

Appeal Decision

Hearing held on 14 March 2006

by D Roger Dyer BA DipArch RIBA FCIArb Barrister

an Inspector appointed by the First Secretary of State

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Date

Appeal A Ref: APP/J3910/C/05/2002809 and 2810 Merkin Farm, Doctors Hill, Ashley, Box, SN13 8AS

- 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 Ms Tina M Johnston and Mr Geraint Morgan against the enforcement notice issued by the North Wiltshire District Council.
- The Council's reference is 05/01907/ENF.
- The notice was issued on 23 March 2005.
- The breach of planning control as alleged in the notice is "without planning permission, the material change of use of the site by the stationing on it of a caravan for residential purposes in the position marked diagrammatically with an "X" on the attached plan".
- The requirements of the notice are:
 - a) Cease the residential use of the site.
 - b) Remove the unauthorised caravan from the site.
 - c) Remove all debris resulting from the removal of the caravan, and all associated domestic accoutrements, equipment, chattels and other such paraphernalia from the site".
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act.

Summary of Decision:

The appeal is dismissed and the enforcement notice is upheld as varied in the Formal Decision below.

Appeal B Ref: APP/J3910/C/06/2005725 and 5727 Merkin Farm, Doctors Hill, Ashley, Box, SN13 8AS

- 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 Ms Tina M Johnston and Mr Geraint Morgan against the enforcement notice issued by the North Wiltshire District Council.
- The Council's reference is 06/00059/APENF.
- The notice was issued on 3 November 2005.
- The breach of planning control as alleged in the notice is "without planning permission, the material change of use of the Land by the conversion of a building (marked X on the attached plan) from agriculture to a mixed use for that purpose and for residential purposes".
- The requirements of the notice are:
 - a) Cease the residential use of the Land.
 - b) Reinstatement the agricultural use of the building by the removal of the residential features and all associated domestic accoutrements, equipment, chattels and other such paraphernalia from the Land".
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act.

Summary of Decision:

The appeal is dismissed and the enforcement notice is upheld as varied in the Formal Decision below.

Procedural Matters

1. Although Appeal A was made on grounds (a) and (c), the ground (c) appeal was subsequently withdrawn. However the appellants have drawn attention in their statements to matters that would normally be addressed in a ground (g) appeal. The point was addressed further at the hearing and the Council's representatives accepted that if I was to consider a ground (g) appeal the Council would not be prejudiced. In those circumstances I have dealt with the appeals as if they had also been made on ground (g).
2. In each of these Appeals, the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989-93 have not been paid to the Secretary of State and the Local Planning Authority within the period specified in respect of Appeals C/05/200810 and C/06/2005727. Accordingly the applications for planning permission under section 177(5) do not fall to be considered in respect of those appeals but will be considered on the other two appeals.

Appeals A and B: the appeals on ground (a): that planning permission should be granted

The main issues

3. The principal considerations in each appeal are first, whether the residential accommodation (whether by means of a caravan or the conversion of the building) is required for the proper management of the appellants' agricultural activity and secondly, whether the alleged use represents appropriate development in the Green Belt.

Reasons

4. The appellants say they are seeking a temporary planning permission for a period of three to five years to enable them to build up their business and establish themselves in the community. Although they seek to retain the caravan they also consider that planning policy would support part conversion of the barn to provide a live/work unit. They say there is no need for a formal garden as this is a working farm and their children can use the fields. All utility services are in place and the dwelling has no effect on residential amenity, highway safety, or the surrounding landscape but they say it does provide good security, immediate access to site operations including call-outs while providing affordable accommodation. The farmyard has a 5 metre band of established trees that screen it from the road and from the land to the north and east.
5. The holding is a mixed farming practice comprising horticultural activities for supplying local restaurants and also has a small herd of 3 suckling heifers and 3 calves together with 4 orphaned lambs as well as chickens, geese, ducks and two working horses. The business commenced in 2004 with the purchase of the farm for £180,000 and was followed by significant investment in farm implements. An initial investment of £2,500 in stock has appreciated to £10,000. 10.72ha (26.5 acres) are farmed of which 4.98ha (12.3 acres) are owned by the appellants. The business is fast becoming established, gaining new customers weekly.

6. The appellants stress that they have been residents in the wider area of north Wiltshire. They have investigated the possibility of renting or buying a property in the vicinity but apart from a lack of availability, the cost would wipe out any profits. A mortgage against the business would not be feasible.
7. They say the horticultural aspect of the enterprise relies on no fertilisers but the keeping of cows and fowl is integral to the way nitrogen input to the soil is maintained. The vegetable plot is rotated on a seven-year plan to maintain healthy soil. Their organic "Veg Box" scheme is up and running with a sizeable clientele that is rising weekly. In future they hope to encourage educational visits to the farm and may use the existing ponds for the cultivation of crayfish. They submit that the Government now recognises that their choice of enterprise is no longer eccentric and that PPS7 notes that it can be financially sound even though it does not generate high returns.
8. The appellants say that as a mixed unit they have to deal with care of livestock and crop management. As there are wide and varied species the needs of the animals varies but they cannot be left unattended for any period of time because of the risk of accident or injury. The loss of any animal would represent a financial loss that could not be sustained. There is need to protect against foxes or minks as well as arson or vandalism while crops need to be protected against frost. The long hours that have to be worked would be impossible if their children were asleep in another location. The need cannot be met by any other dwelling on the unit or in the area. The building has been dry lined, while the steel frame has been in-filled with stud walls and insulation.
9. The appellants submit that the business has been planned on a sound financial basis. Subsistence living has been recognised as an acceptable way to farm by the Court of Appeal in *Petter and Harris v Secretary of State (1999)*. Their first year's trading produced a turnover of around £2,000 but they anticipate better returns over the next two years or so. In the year from February 2006 the appellants expect to make a gross profit of £19,000. All in all they believe they meet the criteria of PPS7.
10. In terms of the Green Belt, the appellants say that the provision of an agricultural worker's dwelling is one notable exception to the presumption against new development in the Green Belt. A second exception is the conversion of existing buildings for commercial/domestic use as long as they do not have a materially greater impact than the present use on the openness of the Green Belt. The building itself was granted planning permission by the Council and must be regarded, therefore, as suitable for its location in an AONB.
11. I am told that the appeal site is a former County Council farm for which deemed planning permission was granted in 1990 for a new four bay livestock building. In 1995 a lean-to and other structures were added to the building. Outline planning permission for the erection of a dwelling on land to the immediate south west of the current appeal site was refused in 2002. In terms of the appeals against the enforcement notices the Council can find no justification for the creation of a residential presence at the site on the essential grounds of agriculture.
12. At my site inspection I saw that the main barn on the holding is now used mainly for residential accommodation. This consists of a living/kitchen on the ground floor off which there is a bathroom with the usual sanitary accommodation. In both of those areas there are windows that I was told had been installed before the appellants'

purchase of the holding. A further area houses various deep freeze and refrigerated equipment. On a new mezzanine floor, that the appellants say replaced an earlier similar arrangement, two bedrooms have been formed with new windows. The caravan mentioned in the enforcement notice acts as a bedroom and is also located on the mezzanine. The rest of the barn is used for miscellaneous storage including a large boat and a workshop. Despite the changes to the building to provide, among other things, light and ventilation, I am told that no application has been made for Building Regulation approval.

13. There is a lean-to to one side of the barn that provides accommodation for the appellants' sheep and also has a cattle bower outside which is a small cattle yard. In the rest of the farmyard there is a poly-tunnel in which seed is propagated, a good deal of mechanical equipment and areas devoted to storage of silage and compost. On the rest of the land various areas are allocated to chickens and other fowl while there is an area where vegetables are grown.
14. Although the Council has submitted that there are no requirements for the proper functioning of an acceptable agricultural enterprise for one or more workers to be readily available at most times, I can see that at the lowest it would be desirable for a constant presence to keep a watch on the animals. Nevertheless, the larger animals are few in number and would not normally warrant an agricultural worker to be housed on the site. If there were affordable accommodation nearby, that would suffice. In reaching my decision on this point I am bound to take account of the fact that, when purchasing the unit, the appellants were aware that an application for residential accommodation here had been refused as late as 2002. In my judgement the appellants' case on the need for a permanent presence to provide frost protection for the plants is not made out, nor is their claim to guard against attacks by foxes or even vandals. Even taking all these matters together I am unable to find that the circumstances of this case satisfy the functional test set out in PPS7.
15. As to the financial aspects of the appellants' business, the aim of the provisions in PPS7 is to stop bogus or over-optimistic applications and to ensure that the relevant agricultural activity is likely to continue. However the appellants have provided little solid evidence of the viability of their venture. I appreciate that subsistence farming may be recognised as enough to warrant authorisation under Government and local policies, but I have not been given any long-term financial information and the figures put before me seem to be based on speculation rather than any business plan or costed forecasts. I accept that the appellants are gradually finding markets for their "Veg boxes" but this activity is clearly low-key and cannot be relied upon for long term growth. In the circumstances I am not persuaded that this venture is capable of being sustained for a reasonable period of time.
16. PPS7 advises that some enterprises which aim to operate broadly on a subsistence basis, but which nonetheless provide wider benefits (e.g. in managing attractive landscapes or wildlife habitats), can be sustained on relatively low financial returns. In this case, though, the activities have, at present, a damaging effect on the local landscape in an Area of Outstanding Natural Beauty despite having planted about 350 small trees. The activities are sporadic and, despite some tree screening, the farm yard is neither as ordered nor as attractive as may be expected.

17. I appreciate that the accommodation makes use of a structure that preceded in time the appellants' business but I found that it falls short of modern standards of residential occupation and does not benefit from Building Regulation approval. PPS7 indicates that even temporary accommodation should satisfy other normal planning requirements in addition to the criteria set out in Annex A paragraph 12. The accommodation seems to address the family's needs rather than to the essential long-term requirements of the appellants' business venture. In the circumstances I am not convinced that there is a sound basis for establishing residential accommodation on the site, whether temporary or permanent.
18. If the functional and financial tests had been satisfied so that the accommodation could have been deemed to be needed for a genuine agricultural worker's dwelling, the presumption against inappropriate development in the Green Belt may have been overcome. As it is I conclude that the circumstances of this case does not bring the accommodation within the definitions of appropriate development in Government and local policies. The harm that arises from the matters before me is not confined, though, to a conflict with policy but the venture has an impact on the openness of the Green Belt and creates the visual harm that I have described above.
19. In all the circumstances I have come to the conclusion that the appeals on ground (a) must fail. For the reasons set out above I do not consider that planning permission should be granted for the retention of either the caravan or the use of the existing barn as living accommodation.

The appeals on ground (g): that the period for compliance is too short

20. The appellants say that if they are required to move from the appeal site they would be homeless. They had been resident on the Kennet and Avon Canal in boats but were forced to move because they needed to finance the purchase of the farm and had pressure from British Waterways Board. They have investigated the possibility of either renting or buying a property in the local area but this would not be affordable while running the business on a subsistence level. The caravan and barn conversion is their only home.
21. For my part it is clear that if the farm enterprise is to continue the appellants will need alternative accommodation nearby. Ashley is a small community in which suitable property does not often become available so that the appellants may need more time to find accommodation. They will need to find somewhere sufficiently close to the farm while having appropriate accommodation to house the whole family. Even if the appellants choose to dispose of the farm it will take time to make the necessary arrangements. It seems to me that to achieve these objectives the appellants may need up to twelve months and I shall vary the notices to that end.

Conclusions

22. For the reasons given above, and having regard to all other matters addressed to me, I have come to the conclusion that these appeals should be dismissed and that the enforcement notice should be upheld. I am not persuaded that the conditions suggested by the parties, or any other conditions, would overcome the harm that I have identified. In reaching my decision I have taken account of everything brought to my attention at the hearing and in writing but I have found nothing that outweighs the main planning

issues of this case.

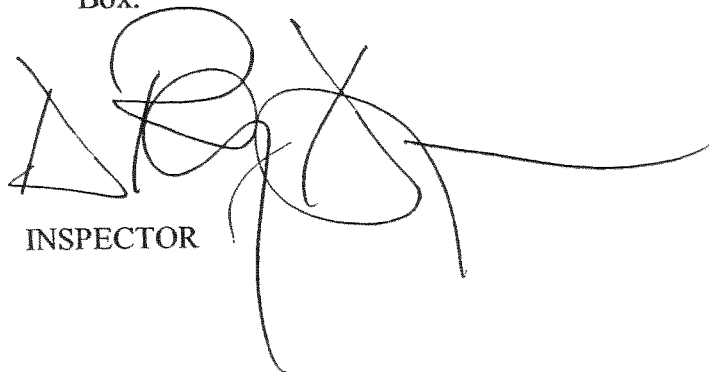
Formal Decisions

Appeal A

23. I direct that the enforcement notice be varied by the deletion from paragraph 6 of the words "six months" and the substitution therefor of the words "twelve months". Subject thereto I dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the retention of the caravan on land at Merkin Farm, Doctors Hill, Ashley, Box.

Appeal B

24. I direct that the enforcement notice be varied by the deletion from paragraph 6 of the words "six months" and the substitution therefor of the words "twelve months". Subject thereto I dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission for the change of use of the land by the conversion of a barn for a mixed use of agriculture and residential purposes at Merkin Farm, Doctors Hill, Ashley, Box.



INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Mr Geraint Morgan Appellant.

Ms Tina Johnston Appellant.

FOR THE LOCAL PLANNING AUTHORITY

Mr Simon Chambers, BSc(Hons), MA, MRTPI LPC (Trull) Ltd, Town and Country
Planning Development Consultants.

Mr Anthony Coke, BSc (Hons), MRICS, FAAV Agricultural Planning Associates.

INTERESTED PERSONS

Mr Michael Lyons CPRE

Mrs Pauline Lyons CPRE

DOCUMENTS

- Document 1 Attendance list.
- Document 2 Letter of notification of the hearing and the distribution list.
- Document 3 Clip of letters of support from local residents put in by Mr Morgan.
- Document 4 Appellants' Comments on the Council's Revised Statement.
- Document 5 Property advertisement put in by the appellants.

PLANS

- Plan A Dimensioned plan of the existing agricultural buildings.