The Planning Inspectorate

# Appeal Decision

Site visit made on 22 August 2022

**by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC**

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

**Decision date: 20 September 2022**

**Appeal Ref: APP/U2370/C/22/3299929**
**Land at Hales Rushes Road, Hale Nook, Out Rawcliffe, Preston, Lancashire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Trevor Beswick against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice was issued on 19 April 2022.
- The breach of planning control as alleged in the notice is without planning permission,
    a) The erection of a dwellinghouse in the approximate location shown cross-hatched in blue on the attached plan;
    b) The erection of a building in the approximate location shown cross-hatched in brown on the attached plan;
    c) A material change in the use of the Land from use for the purposes of agriculture to a mixed use consisting in use for the purposes of agriculture, the use of the dwellinghouse as a dwellinghouse, and the use of the building for non-agricultural commercial purposes.
- The requirements of the notice are:
    i Cease the use of the dwellinghouse as a dwellinghouse;
    ii Demolish the dwellinghouse in its entirety;
    iii Following compliance with sub-paragraph (ii) of this paragraph 5 above, remove from the Land all materials, rubble, and debris that have resulted from compliance with sub-paragraph (ii) of this paragraph 5;
    iv Cease the use of the building for non-agricultural commercial purposes;
    v Demolish the building in its entirety;
    vi Following compliance with sub-paragraph (v) of this paragraph 5 above, remove from the Land all materials, rubble, and debris that have resulted from compliance with sub-paragraph (v) of this paragraph 5;
    vii Cease the use of the Land for residential purposes;
    viii Cease the use of the land for non-agricultural purposes.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) of the 1990 Act as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.**

## Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters relating to 'legal' grounds of appeal is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

2. The appellant refers to "*Philips v Barnett* [1922] 1KB 222 and *R v Rent Officer of Nottinghamshire Registration Area, Ex. P. Allen* [1986] 52 P&CR 41". Transcripts are not supplied, however, these appear to concern the Rent Acts and are not strictly applicable to the matters at issue here. However, I have taken account of other relevant caselaw, which deals with similar matters, as set out below.

3. The appellant indicates that the enforcement notice is invalid as it confuses operational development with a change of use. I agree that where the allegation is of unauthorised development, the notice should distinguish between operations and a material change of use, although there is no reason why one notice should not combine allegations of both, provided they relate to connected matters. It is necessary to establish whether the matters are to be regarded primarily as either operational development or a change of use, with an ancillary element of the other; or whether they are composite activities embracing both and thus requiring permission under both heads.

4. The reference to "the use of the dwellinghouse as a dwellinghouse, and the use of the Building for non-agricultural commercial purposes" indicates those buildings are considered separate planning units in their own right. That being the case, allegation 3(c) would not be necessary as it duplicates the allegations in 3(a) and 3(b). Having visited the site and reviewed the evidence, I consider that the alleged breach would be best described as operational development and would be adequately covered by 3(a) and 3(b). There will be consequential changes to the requirements because the steps to demolish the dwellinghouse and building would achieve cessation of the uses of those buildings themselves. There would also need to be a correction to the reasons for issuing the notice to delete paragraph 4(iii), which relates to timescales in connection with 3(c).

5. I am satisfied I can make these corrections without injustice since the effect of the notice would be the same. Also, the appellant has addressed their evidence to the operational development in any event so their case would not be prejudiced.

## The ground (b) appeal

6. In order to succeed on the ground (b) appeal, the appellant must show on the balance of probabilities, that the matters alleged have not occurred as a matter of fact.

7. The appellant claims the allegations are factually incorrect. It is argued that the alleged dwellinghouse is a mobile home that falls within the definition of a caravan. As such, the setting up of the structure cannot amount to operational development as it is not a building. Support for this assertion is drawn from *Tewkesbury*[1], in which the High Court held that a mobile shed was not a building for the purposes of planning control.

8. Section 336(1) of the 1990 Act includes in the definition of the word *'building'* any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. In *Cardiff Rating Authority*[2], which was endorsed by the Court of Appeal in *Skerritts*, three primary factors

[1] *Tewkesbury BC v Keeley* [2004] EWHC 2594.
[2] *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 and *Skerritts of Nottingham Ltd v SSETR* [2000] JPL 1025.

were identified as decisive of what was a *'building'* and these are as follows: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.

9. The appellant's assertion is that the structure is mobile because it has wheels. I saw that the structure incorporates a modified single axle trailer. It has a metal skin and is of a rectangular form with an upper floor accessed via a loft ladder. The substantial size of the structure is consistent with a building. In addition, it has most likely been constructed on site and there is no evidence to the contrary. The wheels were held in place by concrete blocks and there is no pre-laid base or supporting foundations other than hardstanding. However, the presence of wheels alone does not equate to mobility. It is not apparent that the structure has been moved since it was constructed and it seems to be permanently located within the site. Although there is no physical attachment to the ground, the structure is immobile by its own weight. On the particular circumstances of this case, it can reasonably be described as a structure that falls within the definition of the word *'building'* in s336(1).

10. I now turn to the secondary argument that the setting up of the structure does not amount to operational development. Section 55(1) to the 1990 Act says that the word *'development'* means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(1A) says that for the purposes of the Act *'building operations'* includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. The erection of an entirely new building is not specifically mentioned, however, it falls within the definition as work normally undertaken by a person carrying on business as a builder.

11. Given the manner and nature of the work involved in the erection of the structure and its physical construction and size, it required an element of pre-planning and necessitated construction in accordance with a specific end use in mind. I consider that the matters alleged amount to development because the erection of the structure involved the carrying out of building operations, which resulted in an entirely new building.

12. For completeness, I have considered the appellant's case that the structure is a mobile home that falls within the definition of a caravan. A caravan is defined in Section 29(1) to the Caravan Sites and Control of Development Act 1960 (the 1960 Act) as "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed or being transported on a motor vehicle or trailer) and any motor vehicle so designed and adapted". Thus, a caravan is mobile by definition. However, as explained, it is likely that the structure was constructed on site from several components. Despite the appellant's assertion that it can be towed around the site by a tractor, it has not been shown that it is possible to tow it or lift it onto a trailer for transportation without causing considerable damage to the structure that would render it unusable. Consequently, I am of the opinion that the structure fails to satisfy s29(1) of the 1960 Act.

13. I find, as a matter of fact and degree, that the structure on the site is not a mobile home but that it was constructed as a result of building operations as

defined in Section 55 of the 1990 Act. This finding is consistent with *Measor*[3], which the appellant refences, in which the Deputy Judge said he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home could never be a building for the purpose of the 1990 Act.

14. In terms of use, the appellant explains that the building functions as a shelter in connection with the agricultural use of the land and, hence, it cannot be considered a dwellinghouse but is part and parcel of the agricultural use.

15. There is no definition of the term 'dwellinghouse' in the 1990 Act but it was accepted in *Gravesham*[4] that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The building includes sleeping accommodation, it has a gas cooker connected to a gas bottle and there is a wood burning stove. There is a portable WC. I saw a sink, although there is no water supply and no permanent electricity supply. As such, the building lacks certain amenities generally found in most houses. However, it is plainly capable of being used as a dwelling because the appellant's case is that he lived in the building during a period of self-isolation due to the COVID-19 pandemic.

16. It is also contended that there has been no change of use in relation to the alleged commercial activities. While the erection of the building alleged in 3(b) is accepted, it is claimed that its use, and that of the remainder of the land, is agricultural. The appellant has submitted a statement in support of the appeal, however, this is not properly witnessed and cannot be considered sworn evidence, which limits the weight I can attach to its content. I saw that the building is relatively large with a full height opening door. It contained some agricultural equipment and was being used to store straw as shown on the appellant's photographs. There was a compressor and some cylinders of compressed air, which may be related to the alleged use, but it was not apparent that any such use was ongoing.

17. The Council claims that the appellant told them during a site visit that he used the workshop for "blasting and fabricating metal and as a base for maintaining/storing both his agricultural and business machinery". No clear explanation has been offered for this except to explain that any such activities were associated with the construction of the building(s) and/or for the adaptation and repair of machinery. It is also states that the appellant has no intention of using the building for commercial purposes.

18. Although the alleged commercial use seems to have ceased, the appellant must show that the matters alleged have not occurred. The evidence is limited and there is no sworn statutory declaration. Consequently, I conclude that the building has been used for non-agricultural commercial purposes, as alleged. Consequently, I find that the alleged breach has occurred as a matter of fact. The ground (b) appeal fails, therefore.

## The ground (d) appeal

19. The ground (d) appeal is made on the basis that, at the date when the notice was issued, no enforcement action could be taken against the building alleged in 3(b) of the notice.

[3] *Measor v SSETR* [1999] JPL 182.
[4] *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

20. Section 171B(1) of the 1990 Act as amended provides that - where there has been a breach of planning control consisting in the carrying out without planning permission of building operations...."*no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed"*. In this case, the relevant date is 19 April 2018.

21. The appellant has submitted a statement setting out that the building was erected in late 2017. As explained, this cannot be afforded the weight of sworn evidence. Moreover, there is very little supporting evidence. The photographs showing the building are undated and the Title Register for the land concerns ownership as opposed to use. The onus of proof is on the appellant in this type of appeal and I am not satisfied that sufficient information has been provided. Moreover, the Council has submitted evidence of its own, in the form of Google Earth images, which contradicts the appellant's arguments. The embedded dates in the images show there was no building on the land in June 2018, whereas it can be seen clearly in April 2020. It is argued that such imagery cannot be relied upon. Nonetheless, the appellant's own evidence is imprecise and ambiguous.

22. I find that the appellant has not shown, on the balance of probabilities, that the matters alleged were substantially completed on or before 19 April 2018. Therefore, the appeal on ground (d) must fail.

**The ground (a) appeal and the deemed planning application**

*Main Issues*

23. The terms of the deemed planning application are derived from the corrected allegation. Hence, planning permission is sought for the erection of a dwellinghouse and the erection of a building.

24. The main issues are whether the development would be an appropriate form of development in the countryside and its effect on the character and appearance of the area.

*Reasons*

25. The appeal site is a rectangular parcel of land extending to approximately 0.3 hectares. It is accessed via a farm track and lies some distance from the nearest settlement. It is within the area defined as countryside in the Council's Local Plan (2019). The land is used, in part, for livestock and there are associated sheds/shelters along with a hardstanding and open storage of agricultural equipment, in addition to the two buildings targeted by the enforcement notice. The land is enclosed by fencing/buildings and there are high, security gates at the access. The surrounding area is rural and is mostly open fields interspersed with sporadic, mainly agricultural, development.

26. The deemed planning application concerns two buildings. The buildings are fairly large-scale in comparison with the site and, due to their size, scale and siting, have a harmful effect on the character and appearance of this rural locality. In addition, the site is poorly located for access to goods and services. Occupiers and users of the buildings would be reliant on private transport, which is undesirable.

27. I appreciate the appellant's case, that the use of the buildings would be for agricultural purposes, but there is no evidence of need to justify the size and scale of the development. The holding is comparatively small and livestock numbers are similarly limited. There is very little detail of the numbers of ewes, aside from 10 sheep with lambs, the lambing operation or other needs that would require an on-site presence. I understand the larger building is intended as a secure store and I do not doubt the need for security given the remote location. However, the agricultural operation is modest and there are numerous other buildings on the site, which serve agricultural purposes, and are appropriate in scale to the size and nature of the holding. There is no explanation of why a building of this size is required for agricultural purposes alone or why the development is necessary to the ongoing viability of the enterprise. Hence, a condition restricting the use of the dwelling to the lambing season, and that both buildings be occupied in connection with the agricultural use of the site for a temporary period, would not overcome my concerns since the need has not been explained. There are no other conditions that would make the development acceptable in my opinion.

28. I have considered the appellant's personal circumstances, which limit his ability to manage the land and care for his animals. I understand that the development would assist in this respect. However, the appellant has explained that he lives around 8 miles away. While the site is not easily accessed, it is not unusual for farmers to travel such distances where the holding is remotely located. This consideration cannot outweigh the conflict with the development plan.

29. I conclude that the buildings would not be an appropriate form of development in this countryside location and would have an adverse effect on the rural character and appearance of the area. There are no other considerations that would outweigh that harm. Consequently, the development would not accord with Policies SP1, SP2, SP4, CDMP3 and CDMP6 of the Local Plan, which seek to direct new development to established settlements, while restricting development in the countryside as part of a wider strategy to achieve sustainable development and reduce car reliance, protect the open and rural character of the countryside, and promote high standards of design.

**The ground (f) appeal**

30. The ground (f) appeal is that the steps required by the notice to be taken, or the activities required 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. While the connection is not explicit, the wording of Section 174(2)(f) of the 1990 Act links back to Section 173 which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity.

31. In this case, the corrected notice requires the removal the buildings and resulting materials. Its purpose is to remedy the breach of planning control. The breach can only be remedied by the demolition of the buildings. There is no evidence that the buildings could be put to some other lawful use. Hence, the corrected requirements are not excessive to achieve the statutory purpose behind the notice and the ground (f) appeal must fail.

## Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Formal Decision

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

    1) The deletion of paragraph 3(c) in its entirety.

    2) The deletion of paragraph 4(iii) in its entirety.

    3) The deletion of requirements 5(i), 5(iv), 5(vii) and 5(viii).

34. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Debbie Moore*

Inspector