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# Appeal Decisions

Site visit made on 16 January 2012

by **James Ellis LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2012

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**Appeal Ref: APP/R3325/C/11/2156258 (Appeal A)**

**Appeal Ref: APP/R3325/C/11/2156259 (Appeal B)**

**Appeal Ref: APP/R3325/C/11/2156260 (Appeal C)**

**Appeal Ref: APP/R3325/C/11/2156261 (Appeal D)**

**Plots 80-83, Land at OS 2919, Moor Lane, Wincanton, Somerset**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeals are made by Mr J Lovatt (Appeal A), Mrs S Lovatt (Appeal B), Miss C Lovatt (Appeal C), and Mr P Lovatt (Appeal D) against an enforcement notice issued by South Somerset District Council.
- The Council's reference is 11/00156/USE.
- The notice was issued on 30 June 2011.
- The breach of planning control as alleged in the notice is
  - (a) Without planning permission, the making of a material change in the use of the Land, namely the siting of metal containers and touring caravan on the Land for purposes other than agriculture; and
  - (b) Without planning permission, the carrying out of operational development, namely engineering operations to create raised soil beds on which to site the above mentioned storage containers, and the creation of an access onto a classified highway.
- The requirements of the notice are :
  - (i) Cease the use of the land for purposes other than agriculture;
  - (ii) Remove the metal storage containers and touring caravan from the land;
  - (iii) Permanently close the access; and
  - (iv) Restore the land to its condition before the breach took place, such works to include the levelling of the land to its previous gradient, and more particularly to include the removal of the raised soil beds.
- The period for compliance with the requirements is 30 days.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Act 1990.
- Appeals B, C and D are proceeding on the grounds set out in section 174(2) (c) and (f) of the Act. Since the prescribed fees have not been paid within the specified period for Appeals B, C and D, the applications for planning permission in respect of Appeals B, C and D deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld subject to correction**

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## The enforcement notice

1. The land the subject of the enforcement notice is described in paragraph 2 of the notice as plots 76-83, land at OS 2919, Moor Lane, whereas the land actually comprises plots 80-83. This is accepted by the Council. For the sake of clarity, I consider that paragraph 2 should be corrected to reflect this situation, and that the reference to plots 76-83 in the second line of the

heading of the notice which addresses it to the owner(s) and occupier(s) of the land should also be corrected. I shall refer to the appeal site as being plots 80-83 for the purposes of my decisions.

2. The alleged breach of planning control identified in paragraph 3(a) of the notice relating to a change of use is widely drawn and does not say to what use the containers and caravan on the appeal site are being put. The evidence before me indicates that one of the two containers is being used for the storage of a pump station and engines, and that the other is being used for the storage of fuel oils. Again the evidence is suggestive that a touring caravan on the land is being stored there prior to use as a first aid/security station. Consequently, I consider that the alleged breach of control identified in paragraph 3(a) should be reworded to refer to the change of use of agricultural land to the stationing of containers used for storage purposes, and the storage of caravans. It would follow on from such rewording of paragraph 3(a), that the first requirement of the notice (as set out in paragraph 5) would also need rewording to require cessation of the use of the land for storage purposes.
3. I consider that the required amendments to the notice would not cause injustice to the appellants or to the Council and I shall therefore correct the notice accordingly, using the powers given to me under section 176(1) of the Act.

### **Procedural matter**

4. Mr J Lovatt has stated that his ground (a) appeal is in respect of a series of fish tanks/cages on a 22 acre site (about 9 hectares) at Lovatt Farm, Battspool Bridge, Moor Lane of which the appeal site forms part. It would be beyond my powers for me to consider this. This is because the enforcement notice refers only to plots 80-83. Also, the alleged breach of control does not refer to fish tanks/cages. My consideration of the ground (a) appeal will therefore be limited to those matters referred to in the notice, as corrected.

### **Background**

5. The appeal site lies in open countryside, about 3 km to the south of Wincanton. The area is generally characterised by flat fields which are bounded by hedgerows of indigenous species which include some mature trees. There are occasional farm buildings and dwellings interspersed throughout the landscape. To the south-west of the appeal site is a classified highway which is separated from the site by a hedge. A hedge also forms the south-eastern boundary of the site, whereas its north-eastern and north-western boundaries are now marked by fencing. The appeal site is the subject of a Direction made under Article 4 (1) of The Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO") made by the Council on 17 March 2006 and approved by the Secretary of State on 5 September 2006. The Direction removes certain rights set out in Class A of Part 2 and Classes A and B of Part 4 of the second schedule to the GPDO. These relate to means of enclosure and temporary buildings and uses.
6. On my site visit, I saw that hedgerow had been removed from the south-west boundary of the site in order to create an access to the classified road. Wire fencing had been put across the access, but this could easily be removed. There were two large green metal storage containers on the site which had been placed on raised earth beds. A caravan was also on the site but appeared

not to be in use. There were no signs of agricultural activity, of any kind, taking place on the 9 hectare area of land.

### **The ground (c) appeal**

7. The ground of appeal under section 174 (2) (c) of the Act is that the matters stated in the enforcement notice do not constitute a breach of planning control. In this case, the appellants are contending that the matters stated are permitted development under Article 3 and Schedule 2 of the GPDO. The appellants state that one container houses a pump station and engines, and the other fuel oils, to be used in connection with fish tanks/cages on the 9 hectare area of land. It is also said that the caravan is in temporary use for security and first aid purposes until a permitted first aid station can be constructed for staff and visiting clients.
8. In terms of land ownership, there is evidence from the Council that the 9 hectare area of land has been divided into over 60 plots, with only 4 of these (those that are the subject of the enforcement notice) being in the ownership of the appellants. Having regard to this, I am not satisfied that the appeal site (which has been fenced off from the remainder of the 9 hectare area) is part of a larger agricultural unit. Also, I am not convinced that it is likely that a fish farm is going to be established on the larger area of land, as suggested by the appellants. I am told that the appeal site itself is about 0.05 hectares in area.
9. Part 6 of the second schedule of the GPDO refers to agricultural buildings and operations. The size of the appeal site is such that it cannot benefit from Class B of Part 6 (development on units of less than 5 hectares) because the rights given by Class B only relate to units of over 0.4 hectares. In any event, Class B does not include the installation of fish tanks and cages, as opposed to their replacement. Class B. (g) refers. Moreover, development is not permitted by Class B if it would relate to fish farming and would involve the placing or assembly of a tank on land or in waters or the construction of a pond in which fish may be kept. Class B.1 (e) refers.
10. It is therefore clear that the establishment of a fish farm with fish tanks and fish cages on the appeal site would not be permitted development for the purposes of Article 3 and Class B of Part 6 of the second schedule of the GPDO. Planning permission would be required. Given that the establishment of a fish farm on the appeal site would not be permitted development, it follows that the storage of equipment and fuel oils in association with such use and the storage of a caravan to be used in connection with such use are not permitted development. Even if the caravan were actually to be used for first aid/security purposes, as suggested by the appellants, this would be associated with development that requires permission. Moreover, the effect of the Article 4 Direction made by the Council is such that the caravan cannot benefit from Class A of Part 4 of the second schedule to the GPDO.
11. If it could be argued that the placing of the containers on the land was operational development, such an operation would not fall within the parameters of Class B of Part 6, and neither do engineering operations such as raising the soil beds upon which the containers have been placed.
12. Class B of Part 2 of the second schedule of the GPDO relates to the formation, laying out and construction of means of access to a highway but it only includes highways which are not trunk roads or classified highways. Given that

the access the subject of the enforcement notice is to a classified highway, it cannot take advantage of Class B of Part 2. Again, the effect of the Article 4 Direction is such that the access cannot benefit from Class A of Part 4 of the second schedule to the GPDO.

13. Overall, I find that the matters stated in the enforcement notice are not permitted development or associated with development that is permitted development. I therefore conclude that they require planning permission and that they constitute a breach of planning control. The appeals on ground (c) must therefore fail.

### **The ground (a) appeal**

14. This ground of appeal is that planning permission should be granted for what is alleged in the notice. In this case the main issues relating to the storage containers, the caravan and the raised earth platforms are: the effect of the development on the character and appearance of the area; the susceptibility of the development to flood risk; and the principle of development in the countryside having regard to sustainability. With regard to the access, the main issue is its effect on highway safety.

15. The flat open countryside of which the appeal site forms part is a pleasing rural landscape. To my mind, the two storage containers, which stand on the raised earth platforms, have a strident industrial character and appearance which is very much out of keeping with the gentle agricultural character and appearance of the area. This is because of their size, shape and materials. When viewed from the road which passes by the appeal site, the containers are clearly seen over the top of the hedge which forms the south-western boundary of the site. The caravan is less conspicuous than the containers. Nevertheless, given that it is located in a flat open field, I consider that it is an alien feature within the landscape because of its form, light colour and materials. Again, I find that because of the flatness of the field, the raised beds are an incongruous and unattractive feature. I therefore conclude that the containers, the caravan and the raised beds have resulted in material harm to the character and appearance of the area, contrary to Policy 5 of the Somerset and Exmoor National Park Joint Structure Plan Review 1991-2011 and Policies ST5, ST6 and EC3 of the South Somerset District Local Plan. The policies seek, amongst other matters, to prevent such harm.

16. The appeal site is in Flood Zone 3 for the purposes of Planning Policy Statement 25: Development and Flood Risk ("PPS25"). PPS25 seeks to ensure that flood risk is taken into account at all stages in the planning process so as to avoid inappropriate development in areas at risk of flooding. A sequential approach to the determination of applications is advised so as to minimise flood risk by directing, amongst other actions, new development to areas of lowest flood risk. Given that the appeal site falls within Flood Zone 3, I consider that, in accordance with PPS25, a flood risk assessment as described in PPS25 is required, such assessment to contain, amongst other matters, information which would enable the Council to carry out a sequential test. In this case, no flood risk assessment has been submitted and there is no information concerning a sequential test before me. Having regard to this, I am not satisfied that the development would fail to minimise the risk of flooding. I must conclude that it would be an unacceptable form of development which would run contrary to the objectives of PPS25.

17. Policy STR6 of the Structure Plan states that development outside towns, rural centres and villages should be strictly controlled and restricted to that which benefits economic activity, maintains or enhances the environment and does not foster growth in the need to travel. This is echoed by Policy ST3 of the Local Plan. There is no evidence before me to suggest that the development the subject of the enforcement notice would benefit economic activity. I have found that the development would not maintain or enhance the environment. As regards sustainability in terms of the need to travel, there is limited information before me other than the Council's reference to the distance that the appellants themselves live from the appeal site. Certainly, there is nothing to suggest that the development would not foster growth in the need to travel. On the face of it, I therefore conclude that the development is contrary to policies which seek to ensure that new development in the countryside is subject to strict control.
18. As I saw on my site visit, the access is poorly formed and blocks a roadside ditch. Its surface is bare earth and use of it could result in mud being brought onto the highway which could be hazardous to road users. In addition, the access is at a gradient which could impact on visibility. Mr J Lovatt contends that the new access is for emergency use only but there is no detailed evidence from him to explain why this is needed. Nor is there any mechanism in place to ensure that it would only be used by emergency vehicles. I therefore conclude that the new access has resulted in harm to highway safety contrary to Policy 49 of the Structure Plan which seeks to ensure that development provides safe access to roads. The existing access to the larger area is not ideal, but this does not justify the construction of the access referred to in the enforcement notice.
19. A number of issues were raised by third parties that largely follow those addressed by the Council. However, other issues include services to the site, precedent, the occupations of the appellants and their motives. It seems to me that the provision of services relates to the establishment of a fish farm, rather than the development the subject of the enforcement notice. I have found the development to be unacceptable for a number of reasons so it should not act as a precedent. In any event, all future applications would have to be considered on their own individual merits. The occupations of the appellants and their motives are not material planning considerations to which I can give weight. I can, therefore, only give limited weight to the other issues raised by third parties.
20. For the reasons given above, I conclude that the ground (a) appeal should be dismissed.

### **The ground (f) appeal**

21. Ground (f) is the appropriate ground where an appellant seeks to argue that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by such breach.
22. Section 173(3) of the Act provides that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 173(4) then states that those purposes are –  
(a) remedying the breach by making any development comply with the terms

- (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.
23. Whether the steps required exceed what is necessary must be judged against the authority's chosen purpose. It is clear from the requirements of the notice that the purpose of the steps derives from section 173(4) (a) of the Act, rather than (b). It seeks to remedy the breach of control by restoring the land to its condition before the breach took place. In straightforward terms, the question that needs to be asked in this case is: do the steps (subject to the corrections referred to in paragraphs 2 and 3 above) exceed what is necessary to restore the land to its condition before the breach took place?
24. In my opinion, it is clear that the requirements of the notice (subject to the corrections) are entirely appropriate to achieve the objective of section 173(4) (a). I consider that none of the appellants' limited arguments put forward in support of this ground of appeal justify lesser requirements
25. In the circumstances, I conclude that no reasons have been advanced to convince me that the requirements of the notice (subject to correction) exceed what is necessary to restore the land to its condition before the breach took place, which in this case is the limited scope of ground (f). As such, this ground of appeal must fail.

### **Formal decision**

26. Following on from paragraphs 1, 2 and 3 above, I direct that the enforcement notice be corrected as follows:
- (a) the deletion of the number '76' in paragraph 2 of the notice, which refers to the land to which the notice relates, and its substitution with the number '80';
  - (b) the consequential deletion of the number '76' in the second line of heading of the notice which addresses it to the owner(s) and occupier(s) of the land, and its substitution with the number '80';
  - (c) the deletion of the second and third sentences in paragraph 3(a) of the notice, which refers to the change of use breach of control, and their substitution with the words 'the stationing of metal containers used for storage purposes and the storage of a touring caravan; and'; and
  - (d) the deletion of the words 'purposes other than agriculture' in requirement (i) set out in paragraph 5 of the notice, and their substitution with the words 'for storage purposes'.
27. Subject thereto, I dismiss the appeals, uphold the enforcement notice as corrected, and refuse planning permission in respect of the application deemed to have been made under section 177(5) of the Act.

*James Ellis*

Inspector