of use. Furthermore, the evidence provided by the appellants indicates that the building was substantially complete to enable habitation in 2014. Together, I find that it is therefore development immune from enforcement action by virtue of s171B of the Act.
25. As above, the curved track passing the northern elevation of the building did not require planning permission. The original track along the northern boundary providing access to the farm buildings was present in aerial imagery provided by the Council in 2013. It was labelled as an existing agricultural track in the application ref. MA/13/1262, submitted in July 2013, for the siting of a mobile home. There can be little question that that is also immune from enforcement action.
26. However, that part of the hardstanding immediately east of the dwelling appears after the construction of the curved track. At the time of my site visit, it facilitated access to other buildings and a caravan used incidentally to the dwelling. Accordingly, following *Murfitt*, as ancillary development associated with the alleged material change of use of the site (consistent with the appellants' ground (d) claim in relation to Class F of Part 1, Schedule 2 of the GPDO), I find it susceptible to enforcement action in association with the change of use of the Land. It is therefore subject to the 10-year immunity period set out in s171B.
27. As there is no dispute that the residential use had not been in place for a continuous period 10 years prior to the service of the Notice, I find it is not too late to take enforcement action against that area of hardstanding.

28. For the above reasons, the appeals on ground (d) succeed in relation to the building and the associated drainage and servicing, however, fail in relation to the hardstanding to the east of the dwelling.

Ground (a)

29. Pursuant to my findings above, the ground (a) appeal relates to the residual development consisting of the residential use of the land and the area of hardstanding to the east of the building.

Main Issues

30. The main issues are whether or not there is an essential need for a dwelling to accommodate a rural worker on the site to meet the exception to new homes in the countryside and, if so, the effect of the use and the associated hardstanding on the character and appearance of the locality.

Reasons

Housing in the countryside

31. The site lies in the countryside as defined by Policy LPRSP9 of the LPR. The policy restricts new development in the countryside unless it accords with other specific policies in the development plan and does not result in harm to the rural character and appearance of the area. It provides general support for development that facilitates the efficient use of the borough's significant agricultural land and soil resource. This is subject to mitigation of any effects on the appearance and rural character of the landscape.
32. Policy LPRCD3 recognises that residential development in the countryside may be justified where there is an essential need for a rural worker to live permanently at, or in the immediate vicinity of, their place of work. It sets out detailed criteria which should be met to provide the necessary justification.
33. The appellants have lived on site since shortly after a temporary planning permission for the siting of a mobile home for a rural worker was granted for the Land in November 2013. That permission was granted on the basis of a newly established cattle and sheep rearing enterprise, having previously separated from a family farming business elsewhere.
34. Although that permission was never implemented, the evidence provided by the appellants indicates that the building subject of the Notice has been used as their home since 2014. From then until the present, the appellants claim to have maintained a livestock farming enterprise alongside some agricultural contracting work for third parties. Although the latter could not, in itself, provide justification for permanent rural workers accommodation, I heard that the Inquiry that the significant majority of the work undertaken by the appellant (Michael Lott) was on his own holding.
35. A rudimentary agricultural need assessment² outlines an extensive holding area made up of owned and tenanted land. It provides livestock details of both cows and sheep kept by the appellants. Alongside the appellants' own evidence of reported incidents, it also highlights farm security concerns particular to the locality. Although the appellants' submissions fall significantly short of a

² Proof of Mr Trevor Heathcote

detailed assessment demonstrating the necessity for a full-time worker to reside on or close to the holding, the Council does not contest that such a need exists. In the absence of evidence to the contrary, I am satisfied that such a need exists in relation to the activities taking place on the appellants' holding.

36. At the Inquiry, the appellants' financial evidence highlighted that the enterprise had been established for many years and, in the most recently assessed period, over 80% of income was generated from the appellants' own farming activities. The remainder was derived from contracting operations. The financial figures provided by the appellants show year on year profits in recent years.
37. In addition to anticipation of reestablishing higher numbers of sheep and cattle stock since Mrs Lott's knee operation, I heard that going forward, the holding income would be supplemented by a DEFRA Sustainable Farming Incentive grant over a 3 year period. The construction of a new building in 2020 indicates that the appellant has made a significant recent investment in the enterprise. At the Inquiry, I heard further aspirations for additional stock buildings as future investments.
38. Taking all of the above together with my observations at the site visit, the balance of evidence leads me to conclude that there is an established functional need for a full-time worker primarily employed in agriculture on the holding. In addition, the enterprise is well established and has shown profitability and has a clear prospect of remaining viable.
39. As the building used as a dwelling has been demonstrated to be lawful, there is no other building more suitable for providing a commensurate level of accommodation on the holding. Subject to an occupancy restriction, I find the evidence leads me to the conclusion that the functional, financial and scale of accommodation tests for permanent rural occupation dwellings in the countryside as set out in Policy LPRCD3 are met.

Character and appearance

40. Following the Council's acknowledgement that the existing building is lawful by virtue of s171B of the Act, I heard at the Inquiry that it also accepted that the use of the building does not, in itself, materially affect the character and appearance of the locality, or the wider landscape setting.
41. Although the use introduces a more domestic appearance through the presence of parked cars, a washing line, garden furniture and a small area of domestic landscaping, in the context of neighbouring residential development, the effect is muted.
42. The area of hardstanding to the east of the building is limited in overall size. It is of consistent appearance with the access hardstanding and those about the agricultural buildings. From the opening at the entrance to the site - the only clear public view of the appeal site, the hardstanding is partly screened by the building and has a limited visual effect. It neither appears incongruous nor excessive in its setting.
43. In a locality of predominantly mature hedged boundaries of sufficient depth and height to mitigate the visual impact of the residential use and the hardstanding from within the wider landscape, I find the effect of the

development has a limited impact on the character and appearance of the locality.

Conclusion on ground (a)

44. For the above reasons, I find the necessary justification for the rural worker's accommodation in a countryside area exists. The development complies with the exception set out in Policy LPRCD3 to the restriction of new development in the countryside imposed by Policy LPRSP9. It also meets the requirement in Policy LPRSP9 that seeks to ensure no significant harm to the rural character and appearance of the area results from new development. For similar reasons, it complies with the requirements in the National Planning Policy Framework (the Framework). The appeal on ground (a) therefore succeeds.

Conditions

45. At the Inquiry there was some discussion on the revised conditions suggested by the Council. I have considered the conditions and the associated comments and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions.
46. A new dwelling in the countryside would not be consistent with the Council's adopted spatial strategy for the distribution of new housing unless it complied with one of the exceptions outlined in other development plan policies. As a dwelling intended to serve rural workers in the locality an occupation restriction is appropriate as required by Policy LPRCD3 in the LPR.
47. As that policy seeks a commensurate size of dwelling to the needs of the holding, the clear justification for removal of permitted development rights exists in relation to extensions, outbuildings or other forms of additional residential accommodation on the site. A restriction to means of enclosure is not justified in the specific circumstances of the case, however, control of additional external lighting is necessary in the rural landscape.
48. To protect and enhance the local environment, achieve a high standard of living conditions, minimise the use of fossil fuels and limit CO₂ emissions, and mitigate the potential effects of the residential use of the Land, a condition requiring a scheme of works including the detail of foul and surface water drainage, domestic waste management, potable water supply, site biodiversity enhancement, renewable energy generation and electric vehicle charging is necessary.
49. The condition is imposed to ensure that the required details of those aspects of the development are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the works before the development takes place.
50. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

51. A requirement for additional landscaping and the detail of existing means of enclosure and hard surfacing are unnecessary given the retrospective nature of the application and presence of established boundary treatments.

Other Matters

52. I note the appellants' frustration with the extent of the Council's investigations and consideration as to the expediency of taking enforcement action in the case circumstances. However, those are not matters for the appeal.

Conclusion

53. For the reasons given above, I conclude that the appeals succeed in part on grounds (c) and (d). Appeal A succeeds on ground (a). I shall grant planning permission for the residual development as described in the corrected Notice. The enforcement notice will be quashed. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

R Hitchcock

INSPECTOR

Appendix 1

Schedule of Conditions to the deemed Planning Permission granted under Ground (a) on appeal Ref. APP/U2235/C/24/3337974

1. The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture (as defined in Section 336 (1) of the Town and Country Planning Act 1990) or in forestry, or a widow or widower of such a person, and to any resident dependants.
2. The use hereby permitted shall cease and the hardstanding to the east of the building shall be removed within 6 weeks of the date of the failure to meet any one of the requirements set out in (i) and (iv) below:
 - i) Within 3 months of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority and the Scheme shall include a timetable for its implementation. The Scheme shall include details of:
 - a) The means of foul and surface water drainage at the site, along with details regarding the provision of potable water and waste disposal. These details should include the size of individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation).
 - b) Details of the measures to enhance biodiversity at the site.
 - c) Details of measures necessary to incorporate at least 10% on-site renewable or low carbon energy production measured as a percentage of overall consumption. Such details shall include measures for battery energy storage unless this is demonstrated with evidence to be unfeasible.
 - d) Details of a scheme for the installation of one operational electric vehicle charging point for low-emission plug-in vehicles.
 - ii) If within 11 months of the date of this decision the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
 - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Scheme specified in this condition, that Scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions to the dwelling, erection of outbuildings, or stationing of temporary buildings, structures or caravans for purposes incidental to the residential use of the dwelling shall be carried out on the site other than those expressly authorised by this permission.
4. No external lighting, whether temporary or permanent, shall be operated, placed or erected within the site unless details are submitted to and approved in writing by the local planning authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution. The development shall thereafter be carried out and operated in accordance with the subsequently approved details and maintained as such thereafter.

END.

Appendix 2

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/U2235/C/24/3337973	Mr Michael Lott
Appeal B	APP/U2235/C/24/3337974	Mrs Julie Lott
Appeal C	APP/U2235/C/24/3337975	Ms Anne Lott
Appeal D	APP/U2235/C/24/3337976	Mr Benjamin Lott
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APPEARANCES

FOR THE APPELLANT:

Kate Olley	Counsel
Benjamin Lott	Appellant
Julie Lott	Appellant
Michael Dyer	Chartered Accountant, Kreston Reeves LLP

FOR THE LOCAL PLANNING AUTHORITY:

Rowan Clapp	Counsel
Pieter de Villiers	Principal Enforcement Officer, Maidstone Borough Council

DOCUMENTS PROVIDED AT THE INQUIRY:

Appellants' written cost claim.