



Appeal Decision

Hearing Held on 13 July 2021

Site visit made on 13 July 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/L2820/C/19/3240085

Land Title 217277 situated at Greenfields Top Field, Braybrooke Road, Braybrooke, Northamptonshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Vasile Dinu against an enforcement notice issued by Kettering Borough Council.
 - The enforcement notice, numbered ENFO/2018/00186, was issued on 30 September 2019.
 - The breach of planning control as alleged in the notice is: *Without planning permission, a material change of use from agricultural land to a mixed use of agriculture and the stationing of a mobile home to facilitate a carpentry workshop, manufacturing of bee hives and storage of ancillary equipment within the area edged in Red on the attached plan¹.*
 - The requirements of the notice are:
 1. *Cease the use of the land for the stationing of a mobile home*
 2. *Remove from the land as shown edged in red on the attached plan, the mobile home and all ancillary parts/debris.*
 3. *Cease the use of the land for carpentry, manufacturing bee-hives and the storage of its ancillary equipment and remove all associated equipment and materials from the land.*
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - i) Replacing the text at section 3 (The breach of planning control alleged) with the following: *Without planning permission, a material change of use from agriculture to a mixed use of agriculture and the stationing of a mobile home for use as a carpentry workshop, the manufacturing of bee hives and the storage of ancillary equipment within the area edged in red on the attached plan.*
 - ii) Deleting requirements 1,2 and 3 from section 5 (What you are required to do) and replacing them with the following:
 1. *Cease the use of the land for the stationing of a mobile home for use as a carpentry workshop, the manufacturing of bee hives and the storage of ancillary equipment.*

¹ The plan attached to the enforcement notice

2. Remove from the land as shown edged in red on the attached plan, the mobile home and all associated parts, debris, equipment and materials.

2. It is directed that the notice be varied by deleting '1 month' as the time for compliance and replacing it with '2 months'.
3. Subject to these changes the appeal is dismissed and 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.

Procedural Matters

4. In April 2021 a number of local authorities, including Kettering Borough Council, merged to form North Northamptonshire Council. Thus, this new Council has taken over the role of local planning authority from Kettering Borough Council, which issued the enforcement notice. I have not sought to distinguish between the old and new local planning authorities in references to 'the Council' below.
5. The National Planning Policy Framework was revised on 20 July 2021, shortly after the Hearing. I wrote to the parties inviting comments regarding this, and have determined the appeal with regard to the revised Framework.

Application for costs

6. An application for costs has been made by the appellant against North Northamptonshire Council. This application is the subject of a separate Decision.

The appeal on ground (b)

7. An appeal on ground (b) is made on the basis that the matters stated in the notice have not occurred. The planning merits of the alleged use are not considered. The onus is on the appellant to make out their case and the standard of proof is the balance of probabilities.
8. Although the notice refers to a mobile home on the site, the Council expressed the view in its appeal statement that the structure on the site might not meet the definition of a caravan for planning purposes, as set out in the Caravan Sites and Control of Development Act 1960. The matter was discussed at the Hearing and there was agreement that the structure does meet the definition of a caravan and is not a building for planning purposes. Having inspected the structure during my site visit, I agree with that view.
9. It is a matter of fact that a mobile home has been sited on the land identified in the enforcement notice and no building operations are alleged in the notice. Thus, development can have only come about by way of a material change of use. The allegation in the notice is that the mobile home facilitates a carpentry workshop, the manufacturing of bee hives and the storage of ancillary equipment and that this has caused a material change in the use of the land.
10. An essential stage in considering whether a material change of use has occurred is to identify the 'planning unit'. I sought the views of the parties at the Hearing on this point and there was agreement that the land identified by the enforcement notice is the planning unit. I agree with that view. In deciding whether a material change of use has occurred it is necessary for me to

consider whether there has been a change in the definable character of the use of that piece of land. There is agreement that the pre-existing use of the land was for agriculture, as indicated by the notice. I have no reason to reach any contrary view.

11. The next matter to consider is the use of the land when the notice was issued. The mixed use alleged includes agriculture, and so there is an acceptance on the Council's part that an element of agriculture remained. Although the notice refers to a 'carpentry workshop', and the mobile home certainly contained a wide range of wood-working machinery when I saw it, the Council does not make a specific allegation that items other than bee hives have been made there. Nor is it said that items are made for sale.
12. Thus, the carpentry use appears to be the appellant making and repairing bee hives for his own use, together with the storage of the items ancillary to that activity. The question is whether siting the mobile home on the land for that purpose has brought about a material change of use of the land or whether, as the appellant contends, the use the mobile home is put to is ancillary to the agricultural use of the land. It is the primary purpose which determines the character of the use, not the ancillary uses. This principle is clearly established in the cases of *Brazil (Concrete) Ltd v MHLG & Amersham RDC [1967] 18 P&CR 396* and *Wealden District Council v Secretary of State for Environment and Colin Day (1988) JPL 268 CA*, both referred to by the appellant.
13. It is argued for the appellant that the assessment of the change of use should consider the whole of the appellant's beekeeping operation, which includes land rented elsewhere, accommodating 90 hives in total. However, I consider that the correct approach is to consider whether the use of the planning unit (ie the appeal site) has changed. This is consistent with *Brazil*. To consider land outside the planning unit would mean that there would be no clear basis for an assessment of whether a change of use has taken place. Thus, while an understanding of the appellant's business as a whole is relevant, it is the character of the use of the planning unit that is to be considered in deciding whether or not a change of use has occurred.
14. At the Hearing the Council did not dispute the appellant's claim that beekeeping takes place on the site. Beekeeping is agriculture for planning purposes and use for agriculture is not development. However, making bee hives is not, in itself, an agricultural activity. Accordingly, a change of use will have occurred unless it is ancillary to the primary agricultural use.
15. Clearly there is a link between the manufacture/maintenance of hives and the appellant's beekeeping. However, the fact that a piece of equipment (or multiple pieces of equipment) are needed for an activity does not mean that they can necessarily be manufactured on the site on the basis of being ancillary to that use. Farmers use a wide range of items and machinery from tractors to fencing, but that does not mean that every item needed for farming can be manufactured on the farm without bringing about a breach of planning control; whether manufacturing items necessary for farming is ancillary to the agricultural use will be a matter of fact and degree in each case. While the scale of the use is not determinative on its own, it is an important consideration.
16. When I viewed the site, the mobile home was full of items to the extent that it was not possible to fully enter it. Much of the structure was set up as a

workshop. Shelving and cabinets were fixed to the wall and much of the floor area was occupied by workbenches. It contained a variety of machinery including a planer/thicknesser, electric saw, wood-working lathe and grinder. There were also hand tools such as sockets and spanners. None of the machinery was of an obviously commercial (as opposed to DIY) scale. However, with the various benches it filled up about half of the mobile home to the extent that some of it would need to be decanted in order to work in there. The other half of the mobile home had various items stored in it, including further tools and wood, and again was very full. Thus, it seems to me that the woodworking must spill out into the area around the structure.

17. I saw a number of beehives on the site, as well as various individual parts of them in the mobile home. Each one is made of quite a number of individual parts such that its construction must be a fairly involved and time-consuming process. Building the 90 hives the appellant refers to must have been a significant undertaking, even with the equipment available on the site.
18. Considering the appeal site as a whole, it seems to me that a change of use has occurred. At approximately 0.2 hectares, the relevant planning unit is fairly modest. In that context, the woodworking operation that has been introduced is of a significant scale, judging by the area it currently takes up in the mobile home, the amount of equipment and machinery that has been brought onto the site in connection with it and the quantity of work (in the form of making/repairing beehives) the appellant has carried out. While the beehives are to facilitate an agricultural activity, that does not mean that their construction can be carried out on this small site regardless of scale. In my view the woodworking operation has been carried out at such a scale as to bring about a change in the character of the use of the land and now amounts to a primary use of the site rather than a use ancillary to agriculture. Accordingly, the planning unit is now in a mixed use, including a carpentry workshop, as the notice alleges.
19. In reaching that view I have had regard to the various judicial authorities that have been raised. In *Main v SSETR & South Oxfordshire DC [1999] JPL 195* it was established that the fact that an activity is relatively small does not mean that it cannot be a primary use of the land. However, that does not mean that scale is not relevant; as the judgment in *Main* makes clear, whether something is an ancillary use or a primary use is a matter of fact and degree, to be determined on the particular facts of the case.
20. In *Millington v Secretary of State for the Environment, Transport and the Regions, and Shrewsbury and Atcham Borough Council [1999] EWCA Civ 1682* the Court of Appeal concluded that the use of land for processing a crop so as to produce an identifiably different product after it has been removed from the soil constituted agriculture but that does not alter my view that, on the facts of this case, the extent of the carpentry workshop activity is such that it cannot be regarded as ancillary to agriculture.
21. The appellant advises, and the Council does not dispute, that the mobile home is also being used for the extraction of honey and storing equipment needed for beekeeping. These activities are clearly linked to beekeeping and I have no evidence to show that they are of such a scale as to have become distinct, primary uses in their own right. However, that does not alter my view that the

overall use of the mobile home is such that there has been a material change in the use of the land.

22. As the appellant points out, farms commonly have buildings for storage purposes, and such storage may be regarded as ancillary to the agricultural use. However, such a general point does not assist in reaching a view about the case before me, which is dependent on the facts of the case. For the reasons already given I find that the siting of the mobile home for the purposes set out in the notice is not ancillary to the agricultural use of the land and that a material change of use has occurred. Accordingly, this element of the appellant's case fails.
23. The appellant regards the use of the term 'to facilitate' in the breach of planning control alleged in the notice to be wrong. However, it was agreed at the Hearing that this could be addressed by substituting the term 'for use as' without causing injustice to either party. I will make this change, which will make it clearer that the notice is concerned with the use the mobile home is being put to, in accordance with established case law. To that extent only, the appeal on ground (b) succeeds.

The appeal on ground (a)

Main issues

24. The main issues are:

- The effect of the development on the character and appearance of the area;
- Whether the presumption in favour of sustainable development, as set out in the National Planning Policy Framework (the Framework), applies; and
- Whether any harm arising from the development is outweighed by other considerations, including any need for it, when the appropriate planning balance is applied.

Character and appearance

25. The appeal site lies within open countryside. It forms part of roughly 15 hectares of land known as 'Greenfields', which has previously been divided into small plots and sold off separately. The appeal plot is reached via a track which runs past other small plots, some of which have caravans sited on them.
26. The appeal site is a sloping strip of land, about 0.2 hectares in area. It is mainly grassed, with the boundaries demarked by post and wire fencing. The mobile home is prominently located at the upper part of the land, close to the track. When I saw it, the interior of the mobile home was full of various pieces of wood working machinery and items being stored. There is also a small metal building at the bottom of the site. I understand that this is a relatively recent addition and was not on the site when the notice was issued. The site contained about 14 beehives when I saw it.
27. The mobile home currently on the site is rather scruffy in appearance. In particular, a protruding section in the middle of the unit, perhaps a porch, has been rather crudely truncated, leaving the underlying timber exposed. Various minor items were stored around the mobile home and below it, detracting further from its appearance.

28. The Northamptonshire Environmental Character Assessment (NECA) includes the site within an area defined as 'West Northamptonshire Uplands'. The NECA indicates that the area is characterised by 'expansive and elevated landscape with an arc of high rounded hills and valleys'. It adds that 'Land cover is primarily improved agriculture, with arable and pastoral farming evident in equal measures, creating an attractive patchwork rural landscape'. The appeal site and its surroundings are broadly consistent with this patchwork rural landscape character, albeit affected to some extent by the nearby plots with caravans.
29. The Council argues that the site lies within a 'valued landscape' for the purposes of the Framework, which states that Planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, amongst other things. In support of this the Council has provided a copy of a 'Statement of Landscape and Visual Evidence' submitted in support of an appeal relating to Plot 24b at Greenfields in 2016², which includes a Landscape and Visual Impact Assessment (LVIA).
30. However, while the site lies within a pleasant rural landscape, I am not persuaded by the evidence before me or what I saw on my site visit that it is of a quality or importance locally as to be 'valued landscape' for the purposes of the Framework. I appreciate that in considering the appeal relating to Plot 24b the Inspector concluded that the area was valued landscape. However, in considering a range of appeals relating to various Greenfields plots in 2017³ a different Inspector reached the contrary view. I have reached my view having considered the observations of both Inspectors and the evidence before me, including the LVIA, which concludes that, overall, it is a landscape of medium value.
31. The landscape does not have any special protection through statutory or local designations. However, neither this nor my view that it is not a 'valued landscape', means that its protection from undue visual harm is unimportant. Indeed, the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
32. Without the mobile home, the site would have a clearly rural, agricultural appearance. The setting of the plot is also clearly rural, notwithstanding the caravans on some of the nearby plots. The substantial hedgerow that bisects the wider Greenfields site creates a distinct sense of separation between the appeal site and many of the plots containing mobile homes.
33. In this setting, the mobile home looks out of place and its slightly dilapidated appearance, along with the storage around the structure, causes additional visual harm. When woodworking is taking place at the site, the nature of that use must be very obvious due to the noise the machinery must generate. It also seems very likely to me that users of the workshop would need to decant items from the mobile home in order to create room to work. Consequently, regardless of whether the Council is right to refer to 'industrial growth' at the site, the character of the site is affected both by the visual effect of the mobile home itself, and by the introduction of a carpentry workshop use, albeit on a small scale, into a rural area.

² APP/L2820/W/15/3139293

³ APP/L2820/W/16/3144399 and others

34. Moreover, the mobile home is currently located in the highest and most prominent part of the site. Although it cannot be seen from the road, it is in plain view from a public footpath which passes close to the site. While its appearance might be improved with landscaping (which could be required by a planning condition), there is no scheme before me to show what improvements could be made. With these points in mind, I find that the mobile home is harmful to the appearance of the site and the area.
35. I appreciate that there are a number of businesses in the wider area, together with various mobile homes on the Greenfields site and beyond. However, the appeal site is seen in the rural setting provided by the adjoining fields, a setting in which the mobile home, used as a workshop, appears incongruous. This brings the development into conflict with Policy 3 of the North Northamptonshire Core Strategy, which seeks to ensure that development is located and designed in a way that is sensitive to its landscape setting. The Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the harmful visual effect of the development is contrary to that purpose as well.

The presumption in favour of sustainable development

36. The Framework advises at Paragraph 11(d) that:

- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

37. It is argued for the appellant that the policies which are most important for determining the application are out of date. In my view, the policies that are most important for determining this application include Policy 3 of the Core Strategy, which is relied upon by the Council. I also accept the appellant's view that Policy 11 is important. Although the Council does not identify any conflict with Policy 11, it is concerned with the distribution of development and, to that extent, is important to the determination of the deemed planning application. In accordance with Paragraph 219 of the Framework, the weight to be attached to policies depends on their consistency with the Framework. Policies should not be considered out of date simply because they were adopted prior to the publication of the Framework.
38. Policy 3 is concerned with landscape character and seeks to ensure that development is located and designed in a way that is sensitive to its landscape setting, retaining and, where possible, enhancing the distinctive qualities of the landscape character area which it would affect. It also states that development should conserve and where possible enhance the character and qualities of the local landscape through appropriate design and management. This seems to me to be consistent with the Framework, with its reference to recognising the

intrinsic character and beauty of the countryside. The wording of the policy, while not replicating the wording of the Framework, is clear.

39. Policy 11 gives a broad indication of development that will be permitted in rural and urban areas, and generally seeks to focus development within settlements. Although it refers to only permitting some forms of rural development in 'special circumstances', I do not regard this as the introduction of an unjustified 'policy test', but rather an appropriate reference to circumstances in which development in the countryside is permitted, as set out in other Core Strategy policies and national policy.
40. Read on its own, the statement in Policy 11 that, 'Development in the rural areas will be limited to that required to support a prosperous rural economy or to meet a locally arising need, which cannot be met more sustainably at a nearby larger settlement' does not sit easily with the more permissive approach of the Framework. However, the policy goes on to list situations where development in rural areas is permitted, including those set out in national policy. Read as a whole, I do not regard it as inconsistent with the Framework. While it is not expressed in the same terms as the Framework, that does not mean that it is inconsistent with it and it is natural that local plan documents add a layer of detail to that set out in national policy, rather than simply reiterating it.
41. I conclude, therefore, that the policies which are most important for determining the application are not out of date. Accordingly, the 'tilted balance' set out in Paragraph 11(d) of the Framework does not apply. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the decision must be made in accordance with the development plan unless material considerations indicate otherwise.

Other considerations

42. The appellant states that the mobile home is essential for his beekeeping business, and I am mindful that local and national policies support economic growth in rural areas. However, any contribution the beekeeping enterprise makes to the local economy has not been quantified. It is, however, clear that it does not currently provide a main source of income for the appellant. Overall, it appears to me that any economic benefit arising from the use must be very limited indeed and I give little weight to this consideration.
43. It is argued that the development accords with Core Strategy Policies 11 and 25. However, Policy 11 seeks to focus development in settlements and, in view of my findings above, I do not accept that the policy supports the development on the basis that it is required to support a prosperous economy. The same point applies to Policy 25, which provides general support for rural economic development and diversification. Moreover, any support in Policy 25 relates only to developments that respect the environmental quality and character of the rural area, whereas I have found the character and appearance of the area to be harmed in this case. Accordingly, I do not consider that either policy provides support for the development.
44. The appellant argues that there are no alternative sites that could accommodate the use, and I accept that the equipment kept in the mobile home cannot be kept outside, not least for security reasons. However, I have insufficient information to demonstrate any substantive attempt to find an

alternative site. I am not persuaded that it is essential for the beehives to be constructed, maintained or stored, or for honey to be extracted, on a site on which the hives are normally sited. Indeed, most of the appellant's hives are apparently sited elsewhere, only coming to the appeal site for repair and so on. Thus, potential alternative sites for the activities carried out in the mobile home do not need to be limited to sites where bees can also be kept. The fact that most of the hives are already on other sites also means that any benefits arising from the current arrangement in terms of reducing the need to travel and transport the hives are likely to be very limited indeed.

45. It is argued that, in the event of the notice being upheld, the appellant would still be entitled to bring a mobile home on to the site to use for matters related to beekeeping (that is, the uses the appellant says the existing mobile home is used for, other than use as a carpentry workshop). However, in the absence of a detailed proposal setting out precisely how the mobile home would be used it is not clear to me that such actions could take place without causing a material change in the use of the land. Nor is it clear that the Council would be willing to grant planning permission for it. In any event, the removal of the woodworking workshop element would substantially change the nature of the use. Consequently, even if the appellant's proposal could be carried out, it would not justify the use currently taking place at the site.
46. My attention has been drawn to a number of appeal decisions relating to the various developments on the nearby plots of land in the wider 'Greenfields' site and beyond. However, these are all different to the specific proposal before me. Additionally, those sites are significantly separate in visual terms to the appeal site. Accordingly, the decisions relating to those sites are of little relevance to the matter before me.
47. I have had regard to the various conditions suggested and discussed at the Hearing. There would be benefits in providing landscaping and controlling storage on the site, car parking and the location of the mobile home. However, such conditions would reduce, but fall far short of overcoming, the harm arising from the development in my view. A condition limiting the development to the appellant only would not reduce the harm arising from the development.
48. A condition could be used to limit planning permission to a temporary period. The appellant suggests this would allow him the time to design a facility which would meet his needs while causing less visual harm. A 3 year period is suggested. However, while a temporary permission would be less harmful than a permanent one, I can see little justification for it. There is no indication before me of the type of facility the appellant has in mind and I cannot assume that the Council would be willing to grant permission for anything that might meet the appellant's needs. The 3 years the appellant seeks is a significant period for the use to continue, given the harm I have found.

Conclusion – ground (a)

49. I have found harm to the character and appearance of the area and consequent conflict with Policy 3. I do not regard the policy as out of date and give due weight to the conflict with it. Having considered all the policies I have been referred to, I conclude that there is conflict with the development plan as a whole, and I have found conflict with the Framework as well. Having considered all matters raised in support of the development they are not sufficient, collectively, to outweigh the harm. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

50. The purpose of the notice is to remedy the breach of planning control. That being the case, the requirements of the notice should reflect the breach alleged in it. However, Requirement 1 is to 'Cease the use of the land for the stationing of a mobile home', which does not state how the mobile home is being used and, therefore, does not reflect the use alleged. At the Hearing there was agreement that this should be changed to reflect the allegation more closely and I will amend the notice accordingly. Making this change means that Requirement 3 becomes essentially superfluous, since the same matters will be addressed in the revised Requirement 1, and so I will delete it. Although Requirement 3 also includes reference to removing equipment and materials, that can be incorporated into Requirement 2.
51. For these reasons the appeal on ground (f) succeeds and I will amend the requirements of the notice to reflect the breach of planning control alleged, as outlined above.

The appeal on ground (g)

52. The appellant seeks a 12 month period for compliance in order to be able to identify an alternative site and move to it. While I appreciate that this is desirable from the appellant's point of view, it needs to be balanced against the desirability of bringing about an end to the breach of planning control and the harm it causes without undue delay. Even if some form of internal space is necessary for the beekeeping enterprise, that would not justify the 12 months the appellant seeks. However, in view of the amount of equipment stored in the mobile home, I consider that the 1 month in the notice is too short a period in which to relocate or dispose of it. In my judgement, 2 months would be an appropriate period and I will vary the notice accordingly. To that extent, the appeal on ground (g) succeeds.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green
Vasile Dinu
Alex Bruce

Green Planning Studio Ltd
Appellant
Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

David Lintott,
Stephen Jupp
Ian Dudley
Lucinda Lee

Cornerstone Barristers
Planning consultant
Chartered landscape architect
Planning Enforcement Officer

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Plan showing Footpath GC7
- 2 Statement of Landscape and Visual Evidence – Lockhart Garratt
- 3 Correspondence from the Council dated 9 July 2019
- 4 Affidavit of Vasile Dinu dated 2 July 2021
- 5 Deakin v First Secretary of State and Others
- 6 Borough of Restormel v The Secretary of State for the Environment and Others