



Appeal Decision

Hearing held and site visit made on 6 August 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH OCTOBER 2024

Appeal Ref: APP/M1710/C/24/3341888

Land at Riverside Paddocks, New Inn Fields, Sleaford, Bordon GU35 9LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Penny Amer against an enforcement notice issued by East Hampshire District Council.
- The notice was issued on 15 March 2024.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the material change of use of land to a B8 business use for the storage of builder's materials and equipment (reclamation tiles and bricks and other materials).
- The requirements of the notice are:
 - 1) To cease the use of the land for the purposes of any business relating to that of an open-air storage (B8) (as outlined in the red line area of the attached plan).
 - 2) To cease the use of the land for the purposes for the storage of building materials or equipment storage within the barns or container on site as indicated (hatched black on the plan).
 - 3) To remove all items, including all reclamation goods and or building materials, tiles, bricks, slabs, and any other item or equipment stored for B8 business purposes on site from the Land.
 - 4) Remove the container from the land (marked in dark blue on the plan).
 - 5) Remove the building from the land (marked hatched black on the plan).
 - 6) Remove the caravan from the land (marked hatched red on the plan).
- The period for compliance with the requirements is: four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variations.

Matters Concerning the Enforcement Notice

1. There was a discussion over whether the word 'barns' referred to in paragraph 5, step 2 of the Enforcement Notice (Notice), was referring to, or included, the agricultural barn erected as part of the recently approved planning permission¹. However, the Council outlined that the plural use of 'barns' was a mistake, and it was referring to the structure identified as a 'building' (hereafter referred to as the 'building') and not the approved agricultural barn. It was also acknowledged that a container had been referred to in step 2 of paragraph 5 but had not been identified with reference to it on the attached plan. As such, it was agreed that the container needed to be identified with reference to it on the attached plan.
2. These matters were discussed at the hearing, and no objections were raised to the variations that would be needed to provide clarity to the appellant. They also do not alter the nature of the allegation or make matters more onerous for the

¹ Approved by Council as part of planning permission reference 52780/004

appellant. I do not consider that any injustice would be caused to the Council or appellant by making these variations.

3. As the matters concerning the Notice identified above may be affected by the grounds of appeal, I will confirm the varied wording of the Notice below.

Applications for costs

4. Applications for costs have been made, which are the subject of a separate decision. Costs Application A is made by Ms Penny Amer against East Hampshire District Council. Costs Application B is made by East Hampshire District Council against Ms Penny Amer.

Preliminary Matters

5. At the hearing, I was provided with a printed copy of two photographs taken of the site. The photographs were said to have been taken on 10 July 2024 from a location on Forge Road to the south of the site. A copy of the photographs was provided to the appellant and interested parties. The photographs were said to be responding to the appellant's agent claiming that the builder's materials and equipment were removed approximately 4 weeks prior to the date of the hearing. In view of this, together with the fact that the evidence did not require an adjournment or re-consultation, I accepted the photographs as late evidence.
6. No ground (a) appeal has been pleaded against the material change of use alleged. As such, issues relating to the character and appearance of the area are not matters before me for consideration.

The Appeal on Grounds (b) and (c)

7. The appellant has not contested that some builder's materials and equipment were not on the land, but rather that they were not there as a 'business' use. By suggesting the commercial or business aspect of the use has not occurred as a matter of fact, this amounts to a ground (b) appeal. However, the appellant also contends that the land is primarily being used for agriculture, and the storage of the builder's materials and equipment in connection with that primary use, does not amount to a material change of use of the land. This amounts to a ground (c) appeal.
8. When making an appeal on these grounds, the onus rests with the appellant to make their case. The evidence alone should be sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the development alleged has not occurred as a matter of fact, or if it has, it does not amount to a breach of planning control. Having regard to the allegation as made in the Notice and the appellant's response to this in her appeal, it is more logical to deal with the grounds (b) and (c) together, rather than disentangling the differences.
9. In cases where there is a dispute as to whether a material change of use has occurred, it is necessary to ascertain the correct planning unit, and the primary (as opposed to incidental) uses of that unit. In respect of the determination of a planning unit, *Burdle*² is the lead case. *Burdle* held that the planning unit is normally the unit of occupation, unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

different and unrelated purposes. Three separate broad categories are identified for planning units, those include: -

a) single unit of occupation with a single primary use with ancillary and incidental activities;

b) a single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use);

c) a unit of occupation where two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario c) forms a separate planning unit.

10. The Statement of Common Ground confirms that the land, subject of the Notice, extends to approximately 0.34 hectares. The land is owned by the appellant, and there is no evidence to suggest anyone else has an interest in the land or occupies part of it for any other purpose. The land identified on the Notice therefore forms a single planning unit, which is owned and occupied by the appellant.
11. At the time of my visit, no animals were present, but a static caravan, a 'building', a pig arc type structure, a blue container, and a mid-sized steel framed and timber clad agricultural barn³ were all on the land. The land was open with overgrown grass that had partially been turned over. The 'building' had metal gates across the openings with feeding troughs attached. The static caravan included a toilet/shower room, living room, a kitchen and two bedrooms. The caravan was connected in respect of electricity but had no mains water. The agricultural barn was predominantly being used to store hay bales, but included other miscellaneous items, such as shelving, hand tools and a feeding trough. I was not able to access the container at the time of my visit.
12. The agricultural use identified by the appellant involves the grazing of 3 horses and 3 goats on the land. The animals are mostly grazed on other land she rents nearby but are occasionally moved to the appeal site on a rotational basis. She also uses the agricultural barn for the storage of hay bales, which are purchased elsewhere and brought to the site. The 'building' is said to be used by the grazing animals as a field shelter and the static caravan is used for welfare purposes. The container is said to be used for storage of tack and tools to maintain the land.
13. An agricultural barn storing hay bales, a building with attached feeding troughs, together with the presence of an open area of grass and the appellant's claims of the grazing of horses and goats, indicates a small scale agricultural use. This use is consistent with the meaning of agriculture set out in section 336(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act)⁴.
14. I have had regard to the Council's concerns that they have not seen animals on the land, and do not believe that the land has been used for agriculture by the appellant since she took ownership. However, the information provided by the appellant, albeit limited, is precise and unambiguous evidence, which supports her claims of a small scale agricultural use on the land. She has also remained consistent since responding to the Council's initial correspondence in February 2023. In my judgement, the evidence put forward by the Council is not sufficient

³ Approved by Council as part of planning permission reference 52780/004

⁴ The list is not exhaustive, but it includes 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.'

to contradict the appellant's claims or make it less than probable that a small scale primary agricultural use was occurring on the site at the time the Notice was issued.

15. The appellant claims the builder's material and equipment is in fact being kept on the land for personal use in connection with the primary use for agriculture. As a matter of fact and degree, the business storage of builder's materials and equipment is materially different in character to the use of the land for small scale agricultural purposes. As such, the number of materials as well as the scale and type of activities being carried out, and the extent to which it is associated with the agricultural use, is crucial in determining whether a material change of use has occurred.
16. The Council has produced photographic evidence showing a number of builder's material and equipment being present on the land. A google street view image as well as the Council's own photographs (Appendix LG1 to LG7) show that a significant number of tiles as well as red bricks and stacked wooden pallets were present on the land in May 2023 and January 2024.
17. The piles of materials are externally stored in several locations around the site. The materials in the photographs are near to, but located outside of the agricultural barn, building, container and caravan. The Council claim that the number of materials increased over the investigatory period, prior to the issuing of the Notice. The Council also indicate the materials were being stored in connection with the appellant's partner, who they understood to be involved with the buying and selling of reclaimed materials like those on the land.
18. In the initial correspondence with the Council in February 2023, the appellant outlined that there were 'a small, excessive number of tiles' that were dumped at the property by persons unknown. It was indicated that the materials were going to be used by her in connection with the agricultural use on the land, and any excessive materials would be removed. However, there is no substantive evidence with the appeal submissions to indicate how much of the builder's materials and equipment was being stored for her own use and how much was placed on the land by persons unknown. Furthermore, despite removing the materials by the time of the hearing, the appellant did not confirm what she used the materials for on the land, or how she disposed of the excessive materials placed on the land by an unknown person.
19. There can be instances when builder's materials and equipment are stored incidentally in connection with a primary use. However, the appellant has failed to discharge the required burden of proof to demonstrate, on the balance of probability, that the materials were being used in connection with the primary use for agriculture. In my judgement, the scale and number of builder's materials and equipment being stored on the land was significant, and more consistent with a business use. There is limited evidence to show that the materials and equipment were incidental to a small scale agricultural use on the land.
20. When taken as a whole, the layout of the site, the buildings and structures as well as the way it is being used, leads me to conclude that at the time the Notice was issued, the land was being used for a mix of agriculture and the business storage of builder's materials and equipment. These uses are separate primary uses, which are not incidental to one another, resulting in the material change of use of the land from agriculture to an unauthorised mixed use.

21. As the allegation set out in the Notice only indicates a single primary use for the business storage of builder's materials and equipment, the allegation is inaccurate and would need to be corrected to allege the unauthorised mixed use. Variations to the requirements would also need to be carried out to ensure they match the corrected allegation. I have powers under section 176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case of correcting or varying the Notice, the test is whether the change would cause any injustice to the appellant or the Council.
22. In this case, the appellant is using the land for agriculture, and she has not made a ground (a) appeal to retain the business use for the storage of builder's materials and equipment. The Council is also seeking to cease the storage element of the mixed use and return the land to its former use for agriculture. Following compliance with the Notice, the use of the land would revert to the previous lawful use for agriculture, in line with the provision set out in section 57(4) of the 1990 Act. For these reasons, I am of the view that the corrections and variations to allege the unauthorised mixed use, as set out below, would not cause any injustice to the appellant or the Council.
23. The allegation would need to be deleted and substituted with the words,
'The material change of use of land from agriculture to a mixed use comprising agriculture and a business use for the storage of builder's materials and equipment (reclamation tiles and bricks and other materials).'
24. To match the requirements and the allegation, paragraph 5, step 1 and step 2 of the requirements would also need to be deleted and substituted with the words,
'1. Cease the mixed use of the land. (as outlined in the red line area of the attached plan).'
25. For clarity, it is not necessary to require the mixed use of the building and container to cease when step 1 already requires the unauthorised use of the land to cease.

Conclusions on Grounds (b) and (c)

26. For the reasons set out above, there is evidence to show that there is agricultural activity being carried out on the land, and therefore, it is necessary to correct the allegation to include it. However, the scale and number of builder's material and equipment on the land is consistent with a business or commercial activity, with no evidence to suggest that it is incidental to the agricultural use being carried out.
27. The allegation and requirements of the Notice can be corrected and varied without causing injustice to either party. The allegation of an unauthorised mixed use, as corrected, is a material change of use of the land that has occurred as a matter of fact and which is a breach of planning control.
28. Accordingly, the appeal on grounds (b) and (c) fails.

The Appeal on Ground (f)

29. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The ground (f) appeal is pleaded in relation to

- steps 4, 5, and 6 of the requirements, which require the appellant to remove the container, building, and caravan from the land.
30. The corrected Notice alleges an unauthorised mixed use of the land and requires that mixed use to cease as well as the removal of the container, caravan and building. Therefore, the purpose of the Notice is clearly to remedy the breach of planning control and return the land to its former condition. The appellant contends that all of these items were on the land when she purchased it. She also outlines that they were being used in connection with the agricultural use, prior to any builder's materials and equipment being on the land.
31. The Council contends that the building, caravan and container are part and parcel, and facilitate the alleged business storage for builder's material and equipment. The Council states that the caravan was temporarily used by the previous owner in connection with the operations to construct the agricultural barn⁵, but was never used as a welfare facility in connection with agriculture. The Council also indicates the container was brought onto the land during the enforcement investigation, and the 'building' was taken down and relocated within the site by the appellant to facilitate the unauthorised mixed use.
32. Case law confirms that where an enforcement notice attacks a material change of use it may also require the removal of works which are integral to and solely for the purpose of facilitating the unauthorised use, even if not set out in the allegation, so that the land is restored to its condition prior to the breach⁶. However, case law also sets out that the requirements of an enforcement notice should not purport to prevent the exercise of lawful rights for the use and development of land. Consequently, the Notice should not require the removal of items from the site that were previously connected with its lawful use and to which it can revert. This is known as the *Mansi principle or doctrine*⁷.
33. I have had regard to the Council's position, but there is limited evidence before me to demonstrate that the building and caravan were brought onto the site by the appellant in order to facilitate the unauthorised mixed use of the site. The aerial photograph from July 2021 (provided by the appellant) confirms that the agricultural barn had been substantially completed by this time. Furthermore, the caravan and building were clearly on the land in their current positions, prior to the appellant's ownership and two years prior to the builder's materials and equipment being brought onto the land.
34. Based on the evidence before me, it is more likely than not that the building and caravan were on site in July 2021 in their current position and were being used in connection with an agricultural use of the land. In this context, to require the removal of the building and caravan would go beyond what is necessary to restore the land to its former condition. It would also impinge on the appellant's right to revert to using the building and caravan in association with the lawful use of the land for agriculture. Requiring the building and caravan to be removed to remedy the breach, therefore, exceeds what is necessary to return the land to its condition before the breach took place.

⁵ In connection with Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

⁶ *Murfitt v SSE* [1980] JPL 598; *Somak Travel v SSE & Brent LBC* [1987] JPL 630; *Newbury DC v SSE & Mallaburn* [1994] JPL 879.

⁷ *Mansi v Elstree RDC* [1964] 16 P&CR 154.

35. With regard to the container, the appellant's agent indicated at the hearing that it was present at the time of her purchase, but tree cover means it is not visible in the July 2021 aerial photograph. However, having regard to the current position of the container on site, I do not agree that the tree cover present would have concealed it from being visible. Furthermore, aside from the aerial photograph, I was not presented with any substantive evidence to corroborate the purchase of the container as part of the land purchase.
36. Conversely, the Council has provided substantive evidence, in the form of photographs, which indicates that the container was placed on the site at the time the unauthorised mixed use was being carried out by the appellant. Based on the evidence before me, I find it more likely than not that the blue container was brought onto the land to facilitate the unauthorised mixed use of the site. To require its removal is not an excessive requirement to remedy the breach and return the land to its condition before the breach took place.

Conclusion on Appeal Ground (f)

37. For the reasons given above, I conclude that steps 5 and 6 of the requirements are excessive to remedy the breach of planning control and restore the land to its former condition. I shall vary the enforcement notice by deleting these requirements prior to upholding it.
38. To this limited extent, the appeal on ground (f) succeeds, and I shall vary and renumber the requirements of the Notice accordingly.

Formal Decision

39. It is directed that the Notice is corrected and varied by:

In paragraph 3, delete all the words and substitute the words 'The material change of use of land from agriculture to a mixed use comprising agriculture and a business use for the storage of builder's materials and equipment (reclamation tiles and bricks and other materials).'

In paragraph 5 step 1, delete all the words and substitute with the words 'Cease the mixed use of the land (as outlined in the red line area of the attached plan).'

Paragraph 5, step 2 shall be deleted in its entirety.

In paragraph 5, step 3, delete all the words and substitute with the words 'Remove all items, including all reclamation goods and or builder's materials, tiles, bricks, slabs, and any other item or equipment stored in connection with the mixed use of the land.'

Paragraph 5, step 5 shall be deleted in its entirety.

Paragraph 5, step 6 shall be deleted in its entirety.

In paragraph 5, renumber steps 1, 3 and 4 as steps 1, 2 and 3.

40. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr. Tony White	White Planning- Agent instructed on behalf of appellant
Ms. Penny Amer	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms. S. Blackmore	Barrister- Counsel instructed on behalf of East Hampshire District Council
Mr. S. Baldock	Planning Enforcement Manager
Ms. Z. Gheasuddin	Trainee Solicitor- East Hampshire District Council
Ms. Gayle	Trainee Solicitor- East Hampshire District Council

INTERESTED PARTIES:

Cllr Anthony Williams	Ward/Parish Councillor- Headley
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EVIDENCE SUBMITTED AT HEARING:

- Two photographs of appeal site from southern road- 10th July 2024