



Appeal Decision

Site visit made on 18 August 2025

by **Robin Buchanan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date 09 September 2025

Appeal Ref: APP/C1760/C/25/3359449

Sunrise Farm, Middle Wallop, Stockbridge, Hampshire SO20 8HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- The appeal is made by Mr Aaron Fudge against an enforcement notice issued by Test Valley Borough Council.
- The notice was issued on 11 December 2024.
- The breach of planning control as alleged in the notice is:
 - 3(i) the construction of a building, with wood burner and flue
 - 3(ii) the installation of three (3) metal containers
 - 3(iii) the installation of a tank under the ground
 - 3(iv) the installation of a timber barrier surrounding an excavated pit/hole.
- The requirements of the notice are to:
 - 5(i) demolish the building together with wood burner and flue, remove the three (3) metal containers
 - 5(ii) remove the tank that has been installed under the ground and back fill with soil
 - 5(iii) remove the timber barrier surrounding the excavated pit/hole and back fill with soil
 - 5(iv) make good the ground where the several buildings/containers stood by removing any hard surfacing material and backfilling with good quality top-soil that is spread evenly to match surrounding ground level and profile
 - 5(v) remove from the Land all resulting materials and waste in association with compliance of steps (i) through (v) of the above requirements.
- The period for compliance with the requirements is: three (3) months.
- The appeal is proceeding on the grounds set out in sections 174(2)(c) and (g) of the Act.

Summary Decision: The appeal is dismissed; the enforcement notice is corrected and varied then upheld.

Preliminary Matters

1. Some interested parties referred to other alleged activity on the land, including occupation overnight. However, those concerns are not what the enforcement notice is directed at, so are a separate matter not for me. Nor is planning policy or the planning merits of activity on the land relevant to my decision because there is no ground (a) deemed planning application. Restrictive covenants are a private matter between the respective parties.

Ground (c)

2. For ground (c) to succeed, the onus and burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control. For example, because they are not development, are exempted from development or do not require an express grant of planning permission, including whether permitted development.

Matter 3(i) - building

3. Caselaw has established three primary factors relevant to what constitutes a building – size, physical attachment and permanence¹.
4. With regard to size, there is unchallenged evidence that a reasonably large, partly open-sided livestock and storage structure was constructed on the land from constituent components. These included a metal frame, using scaffolding poles bolted together, with timber slat elevations and sheet metal roof fixed to it. Inside, a wood burner vented to an external flue. In this form the structure had notable visual and spatial presence on the relatively small, (still) largely open and undeveloped 0.24 hectares of the land.
5. With respect to physical attachment, there is no dispute that the frame (and structure as a whole, under its likely not inconsiderable innate weight) rested on the ground with no footings inserted or fixed into the ground. But there is evidence, and as I saw at my site visit, that the gradient of the ground was excavated to make it level to facilitate the structure on this simple foundation base. There is little to suggest other than that this physical alteration to the land was a composite act of preparatory ground works carried out as a purposeful, pre-meditated means of physical attachment for the duration of the presence of the structure.
6. In terms of permanence, there is unchallenged evidence the appellant split the structure apart on one occasion as a demonstration to a council officer then reconnected it and split it apart again for the appeal. However, and aside from those limited occasions, there is evidence the structure was substantially completed as a whole and existed as such in situ in the approximate position A in the notice plan for at least some 6 months before the notice was issued. This is a significant period of time² and given also its size, there is little to suggest the structure was to be moved as a single entity. Nor that it actually was or could have been moved around the land and by what means or reason why it would need to be. While electricity cables or water pipes could be easily removed, the largely skeletal method of construction with no floor, the installed wood burner and the raised edge of the adjoining ground level also mitigate against easy or casual mobility.
7. Permanence, taken with size and physical attachment, reinforces my impression of sustained rather than fleeting intent. Moreover, the appellant did not refer to the structure as temporary, just 'moveable'. But there is little to suggest that the method of construction or materials is typical of a moveable structure, such as mobile animal field shelters designed and manufactured as such from the outset. Nor that it had runners or skids or any other means for routine, easy or convenient movement for animal grazing and welfare or good husbandry of the land.
8. Since the notice was issued, and as I saw, the wood burner and flue have been removed. This is relevant to compliance with the notice, so is not a matter for me or reason to exclude these items from the requirements of the notice, as the appellant seeks. Furthermore, the structure is partly demolished into two sections and, in the absence of clear evidence, most likely one part unbolted and dragged a few metres apart sideways from the other by a vehicle. The appellant contends that as a result

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 and *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2000] 2 PLR 102

² The Council also referred to *Hall Hunter v First Secretary of State* [2007] 2 P. & C.R. 5 in this regard

the building targeted by the notice no longer exists but is now two mobile animal shelters and that neither is a building or operational development. However, this significant, subsequent alteration is not the alleged breach of planning control in section 3(i) of the notice, which is the matter in hand. Given there is no dispute the original structure was on the land, it may be enforced against and, accordingly, these later works are not relevant to my assessment.

9. There is therefore little to counter that the building is a building, which includes any structure or erection and any part of a building³, and development by building, engineering or other operations in, on, over or under the land⁴. The appellant has not suggested it has the benefit of an express grant of planning permission⁵.

Matter 3(ii) - metal containers

10. These are three shipping containers. The appellant contends that each is moveable so not a building. For planning purposes it is generally accepted that the setting up of such structures on land (as opposed for example to their placement as a transitory act of transportation of goods) is a building operation. This also falls to be considered against the three primary factors.
11. Each metal container is conventional in size and form, so with not inconsiderable nett weight. They have notable individual and collective visual and spatial presence on the land. While one has had two doors cut into a side and been internally subdivided, there is little evidence these structures were constructed on the land as opposed to brought onto it. Nor, as I also saw, of assembly between them, just contact by having been butted up next to each other.
12. They were in the approximate positions B, C and D shown in the notice plan when it was issued. There is evidence that the gradient of this part of the land was altered, including by excavation, to make it level to rest the containers on this simple base, with concrete pads laid to support some corners. As I saw, the containers are now elsewhere on the land, resting on concrete breeze blocks stacked on the ground. The blocks compensate for the slope of the ground beneath to make the containers level and likely more useable, including for storage of animal feed, equipment and machinery and, in one, a room for processing and packaging poultry eggs. The blocks are not a natural feature of the land and could only easily be dismantled after the containers were lifted or removed.
13. Albeit by these uncomplicated methods, the land was prepared by physical alteration and composite preparatory ground works to install the containers by either means of foundation in a purposeful, pre-meditated act of physical attachment for the duration of their presence. As such, this has also included works of partial disassembly then reassembly when they were moved. In short, in either location the containers were not simply placed on unaltered ground or unaided, as the appellant suggests.
14. It is common ground that the containers have been relocated once in some 8 months. It appears, in the absence of any apparent functional or operational reason, simply to demonstrate that it was possible. Even if this was midway through that period, the containers remained in situ for a significant period of time. There is

³ Section 336(1) of the Act

⁴ Section 55(1) of the Act

⁵ Section 57(1) of the Act

no dispute it required specialist lifting and moving equipment, which I did not see on the land at the time of my site visit nor is it claimed is kept on the land.

15. So, while electricity cables or water pipes could simply be disconnected, the containers were not easily moved as the appellant suggests or without some planning or organisation. There is no apparent reason why similar arrangements would not be necessary again. This is, for example, quite distinct in scale and effort from impromptu hitching of a mobile field shelter to a vehicle and dragging it to a new position. There is also little evidence to suggest any of the containers would actually be routinely moved in the future 'as and when required' or why they would need to be moved. Taken with size and physical attachment, and the use of one for a purpose that requires more care and attention with regard to its fragile use and contents, this reinforces my impression of sustained rather than fleeting intent, even if not permanent in an absolute (forever) sense. But then it need not be so for the purposes of my assessment.
16. Both main parties referred to some appeal decisions about, in essence, temporary or permanent structures⁶. Each also mentioned some other caselaw⁷ and the Council mentioned two other court decisions⁸. While I have had regard to all of those decisions, including general principles, it is common ground they were largely informed by the particular circumstances of each case. There is, on the face of it, little to suggest they were the same circumstances or directly comparable to the current appeal, which I have determined on the evidence before me.
17. As a result, there is little to counter that the metal containers are each a building and development by building, engineering or other operations. The appellant has not suggested any have the benefit of an express grant of planning permission.

Matter 3(iii) - underground tank

18. There is little evidence that a (rainwater harvesting) tank was constructed on the land, rather than manufactured elsewhere and installed underground. But there is also little from the appellant to suggest it did replace a previous tank or was 'like for like', such as in size or materials. Nor about works carried out to install the new tank. There are no photographs or a sworn statutory declaration or affidavit in this regard. Even if the new tank has been removed since the notice was issued that is a separate matter of compliance with the relevant requirement of the notice and is not for me. There is no dispute a tank was installed on the land so it can be pursued by the notice.
19. There is, as a result, little to dispute that the underground tank involved development by building, engineering or other operations. The appellant has not suggested it had the benefit of an express grant of planning permission.

Matter 3(iv) - timber barrier and excavation of a pit/hole

20. As identified at my site visit, the 'timber barrier' refers to a wooden post and rail fence erected on the land. There is little to suggest, including as I saw, that it is more than 2m high. Even if it was arranged with four sides in a square shape when the notice was issued, it is now open along one side so doesn't completely surround this part of the land. Nevertheless, and notwithstanding that this fence is

⁶ APP/D3505/X/16/3154157, APP/G2245/X/23/3317123, APP/W1525/W/20/3245635, APP/Y3940/C/19/3243646

⁷ *RJ Scott v Secretary of State for the Environment and Bracknell District Council* [1982] JPL 108

⁸ *Cheshire CC v. Woodward* [1962] 2 QB 126, *Barvis Ltd v Secretary of State for the Environment* (1971) 22 P&CR 710

quite short and the ground area contained by it limited, it is continuous around three sides to form a u-shape with evident visual and spatial containment to that extent.

21. As such, there is little to contest that when the timber barrier was erected it was granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
22. A reasonably large and deep hole, edged by the timber barrier, was excavated and used as an open storage pit. It is common ground, and as I saw, that it has been back filled with (there is no dispute) soil, level with the surrounding ground next to it. This is not, though, reason why this development should no longer be subject to the enforcement notice, as the appellant suggests, but is a separate matter about compliance with the requirements of the notice, so not for me.
23. Consequently, there is little to suggest that the hole did not involve development by engineering or other operations. The appellant has not suggested it had the benefit of an express grant of planning permission.

Exclusions and permitted development

24. The Council does not contest the use of the land. As I also saw, I therefore have no reason to doubt the appellant's evidence that he operates a business from the land as an agricultural livestock holding, using the land and structures on it for this purpose. However, there is little evidence that the construction of a building for agriculture, as opposed to the use of a building for agriculture, is excluded from the meaning of development⁹. Nor, considering the small size of the holding, that the GPDO grants planning permission to erect an agricultural building on the land. No other exclusion or permitted development right was advanced by the appellant, including in respect of the underground tank and pit/hole.

Conclusion on ground (c)

25. For the reasons given above, the appellant has not demonstrated on the balance of probabilities that the building, metal containers, underground tank and pit/hole do not amount to a breach of planning control, so ground (c) fails in these respects. On this same basis, the timber barrier is not a breach of planning control, so ground (c) partly succeeds to this extent. I shall correct section 3(iv) and vary requirement 5(iii) of the notice accordingly.

Ground (g)

26. For ground (g) to succeed, the appellant must demonstrate that the 3 month period specified in the notice to take the steps required by it falls short of what should be reasonably allowed.
27. This period was in part informed by how quickly the Council maintains the development was carried out. While undoing development may not necessarily reflect how long it took to establish it, in this case the requirements are descriptively and physically relatively straightforward individually or taken together. The appellant did not dispute that carrying out the requisite works could not be achieved in 3 months.

⁹ Section 55(2) of the Act

28. I acknowledge that the agricultural holding is in operation and that even if the appellant still owns land elsewhere it is in a distant part of the country, so not a convenient arrangement for the livestock on the land. He has had the reasonable expectation of a successful appeal on ground (c) and, I appreciate, would have to make alternative arrangements to care for livestock on the land or look elsewhere in earnest after the outcome of the appeal.
29. However, the size of the holding is relatively modest as is the apparent number and variety of animals that I saw or have been described. In which case, there is little evidence that making or looking for alternative arrangements would be unusually difficult, require an inordinate amount of time or, therefore, likely result in harm to the welfare of these animals. Nor has it been suggested that the functional or financial viability of the holding would be unduly adversely affected, or at all. There is little else to justify the 6 month period the appellant sought, which on the face of it would therefore be disproportionate.
30. Consequently, I conclude that the 3 month period given by the notice to comply with the requirements does not fall short of what is reasonable, so ground (g) fails.

Formal Decision

31. It is directed that the enforcement notice is corrected and varied as follows:
- Section 3(iv) – delete the existing wording and replace with ‘*an excavated pit/hole*’.
 - Requirement 5(iii) – delete the existing wording and replace with ‘*Back fill the excavated pit/hole with soil*’.
32. Subject to this correction and variation, the appeal is dismissed and the notice is upheld.

Robin Buchanan
INSPECTOR