



Appeal Decision

Inquiry held on 8-10 May 2024

Accompanied site visits made on 7 & 10 May 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/L1765/C/23/3334938

**Springbridge Farm, Highbridge Road, Highbridge, Eastleigh, Hampshire
SO50 6HN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Colin Blyth against an enforcement notice issued by Winchester City Council.
- The notice was issued on 14 November 2023.
- The breach of planning control as alleged in the notice is:
 - (i) The making of a **material change of use** of the Land from an agricultural use to a mixed use for:
 - a) a retail shop with associated freezer unit (Class E(a) of the Use Classes Order 1987, as amended (UCO));
 - b) siting and use of a food van/kiosk for the sale of hot and cold food (Use Class E(b) of the UCO);
 - c) storage, falling within Class B8 of the UCO;
 - d) siting of generators to enable the unauthorised mixed use of the Land;
 - e) a campsite;
 - f) agriculture/horticulture;
 - g) (i) siting of two linked caravans/mobile homes for residential purposes shown in the approximate positions marked 'X' and 'Y' on Plan 1.
 - ALTERNATIVELY:**
 - (ii) the construction of a dwelling house by the linking of the said two caravans/mobile homes and its use as a dwelling house;
 - h) siting of one caravan used for residential/associated residential purposes in connection with g) above shown in the approximate position marked 'Z' on Plan 1;
- AND**
 - (ii) The carrying out of **operational development** on the Land namely:
 - i) erection of buildings, outbuildings, toilet block, solar panels, and fencing used in connection with the unauthorised mixed use of the Land;
 - j) erection of polytunnels and structures associated with the use of the land for horticulture;
 - k) engineering operations to create a septic tank and cesspit(s) for use in connection with the unauthorised mixed use of the Land;
 - l) the laying of hard-surfacing to facilitate the unauthorised mixed use of the Land
- The requirements of the notice are to:
 - i) Cease the use of the Land as a retail shop, for siting a food van/kiosk for sale of hot and cold food and B8 storage.
 - ii) a) Cease the use of the Land for siting caravans/mobile homes for residential or associated recreational purposes; OR b) Cease the use of the Land as a dwelling house and the use for siting caravans/mobile homes for residential or associated purposes.
 - iii) Cease the use of the Land as a camp site except in accordance with permitted development rights for temporary campsites under The Town and Country

- Planning (General Permitted Development) (England) Order 2015 or any amending or subsequent legislation.
- iv) Remove from the Land the retail shop and associated freezer container, food van/kiosk, outbuildings, toilet block, solar panels, vehicles, boats, trailers, generators, storage containers, polytunnels and similar structures, fencing, building materials and rubble and all other paraphernalia brought onto the Land to facilitate the unauthorised use.
 - v) a) Remove from the Land the two caravans/mobile homes and the wooden structure linking the mobile homes, and the separate caravan (shown marked X, Y and Z on Plan 1); OR b) Remove from the Land the dwelling house comprising two linked caravans/mobile homes units, and the separate caravan (shown marked X, Y and Z on Plan 1).
 - vi) Remove the storage container (including sanitary facilities housed within), wooden structure, and cesspit(s)/septic tank from the Land (as shown in photographs A & B attached); fill in the excavated area and re-level the Land in line with the directly adjacent land.
 - vii) Dig up and permanently remove from the Land the hardstanding (shown outlined in blue on the attached Plan 1 and tarmac (shown coloured green on the attached Plan 1) both of which facilitate the unauthorised use of the Land.
 - viii) Remove from the Land all materials, rubble, rubbish and debris arising from steps (iv) to (vii).
 - ix) Reinstall the field gate at the entrance to the Land onto Highbridge Road with a boundary treatment and gate similar in appearance to the one shown in photograph C attached.
 - x) Reseed the Land to grass.
- The period for compliance with the requirements is: **9 months** from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 'polytunnels' from requirement iv) above, and deletion of requirements vii) and ix) in their entirety.
2. Subject to these variations, the appeal is allowed insofar as they relate to the Land and the specified part of the development being permitted and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for the currently occupied chicken sheds, polytunnels, access and hardstanding only.
3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the Land and the rest of the unauthorised development attacked by the notice 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

4. Paragraphs 2.33 and 2.44 of Mr March's Proof state that the appellant is making a costs application. However, I checked this on the last day of the Inquiry, and it was confirmed that neither party was making a costs application. Consequently, there are no separate costs decisions linked to this appeal decision.

Reasons

Grounds (b) and (c)

5. Ground (b) is that the matters alleged in the notice have not occurred. The appellant seems undecided as to whether or not he is appealing on this ground: his agent at paragraph 2.7 of his Proof sets out agreement that the matters initially raised under ground (b) were in fact part of the ground (c) appeal, as he agreed at the Case Management Conference. So, I will treat them as such, despite reference again to ground (b) in the appellant's advocate's closing submissions.
6. Ground (c) is that the matters (if they occurred) do not constitute a breach of planning control.
7. The appeal site, the Land, is a single planning unit comprising 2.95 hectares (7.29 acres) of level pastureland, essentially a single field. Its southern boundary abuts the B3335 Highbridge Road and its western boundary the public footpath next to the Itchen Navigation (a man-made canal) that forms part of the River Itchen. Immediately to its west on an embankment is the main railway line, beyond which is Allbrook, the north-eastern edge of Eastleigh. Around it to the north, south and east is other agricultural land.
8. The retail shop, or the Butcher's Shop as it is referred to by the appellant, comprises a mobile trailer kitted out with a retail display counter like a traditional butcher's shop. Although it is currently unused, and has been for some time, when it was last used the appellant claims that the produce sold from it predominantly comprised meat and vegetables produced on the holding.
9. When it was being operated by the butcher (employed by the appellant), Mr Blyth says that his beef and pork was sold there. The fact that his beef cattle were reared on nearby land (only a kilometre or so away) leased to him by the owner of Highbridge Farm, rather than on his Land itself, does not invalidate the fact that it was produced on his own agricultural holding. I accept that that Mr Blyth kept pigs on site around the time the Shop was operating. I also note that eggs produced by Mr Blyth's chickens on site continue to be sold from the wooden structure next to the Butcher's Shop.
10. However, the appellant has very few records of animal movements (sheep, pigs or beef) from the holding, which he accepted are required every time an animal is brought onto the site or removed to an abattoir for slaughter. In the absence of such records I find it hard to believe that all or the vast majority of the meat sold by the butcher – beef, pork and lamb – was produced on the holding, given that the meat sold enabled Mr Blyth to employ a qualified butcher.
11. Furthermore, as well as the signboard displaying all the different cuts of meat previously sold there, another board details a large range of vegetables also for sale from the shop. The appellant maintains that these were all produced on the site, except for the sweet potatoes. I doubt that to be the case, given the small-scale nature of the vegetable growing on the site currently, and because Ms Middleton's evidence simply did not back up Mr Blyth's allegation in this respect. It is also undisputed by the appellant that Mr Conor Cleary, the appellant's erstwhile business associate, brought plants and Christmas trees onto the site from elsewhere and sold them from there in 2022.

12. In order to be ancillary to the agricultural/horticultural use of the Land, the produce sold must predominantly have been produced on the Land. But, on the balance of probability, and for the above reasons, I do not believe that to be likely and have no evidence that it was in fact the case; the onus is upon the appellant to establish this. Part of the mixed-use taking place when the notice was served therefore included a retail use. That comprises development, for which no planning permission has been granted.
13. The appellant also claims that the nearby food van/trailer/kiosk/café was used to predominantly sell pork and beef burgers, the meat for which was produced on the Land. But he admits, and it stands to reason, that tea, coffee and possibly other drinks as well as bread rolls/baps for the burgers, were purchased to sell from the kiosk. Ice lollies were sold when Conor Cleary was running it for 8 months in 2022; it is unclear what else was sold by him from the kiosk during this 8-month period. It seems likely to me that other bought-in foodstuffs would also have been sold there generally, given that it appears it was set up to cater for passing trade from walkers, tradesmen and probably the campers on the adjacent campsite. I doubt that 75-85% of the products sold through this kiosk were produced on the holding – and I certainly have no evidence to establish that.
14. In any case, even if the majority of the sales were of meat or eggs produced on the site, there is no customary expectation or deemed permission for farms or agricultural enterprises to incorporate hot and cold food takeaway uses, unlike for the direct sale of crops produced or the meat of animals raised on a farm. The use of the kiosk for takeaway food sales is clearly not ancillary to agriculture. Such a use requires express permission, either on its own or as part of a mixed use of the site.
15. In terms of the alleged storage use, there is undoubtedly a large amount of what looks like (and often is) rubbish on the site. Mr Blyth sets out in Appendix 1 to his Witness Statement how he has used or possibly intends to use, should the need arise, much of this material. But even in this list, which is a commentary on the photographs taken by the Council at its site visit on 9 August 2023, there is a fair amount of material that is clearly either scrap, redundant to the operation of the land as a smallholding or simply rubbish in need of clearance. A prime example of this is the trailer situated to the north of the solar array on top of which sits an unused mobile unit (shown on page 43 of the Council's photos), which the appellant acknowledges is full of 'toot' – slang for tat or rubbish.
16. Mr Leigh's Closing Submissions acknowledge that Mr Blyth is 'like a womble' in that he acquires things that might be useful for his business. I acknowledge that some of these things have been put to such use, such as at least some of the numerous generators which have or may be used for spare parts in order to repair the one working generator, when there is insufficient sunlight for the solar array to produce enough electricity, or the corrugated iron used for pig arks in the past.
17. However, the amount of such material, much of which may never actually be used in connection with the agricultural/horticultural use of the Land, is excessive. Indeed, it takes up a fair proportion of the northern and eastern part of the site, which prevents its use for grazing or horticultural production. Clearly, the boats have no need to be on the land and are only present because

Mr Blyth lives there. The marquee clearly had nothing to do with agriculture. The piles of pavers, wood, pallets, corrugated iron and other metal fencing are excessive for such a smallholding and would not normally be expected to be stored even on a large commercial farm comprising hundreds of acres. Consequently, I agree with the Council that they amount to a B8 storage use, for which there is no permission.

18. In relation to the brick pavers specifically, the appellant has said he has retained these to pave the entrance areas of the camping toilet block as well as the prospective steel frame barn, which the Council stated by letter of 14 July 2016 did not require prior approval. However, the toilet block is clearly a permanent structure, which is excessive for 60 days of allowable camping under the GPDO¹. Such toilet facilities should be removed when any camping allowed under permitted development (PD) is not occurring, i.e., the other 10 months of the year. 60 days permissible camping by tents is PD under Class BC, Part 4, Schedule 2 of the GPDO, but such a use is not PD under the GPDO Article 3 (5) (b) where the existing use is unlawful. That is the case here, because the camping is part of a mixed use that is unlawful. Permission is therefore required for the camping use and no such permission has been granted. 60 days camping for up to 50 tent pitches would of course be PD if the use of the Land reverted to agricultural/horticulture.
19. In relation to the proposed barn, the Council makes clear in its letter that development of such must commence within 3 years, i.e., by 14 July 2019. Although some levelling of the ground has occurred in the location envisaged for construction of the barn, no meaningful work has commenced to erect the barn. Planning permission is therefore required for this barn, which would be part of an unlawful mixed use of the Land. The Council would be very unlikely to grant permission, for the reasons indicated in the notice.
20. For the above reasons the various piles of brick pavers comprise unlawful B8 storage, since they are very unlikely to ever be used in connection with the present unlawful use or indeed any lawful agricultural/horticultural use of the Land.
21. The various fencing on the site, despite not being over 2m high, is also unlawful by virtue of GPDO Article 3 (5) (b) and, since it is part and parcel of the unauthorised mixed use attacked by the notice, requires permission as established by current caselaw.²
22. I address the residential use of the Land under ground (d) below, but given my conclusion on that issue, the residential use would require planning permission, which does not currently exist. For the above reasons the uses set out above together comprise a mixed use (together with the agricultural/horticultural use) of the Land, which requires planning permission. The other operational development attacked by the notice requires planning permission because it is part and parcel of the unlawful mixed use of the Land. The appeal under ground (c) consequently fails.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

² *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] EWHC 1654 (Admin), [2016] EWCA Civ 784 & *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

Ground (d)

23. It is established law³ that whilst the erection of a building is operational development that has an immunity period of 4 years from the date of its completion, the use of a building, including a residential use, has a 10-year immunity period⁴.
24. There is no dispute here that the portacabin and the adjacent mobile home sited immediately to its west across the concrete apron between them were used for residential purposes as soon as they were brought onto the Land. There never occurred a change to residential use from some other initial use in the case of either. S171B(2) is therefore irrelevant to the circumstances of this case. The notice was issued and served on 14 November 2023. That means that the residential use of the Land would have had to have commenced by 14 November 2013. But, as admitted by Mr Blyth, he did not move the portacabin onto the site until early 2014, and the mobile home was not moved onto the site until early 2015. The residential use (of both units) therefore commenced less than 10 years ago, and so is clearly not immune from enforcement action.
25. Nonetheless, the appellant argues that both these units, which were clearly caravans rather than buildings when they were delivered to the site, have since become buildings as a result of extensions to them, which he claims were completed more than 4 years prior to the issue of the notice. If that is so, I agree with the main parties that such buildings would be immune from enforcement action, as per the principles laid down in *Caldwell*⁵.
26. Mr Blyth says that he extended the portacabin in 2015 by building a utility room onto its northern end in order to house a boiler and the necessary electrics and pipework for both units. I acknowledge that this extension is physically attached to the portacabin by a dual pitched roof, which runs across both. In respect of the mobile home, he says that he purchased a second-hand uPVC conservatory in early 2016, which he physically attached to the concrete apron and on to the eastern side of the mobile home facing the portacabin.
27. However, there were further works. To prevent the conservatory roof leaking Mr Blyth in 2020 embarked on building a new linking dual-pitched roof between the mobile home and the portacabin. But this roof was incomplete when the notice was served – and indeed is still incomplete as far as I could see from my visit.
28. Caselaw has established that if development as a whole can be enforced against, there is no saving part of it which may have been carried out more than 4 years before the service of the notice. What is being alleged now is that the portacabin, mobile home and linking roof between them (under which is a living area and partially completed kitchen/diner) comprises a dwelling in a building. I have no doubt that these combined structures now comprise one dwelling, and did so at the time the notice was served.

³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; [2011] JPL 1183

⁴ Although the 4-year limit was changed on 25 April 2024 from 4 to 10 years under The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024, Regulation 5 (the transitional provisions relating to enforcement time-limits) means that the limits are not retrospective i.e. where operations were substantially completed before 25 April 2024 in terms of s171B(1) of the 1990 Act or the breach occurred in terms of s171B(2) of the 1990 Act.

⁵ *Ibid Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

29. So, even if the portacabin had become a building by virtue of its 2015 extension and roof by 2019/2020, the subsequent incomplete works linking the two units together mean that the totality of the operations to create the dwelling are not immune from enforcement action. That is the case regardless of what previous Council officers may have concluded regarding the establishment of a permanent dwelling, for instance in the officer report dealing with the retrospective application 16/02638/FUL. Indeed, the appellant argues that the conservatory to the mobile home was only removed once the linking roof between the units had been erected – which confirms that this later work was very much part and parcel of the operation to create the single large dwellinghouse as a building. The mobile home itself is clearly not a building in any case because it still sits on wheels and could be towed away given the fact that the conservatory was removed in July 2023 – and the linking roof extension is incomplete and therefore enforceable.
30. The appellant argued at the Inquiry that the Butcher’s Shop was also a building because it was sunk into a hole in the ground. Whilst it is partially sunken into a depression in the ground, it still sits on the trailer that it rested on when it was brought onto the site⁶. Also, the appellant has in his own words acknowledged that the retained Irish registered mini-articulated truck which he used to bring it onto the site has been specifically retained in case it needs to be removed. It is therefore clearly not a building. Nor is the refrigeration unit sited immediately behind it, which is a metal shipping container. The insubstantial wooden structure attached to the Butcher’s Shop could be easily dismantled; neither together or individually meet the tests in *Skerritts*⁷: they are not sufficiently large, attached to the ground or permanent to be described as a building. Even if it was determined that this was a building, it would comprise operational development ancillary to the unauthorised mixed use, which can legitimately be enforced against under *Murfitt*⁸, as acknowledged by paragraph 40 of *Caldwell*.
31. The solar array is not a building but part and parcel of the generation of electricity, part of the mixed use of the site. The egg incubators and polytunnels are not buildings because they do not meet the tests in *Skerritts* to be realistically described as such. They too are part and parcel of the mixed use of the land, which has been occurring for less than 10 years, as has the camping.
32. For these reasons, even assuming that the dwelling is a building, this building had not been completed when the notice was served, and the ground (d) appeal therefore fails.

Ground (a)

33. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
34. In considering this, two prime linked questions arise. First, whether the unauthorised mixed use complies with development plan policies and if not, whether there is any reason to allow it to continue anyway, notwithstanding

⁶ As acknowledged in paragraph 6.8 of Mr March’s Proof

⁷ *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2) [2000] EWCA Civ 5569*

⁸ *Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598*

any harm it creates. Secondly, whether the purely agricultural/horticultural part of the mixed use justifies either a temporary or personal permission for a dwelling for Mr Blyth and his dependents (primarily his son) to live on the site. I turn to the first issue first.

35. The appellant runs a smallholding on the Land, which is situated in the open countryside. Farms are often untidy, but this smallholding is unreasonably so. As set out above, much of the material on the Land is effectively rubbish, which has no need to be there. I would have expected some clearance of such to have taken place before my site visit. The fact that this had not occurred does not give me any confidence that it would be cleared in the future, even if I was to grant a temporary or personal permission with conditions requiring such.
36. The presence of such rubbish is compounded by the way in which the western boundary to the Itchen Navigation footpath has been fenced with a strange accumulation of random close boarded fencing and corrugated iron etc, the purpose of which seems to be to prevent any walkers on the footpath looking into the site. Such unsightly boundary treatment is entirely inappropriate and unnecessary to a farm smallholding and comprises significant harm to the local rural landscape in itself. This and the internal fencing achieved by upright pallets is a very messy and visually harmful way of creating boundaries around and within the site. There is no doubt, when comparing the aerial photographs of the Land in 2013 and what it looks like today, that the appellant's operations on it have led to significant adverse visual impacts on the character of the area and the local landscape.
37. I understand that the appellant has had problems in securing a mains electricity connection to the Land, hence his electricity generation via the solar array, and in the absence of sufficient sun (in the winter) by the generator. But the absence of such mains electricity in itself is a cause of concern because the solar array and all the equipment associated with it – the batteries and various connections used to store the power as well as the working generator and generators needed for their spare parts – have resulted in a visually harmful level of clutter, which adversely affects the local landscape. I find it hard to believe that a mains connection to the site cannot be created. I understand that this may be expensive but given the financially precarious nature of the enterprise (see below), that only highlights its inherent unsuitability for the site; if it is only viable without a mains electricity connection, the paraphernalia required to produce its own energy is itself unacceptable in terms of harm to the local landscape. I also have concerns about potential noise pollution from the regular use of the generator in the winter months.
38. In terms of the second question, I understand why Mr Blyth has chosen to live on his smallholding since 2014 but what is at issue here is whether such a smallholding (on such a small piece of land), operated in the way in which he continues to operate it, meets the policy tests for a dwelling in the countryside outside any settlement boundary. Policy MTRA4 of the Local Plan Part 1 (Joint Core Strategy) only permits development in the countryside that has an operational need to be there, such as agriculture or horticulture and such development should not cause harm to the character and landscape of the area. The development comprises a mixed use that goes far beyond agriculture and horticulture and, for the above reasons, results in significant harm to the character and landscape of the area, and so is contrary to Policy MTRA4.

39. Regarding the residential use, Policy DM11 of the Local Plan Part 2 (Site Allocations and Development Management) states that new permanent dwellings will generally only be permitted in the countryside to support agricultural etc activities on well-established agricultural etc enterprises. There is no dispute that this enterprise is not well-established, hence the appellant seeks a temporary and/or personal permission. Before permitting a temporary residential permission, the following must be satisfied:
- a. clear evidence of a firm intention and ability to develop the enterprise concerned,
 - b. clear evidence that the proposed enterprise has been planned on a sound financial basis; and
 - c. a functional need for the accommodation, which cannot be satisfied by existing nearby accommodation.
40. The appellant has suffered from poor health in recent years and the smallholding has been affected by bird flu and the effects of the coronavirus pandemic, which has affected its financial viability. Hence the need to re-assess the justification for a temporary dwelling now.
41. Regarding a. above, and looking at the historical position, the smallholding only generated a profit of £9,000 in 2018 and £14,378 in 2023 – neither of which is a living wage. It is unclear how bird flu affected the appellant's egg sales, or his sale of meat from the pigs and lambs, notwithstanding that he has no records of such sales. The vegetable business has never gone beyond an area of approximately 50m², which is insufficient to produce any substantial produce and hence sales.
42. In terms of future intention, it is unclear how the hens will be protected from future outbreaks of bird flu because they are not suitably fenced in. Whilst 150 previously battery hens have been sold in recent months I agree with Mr Sewill, the Council's agricultural needs assessor, that the market for such sales to domestic clients locally will be limited and therefore question whether ongoing sales at this level are likely to continue at such a high level.
43. I acknowledge Mr Blyth's sales of purebred fertilised eggs, chicks, poults and pullets and the potential for him to grow such sales, but it is unclear to me from his evidence how much growth will occur and how it will be achieved. Likewise, it is unclear how many lambs will be sold annually, and the appellant no longer has any pigs, nor does he rent adjacent land for beef. Consequently, I cannot see any realistic need to retain the Butcher's Shop, attached wooden structure or the refrigeration unit.
44. Regarding b. above, no market evidence has been provided that what is proposed is achievable. No capital budget has been provided, and the business plan takes no account of necessary costs such as feed and bedding. No credible financial information has been provided to demonstrate that the business is currently financially viable. The enterprise does not equate to a full-time holding requiring a full-time worker – the need is clearly part-time.
45. In terms of c. above and the functional need for a worker to live on-site, in relation to livestock currently on the site, there are, as accurately indicated in the Council's closing submissions: 231 battery ex-battery hens, 55 chicks in the incubation hatchery and 20 pullets near the southern polytunnel, 25 hens

- of various breeds and 3 cockerels, 1 duck, 2 geese (a total current poultry count of 337), 29 ewes, 1 breeding ram, 5 yearling rams and 20 lambs. That number of livestock does not generate a requirement for anyone to live on the site.
46. Rearing chicks requires attendance if there was, say, a problem with the incubators (including in relation to the electricity supply to them) only after about two hours and this could be done with a mobile alarm system. A full-time worker is only needed for poultry where there would be 5,000 fully fledged birds or 8,000 pullets. For vegetable production, the requirement for a full-time worker is 3,000m², not 50m².
47. Whilst I agree that the Agricultural Budgeting and Costing Book deals with commercial production and not with a smallholding like this, there is nonetheless clearly no need for someone to live on the site, given the minor scale of the smallholding operation; the labour requirement is at most for 1½ hours per day, obviously a part-time requirement. The fact that Mr Blyth does so, to run the smallholding in the way that he does, is simply because he has chosen to. But that is not a justification for there to be a dwelling on the Land. He could live in Eastleigh nearby – the nearest parts of which are within walking distance of the site – and still run his smallholding, including the campsite, efficiently.
48. For the reasons set out above a temporary planning permission for an on-site worker has not been justified, and indeed is very unlikely to ever be so for such a smallholding on this small area of agricultural land. Consequently, even if the development were only related to the agricultural/horticultural use of the Land, it would be contrary to Policy DM11.
49. There is hence no need for the mobile homes. Nor is there any need for the other items on the site that are not required for the running of an agricultural/horticultural smallholding: the hot food kiosk, the Butchers Shop, structure attached to it and attached freezer unit, the outbuildings, permanent toilet block for the campsite, solar panels, vehicles, boats, trailers, generators, storage containers, fencing, building materials and associated rubble and all the other paraphernalia and rubbish on the site.
50. The hen houses to the southwest corner of the site are not ideal because the chickens are not properly fenced in, but their function is obviously necessary on such a smallholding and they are not themselves located in Flood Zone 3 and are therefore acceptable. I note that the notice does not require their removal – and nor does it of course require the removal of the structures currently used for incubating the eggs and raising the chicks, since these are all part of the agricultural use of the site.
51. In contrast the southerly polytunnel used for growing vegetables is within FZ3. But given the fact that any flood water could easily flow through it, I can see no in-principal objection to its retention for horticultural purposes. Nor can I see any objection to the northern polytunnels. The hard surfaced access tracks around the entrance and linking that to the northern part of the site are all part and parcel of the agricultural/horticultural use of the Land and I can see no objection to them per se. Where this development is attacked by the notice, I shall therefore delete it accordingly, as set out in the Decision above.

52. In conclusion, as well as being contrary to Policies MTRA4 and DM11, the development is also contrary to quite a few other development plan policies, for the various reasons set out above. In particular it is contrary to the following policies: Policies CP13 and CP20 of the Local Plan Part 1, which requires development to meet the highest standards of design and protect the District's distinctive landscape respectively, which this development clearly does not; Policies DM15, DM16 and DM23 of the Local Plan Part 2, equally because of the development's harmful effect on the character and landscape of the local area; DM20 because it causes unnecessary noise pollution through the use of generators.
53. In terms of potential impact of the retrospective development on ecology, pollution and biodiversity (including in respect of the nutrient load onto local SSSI and SAC sites), on flood risk and the potential for additional landscaping to address its harmful impact on the local landscape, the Council has accepted that these issues could be addressed by conditions (conditions 3-6 of the agreed conditions between the parties), which would include off-setting the nitrate load generated indicated in the appellant's nitrate budget calculation (Appendix 17 of Mr March's Proof). Consequently, I am content that Policies CP16 and DM17 would not be breached.
54. In terms of the access to the site, I accept that this must be safe. Given that the access remains where it originally was, which is not unacceptable, I understand that the adjacent hedgerow fronting the road has had to be lowered in order to achieve adequate visibility lines for vehicles entering and exiting the site, given the curve of the road. That is therefore acceptable, as is a hard surfaced area for parking near the access, given that members of the public will still want to come onto the site to buy eggs, ex-battery hens, vegetable produce and potentially meat, assuming that the Land continues to be used as an agricultural/horticultural smallholding. There would therefore be no breach of Policy DM18, which requires such a safe access to the Land.
55. In overall conclusion, most of the unauthorised mixed use addressed by the notice (bar the agricultural/horticultural use) is unjustified and has no need to be on the Land. This includes the retail use, the sale of hot and cold food and drink, the B8 storage use, the residential use and most of the associated operational development associated with these uses as well as the camping and its toilet facilities. It is contrary to the relevant development plan policies and to the Plan as a whole. No evidence has been provided by the appellant to suggest that a residential use would ever be required for such a small agricultural/horticultural smallholding enterprise. On the contrary, the size of the Land alone, even apart from the way Mr Blyth has developed (or failed to develop) the enterprise, would be very unlikely ever to warrant the provision of such on the site.
56. For these reasons the appeal on ground (a) fails.

Ground (f)

57. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
58. The appellant argues that he would need to use the mobile home and/or the portacabin as a shelter/messroom/tearoom whilst he is working on the land

and that the one that is not used for such would be required for storage. I disagree. There is enough room in the polytunnel to facilitate a shelter/tearoom. Retention of one of the units for storage would be a hostage to fortune in that the Council would constantly have to monitor its use to ensure that it did not revert to an unauthorised residential use, which would in itself be unreasonable. Furthermore, no justification has been given for requiring such internal storage (or what would be stored there) in connection with the smallholding use of the Land.

59. For these reasons I consider the requirements of the notice, as varied, to be the minimum necessary to ensure cessation of the unauthorised use and allow the Land to be used for agriculture/horticulture.

60. The appeal under ground (f) consequently fails.

Ground (g)

61. Ground (g) is that any compliance period specified in the notice falls short of what should reasonably be allowed.

62. The notice specifies a 9-month compliance period. The appellant argued (in the agent's Proof) for an 18-month compliance period on the basis that the appellant's son (who is currently 16 years old) will be 18 by then, whilst his Closings suggested 24 months would realistically be required in order for his son to continue ongoing studies, albeit only 12 months would be required to remove unwanted items from the Land.

63. I understand that Mr Blyth's son will be 18 years old in March 2026, which is 20 months away. I am conscious that his son will no doubt need to carry on his education in some form or other until he is at least 18. But he could do so if he lived in a dwelling in the built-up area nearby, even if he had to move before he was 18. I consider that 12, 18, 20 or 24 months would, in effect, amount to a temporary planning permission for the residential use, which cannot be justified in view of the harm to the character and appearance of the site including the local landscape and the clear conflict with development plan policies. 9 months seems to me an adequate period in which to clear the land and cease the unauthorised use, as well as to find adequate nearby accommodation, which should in principle not be difficult given the proximity of Eastleigh's large built-up area.

64. The appellant's human rights are engaged here since the requirements of the notice impinge on Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of Schedule 1 of the Human Rights Act 1998. However, interference with a person's right to respect for private and family life and the home may be justified in the public interest. The interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied.

65. The interference here would also be in pursuit of a legitimate aim. This is the economic well-being of the country which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective. I find that the legitimate aim of protecting the environment in the public interest attracts great weight and outweighs the interference to the appellant's human rights, including in terms of his son's continuing education requirements

as outlined above. Interference with the Convention Rights is therefore necessary and proportionate, for the reasons explained above.

66. The appeal under ground (g) therefore fails.

Conclusion

67. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the currently occupied chicken sheds, polytunnels, access and hardstanding only, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the other matters attacked by the notice. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT: *Kevin Leigh* (of 33 Bedford Row) instructed by Neil March called:

-Colin Blyth*

-Susan Middleton*

-Henry Brice MRICS FAAV of Judd & Partners (in Round Table Session 2 (RTS2) on Agricultural Viability)

-Neil March MRTPI of Southern Planning Practice Ltd (in RTSs 1 & 3 on Legal Grounds c) and d) & Ground a) appeals respectively)

FOR THE LOCAL PLANNING AUTHORITY: *Charles Streeten* (of Francis Taylor Buildings) instructed by Fiona Sutherland, the Winchester City Council (WCC) solicitor called:

-Sandra Graham BA (Hons) LLM (Dist.), Principal Enforcement Officer at WCC (in RTS1 on Legal Grounds)

-Roger Sewill, MRICS of Reading Agricultural Consultants (in RTS2 on Agricultural Viability)

-Stuart Dunbar-Dempsey CMLI, WCC Landscape Officer (in RTS3 on Ground a) appeal)

-Amy Winch, BSc (Hons) MSc MRTPI, Principal Planning Officer at WCC (in RTS3 on Ground a) appeal)

*These were the only two witnesses subject to formal examination, cross-examination and re-examination by the advocates.

End of Appearances

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Submissions by WCC
2. Agenda for RTS1
3. Agenda for RTS2
4. Agenda for RTS3
5. Statement of Common Ground signed by both parties dated 10 May 2024
6. Email trail between Council officers dated July 2017 introduced by WCC on Day 2 of Inquiry
7. Draft new ENF PLAN1
8. List of Conditions agreed between the main parties
9. Closing Submissions by appellant
10. Closing Submissions by WCC

End of Documents List