



Appeal Decisions

Site visit made on 2 August 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 08 August 2024

Appeal A Ref: APP/V3310/C/23/3317375

Appeal B Ref: APP/V3310/C/23/3317376

Land at Kingston Farm Lane, Othery, Bridgwater, Somerset

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Samantha Lesley-Anne Newport and Tina Dennehy as executors of the estate of Mr Clifford Dennehy (Appeal A) and Mrs Tina Dennehy (Appeal B) against an enforcement notice issued by Sedgemoor District Council.
- The notice was issued on 9 February 2023.
- The breach of planning control as alleged in the notice is "Without planning permission, the erection of a poultry unit, in the approximate position marked by a cross on the attached plan, comprising the siting of a lorry body on a trailer and erection of an attached chicken run on land marked in red on the attached plan".
- The requirements of the notice are "to cease keeping chickens in the lorry body and trailer and attached chicken run and remove the lorry body and trailer and attached chicken run from the land edged red on the attached plan".
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decisions.

Appeal C Ref: APP/V3310/C/23/3317378

Appeal D Ref: APP/V3310/C/23/3317379

Land at Kingston Farm Lane, Othery, Bridgwater, Somerset

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Samantha Lesley-Anne Newport and Tina Dennehy as executors of the estate of Mr Clifford Dennehy (Appeal C) and Mrs Tina Dennehy (Appeal D) against an enforcement notice issued by Sedgemoor District Council.
- The notice was issued on 9 February 2023.
- The breach of planning control as alleged in the notice is "Without planning permission the material change of use of land from agriculture to a mixed use of agriculture and the use for the siting and storage of caravans in the area shaded red on the attached plan and associated domestic paraphernalia not used in connection with the agricultural use of the land on land marked in red on the attached plan".
- The requirements of the notice are:
 1. To cease any residential use of the land on land marked in red on the attached plan.
 2. Remove all static and touring caravans and any non-agricultural paraphernalia from the land on land marked in red on the attached plan.
 3. To remove any ancillary works connected to the caravans such as drainage, water and power supplies on land marked in red on the attached plan.

4. To restore the land to its original agricultural condition before the breach took place on land marked in red on the attached plan.
- The periods for compliance with the requirements are 1 month after the notice takes effect to comply with step 1 and 2 months after the notice takes effect to comply with steps 2, 3 and 4.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decisions.

Preliminary Matters

1. The appeal site comprises a large field located at the eastern end of Kingston Farm Lane, and is accessed via the garden of a neighbouring residential property. The parties agree that its lawful use is agricultural land. Two separate enforcement notices have been issued by the Council in respect of the site: the first concerns the erection of a poultry unit along the westernmost boundary of the appeal site (Appeals A and B); and the second concerns the stationing of two caravans within the site for storage purposes (Appeals B and C). Given that the two enforcement notices concern the same parcel of land, I have addressed them both in the same decision notice.

APPEALS A AND B (POULTRY UNIT)

2. Pursuant to ground (c), the appellants say there has been no breach of planning control. Whilst the appellants' argument on this ground is not entirely clear, they appear to contend that the poultry unit does not comprise operational development, or alternatively, that it is permitted development. To succeed on this ground, the evidential burden rests with the appellants to demonstrate their case, on the balance of probability. Planning merits are not relevant.
3. The poultry unit comprises a large lorry body, which is mounted on a trailer. There is a wooden framed chicken run connected to the trailer, providing access between the lorry body and the rest of the coup. There is corrugated sheeting affixed to the lorry body which extends out to the derelict and open linhay, both of which form part of the overall enclosure. The poultry unit is also enclosed by wooden post fencing and mesh netting.
4. I have assessed the structure with regard to *Skerritts*¹, which sets out three primary factors to help determine whether or not a structure is a building: size; permanence; and physical attachment. In terms of size, the main body of the structure is understood to measure approximately 8 metres long, 3 metres wide and 3 metres tall. It significantly exceeds the height of the boundary wall to the neighbouring residential property, which attests to its overall bulk and substantial size.
5. The overall structure, including the fencing, wooden framed chicken run, mesh netting and corrugated sheeting are all affixed to the lorry body, and also integrate with the open linhay. Even if component parts of the structure could be moved, the degree of interconnectivity between them means the structure as a whole would not be readily moveable in practice. Moreover, the poultry

¹ *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council (No. 2)* [2000] EWCA Civ 5569; [2000] JPL 1025

unit is understood to have been in the same position since March 2021, which attests to its degree of permanence.

6. When these factors are considered together, I consider that the structure is indeed a building, in line with the principles endorsed in *Skerritts*. This conclusion is consistent with the “*Woolley Chickens*” case², in which it was held that poultry units could still be considered buildings (as per s336(1) of the 1990 Act), notwithstanding their potential moveability and lack of physical attachment to the ground.
7. I have considered whether the poultry unit would benefit from any permitted development rights relating to agricultural land. For agricultural land less than 5 hectares in size, as is the case here, these rights are set out in Class B, Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class B permits the extension or alteration of agricultural buildings, which could conceivably include the lincage mentioned above.
8. However, development is not permitted under Class B where the height of the building would be increased, nor where any part of the development is within 5 metres of the boundary of the agricultural unit. Neither of these conditions are met. Notwithstanding numerous other conditions which must also be met, the development would therefore not be permitted by Class B. No evidence has been presented to suggest the structure would benefit from any other permitted development rights under a different class of the GPDO.
9. On the evidence before me, the matters alleged in the notice therefore comprise operational development, and there are no applicable permitted development rights for its construction. Given planning permission was not obtained, the matters alleged in the notice constitute a breach of planning control.
10. The appeals on ground (c) therefore fail.

Other Matters

11. Whilst the appellants say that the poultry unit is needed for the welfare and security of chickens within the appeal site, this factor is relevant to the planning merits of the development, and cannot be considered under a ground (c) appeal.
12. The requirements of the notice require the appellants to cease keeping chickens in the lorry body and trailer. However, the keeping of chickens is a use of land, and not operational development, as alleged in the notice. I have therefore removed this requirement, as it goes beyond the scope of the alleged breach of planning control. Nonetheless, the requirement to remove the poultry unit will essentially preclude the keeping of chickens, so this variation should not prejudice the Council.
13. I have also made a number of other minor modifications to the allegation and the requirements for greater clarity and accuracy with regard to the planning breach.

² R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)

APPEALS C AND D (CARAVANS)

14. Pursuant to ground (c), the appellants say there has been no breach of planning control. This argument is based on the caravans allegedly being used in conjunction with the agricultural use of the land. As above, the evidential burden rests with the appellants to demonstrate their case, on the balance of probability. Planning merits are again not relevant.
15. There are two caravans on site, one static caravan and one smaller touring caravan. The appellants say they are used for staff and animal welfare purposes, including for toilet facilities and storage space for animal feed and equipment, in conjunction with the site's agricultural use.
16. The primary agricultural operation within the site is the keeping of chickens. Whilst the appellants say approximately 80 chickens are kept within the poultry unit, they have provided very little detail regarding staffing needs in connection with this operation. In particular, they have not explained how often staff are on site, how long they remain on site once there, nor how often the caravans are used. It has also not been explained why two caravans are needed to meet any such welfare purposes.
17. This lack of detail is problematic, particularly as neighbours suggest the appellants only attend the site once or twice a day, solely to collect eggs. If that is the case, it is difficult to envisage the caravan being used meaningfully in conjunction with this agricultural operation (noting that the appellants live very close to the appeal site). On my site visit, there was also no evidence of the caravans being actively used or occupied, which is consistent with the representations made by neighbours. The evidence before me therefore suggests the caravans are primarily sited for storage purposes, and not for staff or animal welfare purposes as alleged by the appellants.
18. In terms of their impact, the two caravans introduce a domestic appearance to the appeal site, which undermines its prevailing agricultural character. They appear cluttered and untidy, especially given their prominent siting towards the middle of the site. The paraphernalia around the caravans, which includes disused appliances, furniture, carpets, bins, tyres, trampoline and football goalposts, exacerbate this sense of clutter, which amplifies the overall harm. On account of these factors, the impact of the alleged development is materially different to the site's lawful agricultural use, as it harms the rural character and appearance of the site and the surrounding area. This factor is indicative of a material change of use having occurred.
19. On the evidence before me, the appellants have therefore not demonstrated, on the balance of probability, that use of the caravans was ancillary to the agricultural use of the appeal site at the time the notice was issued. Instead, the caravans appear to have been sited for storage purposes unrelated to agriculture.
20. In turn, the siting of caravans for this purpose, together with the storage of non-agricultural items, has resulted in a material change of use of the appeal site, from agriculture to a mixed-use comprising agriculture, storage of non-agricultural paraphernalia and the siting of two caravans for storage purposes. Given that planning permission was not obtained for this material change of use, a breach of planning control, as alleged in the notice, has occurred.

21. The appeals on ground (c) therefore fail.

Other Matters

22. The appellants say that the caravans help meet their welfare needs due health conditions. Whilst this is noted, it remains the case that there is insufficient evidence before me to demonstrate the caravans are actually used in conjunction with the agricultural use of the land.
23. There is also suggestion that the caravans were once occupied by the appellants' family for a period of 5 days, however this short period of occupation would again not alter my conclusions.
24. The requirements of the notice require the appellants to cease any residential use of the land. However, the matters alleged do not allege residential use of the land, but instead allege the siting of caravans for storage purposes. I have therefore varied this requirement, to ensure it accurately reflects the use as alleged.
25. I have also made a number of other minor modifications to the allegation and the requirements, to ensure greater clarity and accuracy with regard to the planning breach. In particular, I have reworded the alleged mixed-use to specifically reference the storage of non-agricultural paraphernalia.

Conclusion

26. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notices with corrections and variations as set out in the Formal Decisions below.

Formal Decisions

Appeals A and B

27. It is directed that the enforcement notice is corrected by:

- (a) the deletion of paragraph 3 and the substitution with the following new paragraph 3:

THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission the erection of a poultry unit in the approximate position marked by a cross on the attached plan, comprising a lorry body mounted on a trailer with associated, chicken run, steps, corrugated sheeting and fencing."

- (b) and varied by the deletion of paragraph 5 and the substitution with the following new paragraph 5:

WHAT YOU ARE REQUIRED TO DO

To remove the poultry unit from the Land, including the lorry body, trailer, chicken run, steps, corrugated sheeting and fencing."

28. Subject to the corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Appeals C and D

29. It is directed that the enforcement notice is corrected by:

- (a) the deletion of paragraph 3 and the substitution with the following new paragraph 3:

THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission the material change of use of the Land from agriculture to a mixed use comprising agriculture, storage of non-agricultural paraphernalia and the siting of two caravans for storage purposes.”

- (b) and varied by the deletion of paragraph 5 and the substitution with the following new paragraph 5:

WHAT YOU ARE REQUIRED TO DO

1. To cease the mixed use of the Land comprising agriculture, storage of non-agricultural paraphernalia and the siting of two caravans for storage purposes.
2. Remove all static caravans, touring caravans and non-agricultural paraphernalia (including, but not limited to disused appliances, furniture, carpets, bins, tyres, trampoline and football goalposts) from the Land.
3. Remove any ancillary fixtures or fittings used to connect the caravans to services such as drainage, water or power from the Land.
4. Restore the land to its original agricultural condition before the breach took place.”

30. Subject to the corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR