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# Appeal Decision

Site visit made 24 October 2024

**by D Hartley BA (Hons), MTP, MBA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 OCTOBER 2024**

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**Appeal Ref: APP/Q9495/C/24/3343935**

**Land at Cockenskell Farm, Blawith, Ulverston, LA12 8EL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Colm McNutt against an enforcement notice issued by Lake District National Park Authority.
  - The notice was issued on 27 March 2024.
  - The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the erection of four terraces of brooder units with timber and net enclosures.
  - The requirements of the notice are to i). Remove the four terraces of brooder units, and timber and net enclosures from the land; and ii) reinstate the land to the condition prior to the breach of planning control taking place.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) 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. The appeal is allowed, and the enforcement notice is quashed.

## Preliminary Matters

2. There is no appeal made on ground (b), i.e., that the matters alleged in the notice had not occurred. I have therefore determined the appeal based on the specific description of the breach of planning control as alleged in the notice, i.e., the erection of four terraces of brooder units with timber and net enclosures.
3. Prior to my site visit, the appellant's agent commented that *'I was informed by the landowner this week, that the appellant will be/has ceased trading, and the landowner is in the process of taking back control of the land. The landowner does not wish to progress the appeal and intends to remove the pens at the earliest opportunity'*. The appeal was not submitted by the landowner, and it has not been withdrawn by the appellant. While I was given authorisation from the landowner to enter the site as part of my site visit, and hence was able to inspect all the brooder units on the land, the appellant was not in attendance. There were several brooder units on the land but none of them were being used to house birds. Indeed, the site had the appearance of the brooder unit agricultural operation being ceased.
4. Notwithstanding the above, and therefore the potential for the brooder units to now be sited on the land on a more permanent basis, including perhaps being in the same position, I have determined this appeal based on the evidence which outlines the circumstances that existed when the notice was issued. This

relates to how the brooder units had been positioned on the land and the intention to remove them and then bring them back onto the land at various intervals throughout the year. I return to this issue later in the decision.

## Reasons

### Appeal on ground (c)

5. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The evidence is that the brooder units are put in place with a telehandler as illustrated in the photographs appended to the appellant's statement of case. The appellant states that it takes about one day to put all the units in place and a similar amount of time to remove them. The units are not physically attached to the ground. Heating of the units is provided using gas bottles. The appellant comments that the units are placed on site in May each year, remaining on site for approximately fourteen weeks, and are then removed in September of the same year.
6. The claim made by the appellant is that the units do not amount to operational development and instead are moveable chattels in connection with use of the land for agricultural purposes. The notice does not attack the use of the land, and, in any event, section 55(e) of the Act stipulates that the use of land for agricultural purposes is not development. The appellant claims that the breach of planning control does not amount to the erection of buildings, and, in this regard, does not amount to development. Consequently, he states that planning permission is not therefore required for the breach of planning control.
7. The Courts have provided clarity in terms of what constitutes a building. Three primary factors are identified as being decisive of what is a building: size, permanence, and physical attachment.
8. The evidence is that the units which are the subject of the notice were brought to the site using a telehandler and then removed from the site using a telehandler a few months later. Indeed, the National Park Authority (NPA) states '*we believe the units were first sited in April 2022 and removed in September 2022*'. It is also the intention of the appellant to remove the units in this way, each year, going forward. In this regard, I find that the units are not permanently on the land. Moreover, there is nothing before me to suggest that the units would not be capable of being positioned elsewhere within the wider landholding in association with use of the land for an agricultural purpose. The NPA appear to accept this point in so far that it states the '*units are capable of being moved in separate sections*'.
9. My site visit revealed that the brooder units were not physically attached to the ground. There are no foundations, and they are not placed on a hard base. They rest on the land by their own weight. In this case, the evidence is that the units were moved prior to the notice being issued. It is intended that they would be moved in the future. In my judgement, the evidence indicates that the breach of planning control does not therefore have permanence.
10. Moreover, the evidence is that the associated netting and fencing were provided in connection with the lawful agricultural use of the land. I noticed on my site visit that some of the fencing and netting was no longer on the land.

The evidence is that the netting was not fixed to the ground. If one considers the fencing as a means of enclosure, the evidence is that it was not of a height that would require planning permission under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

11. Based on the land being open previously, one may say that the breach of planning control has resulted in some physical change to the character of the land. I acknowledge that the units can be seen from public right of way FP505011 (Cumbrian Way), but owing to the location, number, and low height of the units, coupled with the screening effect of some boundary landscaping, I do not find that any such effect is material from the point of considering whether a breach of planning control has taken place.
12. The units have an agricultural character, and, in this regard, the rural character of the land has not materially changed. I accept that the NPA does not consider that the breach of planning control has an acceptable appearance in the landscape, but this is a separate matter to be considered, if necessary, as part of the deemed planning application. In any event, my findings in respect of size, permanence and physical attachment are decisive. They are sufficient in themselves for me to reach the balanced conclusion, that the breach of planning control does not amount to the erection of buildings, or that planning permission is needed for the brooder units.
13. For the reasons outlined above, and, as a matter of fact and degree, I do not therefore find that when the notice was issued, the brooder units amounted to the erection of buildings as defined in section 336 of the Act. The evidence is that the brooder units (including netting) constituted moveable chattels in association with use of the land for agricultural purposes. On this basis, I find that the brooder units are not buildings and hence unauthorised operational development had not occurred when the notice was issued. Moreover, the fencing constitutes a series of means of enclosure. Owing to the height of the fencing and its association with a lawful agricultural use of the land, it is permitted development under Class A of Part 2 of Schedule 2 of the GPDO. The breach of planning control does not therefore require planning permission. Therefore, I conclude that the ground (c) appeal fails.
14. I have reached my conclusion above based on the evidence before me and the specific circumstances that existed when the notice was issued. I am mindful that circumstances on the land may now have changed since the notice was issued, particularly if the brooder unit business has permanently ceased trading. It is open to the NPA to investigate matters further if circumstances have or might change on the land in respect of the siting of the brooder units. Indeed, this may or may not have an impact on the degree of permanence in respect of the sited brooder units and hence whether, as a matter of fact and degree, any such brooder units would be buildings as distinct from agricultural uses of the land, considering the collective matters of size, permanence, and physical attachment.

## **Conclusion**

15. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances,

the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

*D Hartley*

INSPECTOR