



Appeal Decisions

Hearing held on 5 November 2024

Site visit made on 5 November 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2024

Appeal A Ref: APP/J9497/C/24/3343435

Land at Elliots Farm, Buckland-in-the-Moor, Newton Abbot, Devon

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Terence Andrew against an enforcement notice issued by Dartmoor National Park Authority.
- The notice was issued on 26 April 2024.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land from agriculture, to agriculture and the siting and storage of a double-decker bus in the approximate position marked with a blue 'X' on the Plan¹.
- The requirements of the notice are to:
 - (1) Permanently remove the double-decker bus from the Land, and
 - (2) Permanently cease the use of the Land for the siting and storage of a bus.
- The period for compliance with the requirements is 60 days of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld

Appeal B Ref: APP/J9497/W/24/3343564

Land at Elliotts Farm, Road Past Elliotts Farm Hill, Buckland-In-The-Moor, Ashburton, Devon TQ13 7HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
- The appeal is made by Mr Terence Andrew against the decision of Dartmoor National Park Authority.
- The application Ref is 0146/24.
- The development proposed is an alteration to a hay barn.

Summary Decision: The appeal is dismissed

Applications for costs

1. An application for costs was made by Dartmoor National Park Authority against Mr Terence Andrew in respect of both appeals. This application is the subject of a separate decision.

¹ The 'Plan' referred to here is the plan attached to the enforcement notice.

APPEAL A

Preliminary Matters

2. Although made on several grounds of appeal, the appellant's case with regard to certain elements of their appeal were only briefly put in their written submissions. Several of the appellant's arguments on certain of his grounds of appeal only became clear or were first heard at the hearing. The Council was given an opportunity to adjourn in order to have time to consider the points raised. Having done so, the Council was able to respond to the additional points raised during the hearing.
3. At the site visit I was not able to view inside the building on site described as the machinery barn, despite hearing evidence at the hearing about machinery stored within the building. After the hearing the appellant provided photographs from inside the barn which they say were taken the day after the hearing. I have had regard to these in reaching my decision.
4. Also at the site visit, I viewed the double-decker bus that is the subject of the enforcement notice externally. However, due to its condition, I chose not to enter the bus for health and safety reasons. As such, I was not able to view the upper floor of the bus. Nevertheless, a comprehensive series of photographs of the internal arrangements of the bus have been provided and there was no suggestion that these do not reflect the current arrangements and condition of the vehicle.

Ground (b)

5. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. There are two alternative elements to the appellant's case on ground (b). The first, whilst there is no dispute that there is a double-decker bus present on the land, their case is that the presence of the bus has not resulted in a material change of use. The second, is that even if a material change of use has occurred, there are parts of the land that are the target of the notice that are not used for the purposes alleged.

Whether or not a material change of use has occurred

6. The appellant says that the bus is a 'mobile agricultural office' and that prior to his ownership of the bus, it was a schools administration office. I note from the photographs provided in the Council's evidence that the bus does not have the seating and layout typically found in a double-decker bus. The photographs show that the bus has at some point in the past been converted for some use other than the transportation of passengers.
7. Notwithstanding this, the Council's photographs from November 2019 and June and September 2021 show that the bus does not appear to be in use. Internally the bus is in a particularly poor condition. Elements of the internal fittings (for example, bench seating and carpet) have been pulled up and some of this is blocking the internal walkway. There is also evidence of insect infestation in certain parts of the bus. Furthermore, other than the internal fixtures and fittings (some of which are loose), there does not appear to be any other items in the bus. I inspected the bus on site and, through the windows, I could see that the internal conditions of the lower floor of the bus

was as shown in the Council's photographs. All of this indicates that the bus is not being put to any particular purpose at present.

8. The appellant suggested that the bus has been used in the past as some form of agricultural worker's shelter. The evidence was, however, that this was intermittent and that it had ceased some time ago. Indeed, there is no evidence of any recent use of the bus for such purposes.
9. Despite the appellant's suggestion that the bus is a mobile agricultural office, they confirmed at the hearing that it is not currently used for this purpose. Indeed, the appellant's written submissions indicate that the conversion of the bus is necessary for it to be used for this purpose and they suggested that these conversion works have not commenced in earnest.
10. I note the appellant's suggestion that the bus is parked, rather than being sited and stored, as alleged in the notice. To my mind, a vehicle that is parked on land is a vehicle that is in use for transportation purposes and is, therefore, regularly moved on and off the land. In this case, since moving the vehicle onto the land, the appellant indicated that it has only been started up and moved once, two years ago. The indication is that the bus is not used for the purposes of transportation.
11. The appellant refers to other machinery and vehicles that are stored on the land, suggesting that the storage of the bus on the land is no different to this. When asked about the purpose of these vehicles and machinery, the appellant indicated that they were mainly used in connection with the wider farm, including for the maintenance of land and buildings, and for associated works. Indeed, the vehicles and machinery described by the appellant are those typically found on such an agricultural holding. Their storage on the land would, in my judgement, be a purpose that is ancillary to the agricultural use of the wider farm. By this I mean that, because these vehicles and machinery are used in association with the farmed land, their storage on the land is entirely associated with the agricultural use. But for the agricultural use, the items would not be stored on the land.
12. I am not, however, persuaded that a double-decker bus is a typical agricultural vehicle. Other than its intended future use as some form of office said to be associated with the running of the farm, the appellant did not suggest any other use of the bus associated with the farm, either for transportation or for other purposes.
13. Whilst I note what the appellant intends for the bus in the future, the evidence before me indicates that the bus is not, on the balance of probability, used for this or for any other purpose at present. Indeed, the bus is clearly awaiting the completion of works of renovation and conversion so that it can be used for its intended purpose or for some other purpose. For this reason, I see no need to conclude on whether or not a breach of planning control would occur if the bus were put to its intended purpose. As for the current purpose, having regard to the evidence before me, I can only describe the siting of the bus on the land as a storage activity.
14. The notice alleges that the storage of the bus on the land has resulted in a material change of use from a use of the land for agriculture to a mixed use for agriculture and the siting and storage of a double-decker bus. The Council

suggest that the land to which the notice relates (i.e. the appeal site) is the planning unit upon which it says the mixed use is taking place.

15. The appeal site is understood to be the extent of the land farmed by the appellant and is, therefore, occupied by him. Save for the areas considered below (i.e. the track to Apple Barn and the land adjacent to the track), there is no dispute that the lawful use of the appeal site is for agriculture.
16. As for the storage activity, I cannot regard this as being associated with the current existing agricultural use of the site, such that I could conclude that the storage of the bus is an activity that is ancillary to the agricultural use. The activity that might result from the intended use of the bus might well be regarded as ancillary to agriculture. However, this is not for me to decide within the remit of this appeal and it does not alter my findings with regard to the current storage activity.
17. The bus is located on an enclosed parcel within the appeal site that is also occupied by two agricultural buildings. There is also some hard surfacing on this land. Accordingly, this land has the appearance of an enclosed yard area. Despite the enclosure, the appellant confirmed that this part of the site and the buildings upon it are used in connection with the wider farmed land. As such, whilst there is physical separation between this part of the site and the wider appeal site, it is not functionally separate.
18. I acknowledge that the bus occupies only a small area. It has, however, been moved about the site in the past. It also occupies a part of the site that is not physically separate from the remainder of the yard area.
19. All things considered, I conclude as a matter of fact and degree that the storage and agricultural activities are two primary uses taking place within the appeal site, where one is not ancillary to the other. Furthermore, I conclude that these two primary uses are best described as a mixed use. In view of the functional connection between the yard area and the wider site, the planning unit in this case is more likely than not to occupy the wider farmed land. Whether or not the planning unit includes the track to Apple Barn and the land adjacent to the track is a matter I consider as follows.

Whether or not all of the land identified on the enforcement notice plan should be the target of the notice

20. It is the appellant's case that the track that provides access to Apple Barn, which is to the south east of the appeal site, and an area adjoining the track should not be the target of the notice. The appellant says that the track is a residential driveway to Apple Barn and that the land adjacent to it, close to the gated entrance off Elliots Hill, is used for parking in association with Apple Barn. The suggestion is that the existing lawful use of the track and adjoining area is not for agriculture, but for residential purposes.
21. I note the appeal decision² that permits the use of Apple Barn as a holiday let. I also note the planning permission granted by reason of application reference 0080/20 for the erection of a single garage adjacent to Apple Barn. The site plan for this application includes the track within the red outline.

² Appeal reference APP/J9497/A/04/1170227.

22. Notwithstanding the above, there is no suggestion that the track was not in use prior to the above-mentioned planning permissions. Indeed, the appellant confirmed that the track is the main means of access to Apple Barn when constructed. The above permissions relate to the use of Apple Barn and to the construction of a garage, not to a material change of use of the land occupied by the track or any adjoining land. Whilst the track provides a means of access to Apple Barn and the garage, it does not follow that the only and lawful use of the track is for purposes associated with these buildings.
23. Indeed, the track provides a means of access to the agricultural land either side of it. It is open to the field parcel to the south of the track and I noted a gate along the enclosure to the field parcels to the north. In this regard the double rutted track serves the same purpose as a typical farm track. There was also a gate at the end of the track, at the entrance to the land enclosed with Apple Barn. This indicates a distinct separation between the land occupied by Apple Barn and the land occupied by the track, together with the surrounding agricultural land.
24. The area referred to by the appellant, adjoining the track where it meets Elliots Hill, is enclosed on three sides by a post and rail fence, but is otherwise open to the remainder of the surrounding agricultural land. Whilst it may on occasion be used for parking, I did not note any formal parking spaces on this land, nor any indication from the condition of the land that it is regularly used for these purposes.
25. Having regard to the above, I am not persuaded that the land occupied by the track and the adjoining area is in a use that is materially different to the use of the surrounding agricultural land.

Ground (b) Summary

26. Having regard to the evidence before me, I find as a matter of fact and degree that the matters alleged in the enforcement notice have occurred and that the land identified on the plan attached to the notice correctly identifies the land on which the material change of use has taken place, on the balance of probability. For this reason, the appeal on ground (b) must fail.

Ground (c)

27. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The matter alleged in the notice is a material change of use of the appeal site to a mixed use for agriculture and the siting and storage of a double-decker bus. The burden of proof is on the appellant to demonstrate that the mixed use alleged is not development that requires the benefit of planning permission, or that it is development that has the benefit of planning permission, or that for some other reason it does not constitute a breach of planning control.
28. The appellant's written submissions on ground (c) are briefly stated. They refer to the planning permissions granted for the erection of buildings within the yard area where the bus is located. The evidence before me that relates to these planning permissions does not, however, demonstrate that they granted consent for the material change of use alleged.

29. The appellant suggests that the storage of vehicles has taken place on the yard area for in excess of 10 years. Whilst not strictly a ground (c) matter, I have concluded above that the storage of vehicles and machinery referred to by the appellant at the hearing is a use that is ancillary to the agricultural use, rather than it being a separate use of this part of the site. Indeed, the appellant states that the 'various machinery items' are all associated with the agricultural management of the land. I have no doubt that such vehicles and machinery may have historically been stored in this part of the appeal site and that such an ancillary use may continue in the future. This does not mean that planning permission is not required for a mixed use, which includes a storage use that I do not consider to be ancillary to the lawful agricultural use, on the balance of probability.
30. At the hearing the appellant suggested that planning permission is granted for the use alleged by reason of Class R of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (2015 Order). Class R permits 'development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use'. The flexible uses are listed in Class R and these include a use falling within Class B8 (storage or distribution) of Part A, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order).
31. In response to the appellant's claim, the Council points to the conditions of the Class R permission, which require at R.3. of Class R either a notification or the prior approval of the local planning authority for certain matters before changing the use of the site under Class R. The Council confirmed that neither process has been followed by the appellant prior to the alleged use of the site commencing.
32. In addition to this, the Council says that the permission granted by Class R relates to the change of use of a building, and not land alone. I acknowledge that R.4. of Class R defines a flexible use as 'use of any building or land' (my emphasis). I cannot, however, ignore that in defining the development granted permission by Class R, R. informs that this is 'development consisting of a change of use of a building and any land within its curtilage' (my emphasis). Furthermore, the title of Class R is 'agricultural buildings to a flexible commercial use', without any reference to land. All of this indicates that the purpose of Class R is to grant permission for a material change of use of buildings and their associated land, rather than for the material change of use of land alone. Nevertheless, I note that the notice alleged a material change of use of land that includes a number of buildings.
33. Notwithstanding the above, the notice alleges a material change of use to a mixed use, which I have concluded is a matter that has occurred under the ground (b) appeal. A mixed use is a single, sui generis use that does not fall within any use class of the 1987 Order, let alone one of the classes listed under Class R. Indeed, the mixed use alleged in the notice is not a use that is listed in Class R as a permitted flexible use. Whilst a storage use on its own might well fall within one of the flexible uses permitted, a storage use as part of a mixed use would not.
34. For the reasons given above, even if the conditions and limitations of Class R had been satisfied in this case, I am not persuaded that the material change of

use alleged in the notice has the benefit of the permission granted by Class R of Part 3, Article 3, Schedule 2 of the 2015 Order.

35. I have been given no other reason to conclude that the material change of use of the land in question would not require the benefit of express planning permission, in accordance with section 57 of The Town and Country Planning Act 1990 as amended (the 1990 Act), and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, I conclude that the material change of use alleged in the enforcement notice constitutes a breach of planning control. For this reason the ground (c) appeal must fail.

Ground (d)

36. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that, on the balance of probability, the use alleged had been continuous for a period of ten years beginning with the date of the breach, in accordance with section 171B(3) of the 1990 Act.
37. Similar to the point already made under grounds (b) and (c), in his written submissions the appellant refers to the historic use of the land for the storage of vehicles and machinery.
38. I have concluded that the storage of vehicles and machinery referred to by the appellant is a use of the appeal site that is ancillary to the lawful agricultural use of the land. I have also noted that the bus, on the other hand, is not a typical agricultural vehicle. Notwithstanding its future intended use, the appellant has not identified any use of it associated with the running of the farm. For this reason, I have concluded that the storage of the bus is not an activity that is ancillary to the agricultural use. I have concluded that the storage of the bus on the land has resulted in a material change of use to the mixed use alleged.
39. In order to determine the date of the breach for the purposes of section 171B(3) of the 1990 Act, I note that the Council suggest that the bus was brought onto the site in 2018. This is not disputed by the appellant.
40. At the hearing the appellant referred to a lorry that they say has been on the appeal site for a period in excess of 10 years. Whilst not a double-decker bus, as referred to in the notice, the indication was that its presence assisted the appellant in demonstrating that the use alleged in the notice had occurred prior to the bus being brought onto the site. I noted the location of the lorry on site, and can see that an object in this location is visible in some of the aerial photographs. The object is not, however, visible in the aerial photographs taken prior to 2015.
41. Even if the presence of this lorry were to indicate that the date of the breach was prior to the date the double-decker bus was brought onto the site, the evidence before me does not demonstrate that, on the balance of probability, the date of the breach was more than 10 years prior to the issue of the notice.
42. For the reasons given above, I cannot be satisfied that the appellant has discharged the burden of proof in this case. I am, therefore, unable to conclude that, on the balance of probability, on the date the enforcement

notice was issued no enforcement action could be taken in respect of the breach of planning control alleged. For this reason, the ground (d) appeal should fail.

Ground (f)

43. A ground (f) appeal 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The purpose of the enforcement notice in this case is to remedy the breach of planning control alleged.
44. The appellant has suggested certain alterations to the bus, including painting it green, will improve its appearance. Under their ground (f) appeal the appellant has also set out how the bus will be used in the future, including in connection with the stewardship works. All of these matters go to the merits of the development that is the subject of the notice, which can only be considered in an appeal made under ground (a) (that planning permission ought to be granted for the development alleged). No ground (a) appeal has been made in this case. Notwithstanding this, none of the suggested alterations to the bus would remedy the breach.
45. At the hearing the appellant suggested varying the notice so that it requires the conversion of the bus and its use as an office, which the appellant maintains is their intention for the bus. In an enforcement notice, the requirements should be consistent with the breach alleged. In the case of this notice, it should remedy the breach and do no more. The variations suggested by the appellant would make the notice more onerous and, in my judgment, go beyond requiring the development, i.e. the use, to cease.
46. Notwithstanding the above, at the hearing I discussed with the parties my concerns with regard to the second requirement in the notice and the potential for this to do more than remedy the breach. Having regard to the Council's response to my questions on this, I am satisfied that the requirements of the notice as drafted are only to prohibit the storage element of the mixed use. They would not prevent the lawful agricultural use from continuing. Neither would they prevent an activity that would be part and parcel of the lawful agricultural use, or a use that would be genuinely ancillary to the lawful use. In view of this, I see no reason to vary the requirements.
47. Although not strictly a ground (f) matter, I have noted the appellant's claims with regard to the relocation of the bus elsewhere. Should the bus be relocated elsewhere within the appeal site, including to the track to Apple Barn, the requirements of the notice would not be complied with. Should the bus be stored on land outside of the appeal site, it would be for the Council to consider, if necessary, whether there would be a new breach of planning control.
48. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

50. The appeal is dismissed and the enforcement notice is upheld.

APPEAL B

Preliminary Matters

51. The development subject of this appeal is an alteration to an existing building on site, described as the hay barn. The alteration comprises the rendering of the building. It is suggested that the development would have the benefit of the planning permission granted by reason of Class A, Part 6, Article 3, Schedule 2 of the 2015 Order. The prior approval application subject of this appeal is made under A.2.(2) of Class A. The application was made on 6 April 2024.

Main Issues

52. The main issues in this appeal are as follows:

- Whether or not the development subject of this appeal would be permitted by Class A, Part 6, Article 3, Schedule 2 of the 2015 Order; and, if permitted
- Whether prior approval is required for the development and, if so, whether the development would be acceptable, having regard to the siting, design and external appearance of the alterations to the building.

Reasons

53. As noted above, the application subject of this appeal was made pursuant to condition A.2.(2) of Class A. This relates to development permitted by Class A consisting of, amongst other matters, the alteration of a building. It states that 'the developer must, **before beginning the development**, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building' (my emphasis). In order to comply with the condition the developer must, in the first instance, make the application required by the condition.
54. In addition to this, condition A.2.(2)(iii) informs that the development must not begin before one of the occurrences stated. These are, in short, the determination of the local planning authority that prior approval is not required; the granting of prior approval by the local planning authority; or the expiry of 28 days following the date on which the application was made without the local planning authority making any determination as to whether prior approval is required.
55. The Council's photographs of the site from April 2022 show a pillar of the hay barn building in question, which appears to have had a smooth render applied to it. The September 2022 photographs show more of the building and I can see both pillars in the front elevation of the building and the side elevation of

the building finished in a smooth render. This is consistent with the January and September 2023 photographs, and those taken in February 2024 and on 5 April 2024. These photographs are consistent with my observations of the building on site.

56. When asked at the hearing when the works to render the building were undertaken, the appellant confirmed that they were completed in 2020. They also confirmed that the existing rendered finish is the development for which the prior approval is sought.
57. As I note above, the prior approval application subject of this appeal was made on 6 April 2024. The development subject of the application was, therefore, carried out prior to the application having been made. Furthermore, as the Council refused the prior approval application, the development was also carried out prior to any of the circumstances listed in A.2.(2)(iii) of Class A having occurred. As there has been a failure to comply with condition A.2.(2) of Class A, the development does not have the benefit of the planning permission granted by reason of Class A, Part 6, Article 3, Schedule 2 of the 2015 Order. Accordingly, the development requires the benefit of express planning permission. In these circumstances the appeal should fail.
58. Given my findings with regard to the first main issue in this case, there is no need for me to move on to consider the second main issue as the outcome of the appeal would be the same regardless.

Conclusion

59. For the reasons given above, I conclude that the appeal should not succeed.

Formal Decision

60. The appeal is dismissed.

J Moss

INSPECTOR