



Appeal Decisions

Hearing held and site visit made on
29 July 2008

by **David Pinner** BSc (Hons) DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
26 August 2008

- 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 Mrs [redacted] against an enforcement notice issued by Staffordshire Moorlands District Council.
- The notice was issued on 14 December 2007.
- The breaches of planning control as alleged in the notice are:
 - i) Without planning permission, the use of land for the siting and storage of a caravan with associated concrete steps, blocks, hard standings, gas bottles and cables;
 - ii) Without planning permission, the use of the land for residential occupation;
 - iii) Without planning permission, operational development on the land consisting of the construction and installation of a water pipe, drain and a brick chemical toilet disposal unit;
 - iv) Without planning permission, operational development on the land consisting of the construction of a hard standing, which includes a driveway and parking area;
 - v) Without planning permission, the use of the land for the storage of vehicles including, but not limited to cars, vans and trucks;
 - vi) Without planning permission, the use of the land for siting and storage of domestic items including, but not limited to, washing lines, garden furniture, garden heaters, play equipment, gas canisters, garden tools and equipment and the erection of canopies and pagodas,
 - vii) Without planning permission, operational development on the land consisting of the erection of a timber shed.
- The requirements of the notice are:
 - i) Cease all residential habitation of the land;
 - ii) Remove the caravan from the land including the associated hard standing, concrete steps and blocks, gas bottles, pipes and cables and cease using the land for the storage and siting of caravans;
 - iii) Dismantle and remove the water tap and the chemical toilet disposal unit including all bricks, concrete, pipes and drains and restore the land to its original grassed condition;
 - iv) Remove from the land all vehicles including, but not limited to cars, vans and trucks,
 - v) Cease using the land for the storage and parking of vehicles including, but not restricted to, cars, vans and trucks,
 - vi) Remove from the land all domestic items including but not limited to washing lines, garden furniture, garden heaters, play equipment, gas bottles, garden tools and equipment and the erection of canopies and pagodas;

-
- vii) Cease using the land for the storage and siting of domestic items including but not limited to washing lines, garden furniture, garden heaters, play equipment, gas bottles, garden tools and equipment and the erection of canopies and pagodas;
 - viii) Remove from the land all driveways and hard standings and return the land to its original grassed condition;
 - ix) Dismantle and completely remove from the land the timber shed including the concrete base and any substructure and return the land to its original grassed condition.
- The period for compliance with the requirements is 4 months from when the enforcement notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of decision The appeal is allowed in part and the notice varied as set out in the formal decision below

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by _____ against the decision of Staffordshire Moorlands District Council.
- The application Ref: _____, dated 18 May 2007, was refused by notice dated 27 July 2007.
- The development proposed is the retention of a residential mobile home and a timber storage shed for use in connection with building works relevant to the conversion of a rural building to tourist accommodation and an agricultural dwelling in the future.

Summary of decision: The appeal is allowed and planning permission is granted in the terms set out in the Formal Decision below.

Applications for costs

1. At the Hearing, the main parties each made applications for costs against the other. These applications are the subject of separate Decisions.

Preliminary matters

2. The enforcement notice lists as separate uses of the land a number of things which are in fact ancillary to the residential use enforced against. Nevertheless, the appellants confirmed at the hearing that they understood what the notice was trying to achieve. I am satisfied that I could have corrected the notice by combining and summarising items i, ii, v and vi and varying the respective requirements without prejudice to the interests of either party, had I not been varying it to give effect to my conclusions on the ground (c) appeal.
 3. The appellants said that the driveway and hardstanding enforced against had existed for many years and they had not done anything to construct them. Although no appeal on ground (d) has been made with regard to these items, the appellants have recently applied for a Certificate of Lawfulness (LDC), but this is still to be determined. In the absence of an appeal on ground (d), I cannot consider the matter. However, at the hearing the Council gave an
-

undertaking that they would not prosecute for any failure to comply with the enforcement notice, insofar as it relates to the driveway and hardstandings, whilst the LDC application remains to be determined. It was also pointed out on behalf of the appellant that part of the appeal site overlaps with the parking area and hardstanding permitted in connection with the conversion of a building on the land to a holiday cottage. It is not necessary to correct the enforcement notice to take account of this because by virtue of S180 of the Act, the enforcement notice is overridden to the extent that it is inconsistent with the planning permission that has been granted.

4. The description of the proposed development in the S78 appeal is unclear. It was confirmed at the hearing that the application was made so that the caravan and shed could be kept until the works for the conversion of the building to a holiday cottage had been completed. After that, the proposal is to use the residential caravan on the land for a further three years as an agricultural worker's temporary accommodation whilst the agricultural enterprise is established. The shed is also required for the same period in connection with the agricultural enterprise. I have considered the S78 appeal on that basis.

The S174 appeal – ground (c)

The caravan

5. The appeal is made on the basis that the use and residential occupation of the land as a caravan site is permitted under Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).
6. The relevant permission granted under GPDO Part 5 (by reference to Schedule 1 of the Caravan Sites and Control of Development Act 1960) allows land to be used as a caravan site for the accommodation of a person or persons employed in connection with building or engineering operations being carried out on the land, or adjoining land, provided that those operations are being carried out with planning permission if it is required. The permission is conditional on the use being discontinued and all caravans on the site being removed as soon as reasonably practicable after the circumstances cease to exist – i.e. when the building or engineering operations are no longer being carried out. The relevant paragraph in the 1960 Act is headed "Building and engineering sites". As far as I am aware, there is nothing that explains the purpose or intention behind this permission and no case law to assist in its interpretation. That being so, it must be interpreted on its face and the words, unless otherwise defined, have to be given their ordinary meaning.
7. In this case, the building or engineering operations concerned are the conversion of a former corn storage building to a holiday cottage. The conversion works have planning permission, so the project qualifies for the Part 5 permission. "Employed" is not defined or qualified (e.g. employed gainfully) and so can be given any of its ordinary meanings, including the devotion of time to an activity or purpose.
8. The holiday cottage project is still under construction and the site still has the appearance of a building site. The appellants are carrying out the bulk of the work themselves. It is evident that work is in progress and that a substantial amount of time and effort has been devoted to it since the project began in earnest. I consider that, as a matter of fact and degree, the appellants are employed in connection with the building or engineering project comprising the conversion of the old corn store to a holiday cottage and that their use of the land as a residential caravan site for their accommodation whilst they are employed in connection with the project is permitted under Part 5.

-
9. I have considered the Council's contention that the Part 5 permission no longer applies because the building project has reached a stage where most of the remaining work is internal and therefore does not constitute development as defined in S55 of the 1990 Act. I think the point has no merit because the internal and external works are obviously inseparable parts of a single building project. The circumstances which permit a caravan to be sited on the land will only cease to exist when the project is substantially completed, unless work stops before it is completed, which seems unlikely given the advanced stage of the project. I conclude that the appeal should succeed on ground (c) insofar as it relates to the caravan.

The shed

10. The appeal is made on the basis that the shed is a temporary building permitted under Part 4 of Schedule 2 of the GPDO. This permits the provision of buildings required temporarily in connection with and for the duration of operations being carried out on the land, subject to the condition that the building shall be removed when the operations have been carried out. The building was required for the storage of materials used in the conversion of the corn store. As that work has not yet been completed, the requirement to remove the shed has not yet arisen. As the conversion works have progressed, the amount of space in the building required for storage has diminished. The vacant space has been used in connection with agriculture on the holding, which does not amount to development as defined in S55 of the Act. I conclude that there has been no breach of planning control with respect to the shed and the appeal on ground (c) succeeds to that extent.

The water supply pipe and chemical toilet disposal point

11. Some of the appellants' land outside the appeal site is used as a certificated 5 van caravan site and the water supply and chemical toilet disposal facilities are required in connection with that use. The chemical toilet disposal unit has the appearance of a small raised inspection chamber, whilst the water supply appears as a tap fixed to a fence. It would be an exaggeration to regard these as engineering works and in the context of contemporaneous works for replacing the septic tank on the land and carrying out repairs and renovations to the field drainage system, I consider these works to be trivial. On that basis, I conclude as a matter of fact and degree that the works involved in providing the water supply pipe and chemical toilet disposal unit were *de minimis* and did not amount to development within the meaning of s55 of the Act. The appeal on ground (c) succeeds in respect of these items.

Ground (g)

12. In view of my conclusions on the ground (c) appeal, ground (f) does not need to be considered. The ground (g) appeal now relates only to the hardstanding. I have noted the Council's assurance that they will not act upon the enforcement notice until the LDC application has been determined, but I think it would be prudent to extend the period for compliance to 9 months to allow time for that application to be determined before the enforcement notice has to be complied with. I shall vary it accordingly.

The S78 appeal

13. In essence the basis of this appeal is that the appellants wish to keep the caravan and shed on the land for a temporary period of three years so that they might have the opportunity to establish a profitable agricultural enterprise. The land is within open countryside and also in the Green Belt, where new development is very strictly controlled.

-
14. Residential development in the open countryside needs special justification. In the Green Belt, it is a class of development that is inappropriate by definition and very special circumstances must exist before it can be permitted.
 15. There is nothing in planning law that discourages the use of land for agriculture. Quite the opposite in fact, since the use of land for agriculture is specifically excluded from the definition of development contained in S55 of the Act. The Government's fourth objective for rural areas, as set out at the beginning of Planning Policy Statement 7 *Sustainable Development in Rural Areas* (PPS7), calls for diverse agricultural sectors; it recognises that farming manages valued landscapes and it encourages the production of high quality products that the public wants. It is also accepted in PPS7 that new dwellings may be required to support agricultural enterprises and where such a dwelling is justified, planning permission may be granted as an exception to the normal policy of restraint in rural areas. However, in all cases, it is the needs of the enterprise that are important, rather than the personal preferences or convenience of those involved in it.
 16. Annex A of PPS7 sets out the policy on temporary agricultural dwellings and establishes five criteria which proposals must meet. Criterion (i) is that there should be a firm intention and ability to develop the enterprise. I do not think there can be any doubt from the evidence that the appellant and her husband have put in an enormous amount of time and effort to bring what was a neglected and semi-derelict smallholding back into a state whereby it can begin to be used for productive agricultural purposes. Furthermore, they have made a significant investment in a new farm building on the land. The appellant herself has enrolled on various agricultural and farm management courses and has also sought advice on how best to establish a viable enterprise on the land. I conclude that criterion (i) is met.
 17. Criterion (ii) is that there is a functional need for a dwelling on the land. The philosophy behind the proposed enterprise is that it requires no great investment of capital in machinery and equipment. It will use old-fashioned, labour-intensive methods to produce a variety of products, including vegetables, bedding plants and hanging baskets, poultry products and lamb. I was told that there is a growing niche market for these things and that small producers can make reasonable profits by specialising in this market. I do not doubt the existence of the niche market that the enterprise would serve.
 18. The business plan prepared for the appellants provides a calendar of what needs to be done at various times of the year in order to get the enterprise up and running and profitable by year 3. The averaged-out labour requirement of 42.75 hours a week perhaps disguises the reality of the situation. There is likely to be a variable labour requirement from week to week or even day to day, depending on the season, the weather and so on. From a practical point of view, I think it highly unlikely that a labour-intensive smallholding offering the variety of produce proposed could be established successfully without there being an on-site residential presence. I conclude that the proposed enterprise has a functional need for a dwelling and criterion (ii) is met.
 19. Criterion (iii) is that the enterprise should be planned on a sound financial basis. I have no reason to believe that the business plan provides unrealistic financial projections. It shows that in the third year, the smallholding is projected to produce a total profit of £12,894 from the agricultural activities, excluding labour costs. I have derived this figure by deducting the projected income from the holiday cottage and five caravan site from the total profit figure provided in the business plan summary, as neither would contribute to any justification for an agricultural dwelling on the land. I was told that the

-
- minimum wage for a full-time agricultural worker is about £12,000 pa. Taking into account that the labour requirement is a little more than the 39 hours standard week, it seems to me that the enterprise could just about break even by the third year. Whilst it might provide the appellant with a wage, it would not provide a profit as such. The significance of this is that the enterprise could not provide the funds to support the construction of a permanent dwelling on the land.
20. Jumping ahead to criterion (v), that other normal planning requirements are satisfied, I am content that, upon completion of the holiday cottage scheme, the site would have a good access and that there are no other practical requirements that could not be met.
 21. The holiday cottage on the land is nearing completion and will provide a good standard of accommodation which, it appeared to me, would be suitable for permanent occupation if the need arose. However, the Council said at the hearing that they would not be likely to grant planning permission for its use as an agricultural worker's dwelling, even on a temporary basis because they believe that the appellant's proposals amount to hobby farming and are unlikely to be sustainable in the long run. On that basis and for the purposes of the fourth criterion, I am not satisfied that the dwelling on the holding is available to the appellant to use as a temporary dwelling.
 22. The appellant's holding is of a size that would qualify for the Class A permissions in Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 and as I have already pointed out, planning legislation and national policy encourage agricultural enterprise. In my view, the Council's dismissal of the appellant's proposals and efforts to date as hobby farming is an unduly harsh and negative criticism.
 23. Although the use of the holiday cottage as an agricultural worker's dwelling is not a matter before me, its existence on the site is a material consideration. In the longer term, if the appellant were given a chance to establish her enterprise and it were to thrive as predicted in the business plan, then there would be a good case to be made for allowing the holiday cottage to be occupied as the agricultural dwelling that the enterprise needs. This would result in the existing dwelling being part of a productive holding that would be maintained and that would contribute to the local, man-made, agricultural landscape that is recognised as being of high value. If the appellant is not given a chance to establish her enterprise, then the likely result would be that the existing dwelling would remain as a holiday cottage, within an unproductive holding that is likely to descend into dereliction, as it did previously. Of course, that is the likely outcome if the appellant were to fail in her endeavours to establish a productive holding that could provide her with an income, but that does not provide a good reason for not even giving her a chance to try.
 24. The caravan and the shed are located close to existing buildings and have no great impact on the appearance of the area or the openness of the Green Belt. The shed is required for agricultural use and does not represent inappropriate development in the Green Belt. The majority of the harm to the Green Belt would be the harm by reason of inappropriateness of the use of the land as a caravan site to provide a temporary agricultural dwelling. Weighing against this harm is the possibility that the enterprise could be developed within three years to provide an income for the agricultural worker, directly providing employment in the area, together with the wider benefits that would arise from the maintenance and productive use of the land. If the enterprise were to succeed as predicted in the business plan, it would not justify the construction of an agricultural dwelling, but it could justify the use of the holiday cottage for
-

that purpose. In my view, these considerations clearly outweigh the harm by reason of inappropriateness and I conclude that very special circumstances exist for the shed and the use of the land as a site for the residential caravan to be permitted for agricultural use and occupation for a three year period and I shall grant planning permission on that basis.

Formal decisions

The S174 Appeal

25. I allow the appeal on ground (c) insofar as it relates to everything enforced against except the construction of a hardstanding, parking area and driveway (item iv of the allegation). I direct that the enforcement notice be varied by the deletion of items i, ii, iii, v, vi and vii from the alleged breach of control; by the deletion of items i, ii, iii, iv, v, vi, vii and ix from the requirements and by the substitution of 9 months for as the period for compliance.
26. I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to operational development comprising the construction of a hardstanding, parking area and driveway.

The S78 Appeal

27. I allow the appeal, and grant planning permission for the use of the land for stationing one caravan for residential purposes and for the erection of a shed for agricultural purposes at
in accordance with the terms of the application, Ref: ,
dated 18 May 2007, and the plans submitted with it, subject to the following conditions:
- 1) the occupation of the caravan shall be limited to a person solely or mainly working in the locality in agriculture and to the spouse and any resident dependants of that person;
 - 2) the building hereby permitted shall not be used other than for agricultural purposes. The building shall be removed from the land and the use of the land as a site for one residential caravan hereby permitted shall be discontinued on a date not later than three years from the date of this permission;
 - 3) the land shall not be used for the stationing of more than one caravan used for residential purposes.

David C Pinner

Inspector

APPEARANCES

FOR THE APPELLANT:

Peter Gallimore	Appellants' agent Appellant Appellant
David Murray	NewLandOwner agricultural consultants
Robert Jeffery	NewLandOwner agricultural consultants

FOR THE LOCAL PLANNING AUTHORITY:

Benjamin Hurst	Senior Enforcement Planner, Staffordshire Moorlands District Council
Lisa Goldstraw	Planning Officer, Staffordshire Moorlands District Council.

DOCUMENTS

- 1 List of those present at the hearing
- 2 Council's letter of notification of the appeal and list of those notified