



Appeal Decision

Site visit made on 29 August 2018

by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 August 2018

Appeal Ref: APP/R3325/C/17/3183816

Land at Somertonfield Road, Somerton, Somerset, TA11 6HZ

- 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 John Chant against an enforcement notice issued by South Somerset District Council.
 - The enforcement notice was issued on 27 July 2017.
 - The breach of planning control as alleged in the notice is the change of use of the land from agricultural to a mixed use of agricultural, residential (C3), industrial (B2), and storage B(8) uses under the Town and Country Planning (Use Classes) Order 1987 as amended, by the:
 - 1) The siting of a mobile home and its residential use and occupation of the land, and
 - 2) The siting and storage of numerous vehicles, plant and machinery, and a considerable amount of rubble and salvaged building materials including stone, timber, ironmongery and hardcore on the land.
 - 3) The use of the land for the repair and maintenance of vehicles, plant and machinery.
 - The requirements of the notice are:
 - i) Cease the unauthorised residential occupation and use of the land
 - ii) Remove the unauthorised mobile home from the land.
 - iii) Remove from the land any materials, vehicles, infrastructure and other residential paraphernalia associated with the siting and residential occupation of the unauthorised mobile home.
 - iv) Cease the non-agricultural use of the land for the storage of all vehicles, plant and machinery, rubble and building materials.
 - v) Cease the non-agricultural use of the land for the maintenance and repairs of vehicles, plant and machinery.
 - vi) Remove all non-agricultural materials, vehicles, plant and machinery and restore the land to its former condition before the unauthorised use took place.
 - The period for compliance with the requirements is:

For i) and ii) – 6 months
For iii) – 7 months
For iv), v), and vi) – 12 months
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: appeal dismissed, planning permission refused and notice upheld**
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The site, background and relevant planning history

1. The appeal site is in open countryside comprising land that was formerly an open field of about 4.86 hectares with hedgerow boundaries and which has been divided by a series of earth bunds overgrown with vegetation. Part of the

site adjacent to the highway is an open area but the majority of the appeal site is accessed from an ungated track located to the west of this open area.

2. At the time of my site inspection a wide variety of items were on the land including two mobile homes, several shipping containers (one of which the appellant claimed was used as an office and another contained filing cabinets), some seventy or so cars and vans, many commercial vehicles, plant, machinery, timber, rubble and salvaged building materials. A large mono-pitch open sided work shop had been constructed with one side that appeared to be constructed above a container. There were a number of haystacks covered in white sheeting and a variety of agricultural implements and machines.
3. My impression of the site was that it had the appearance of a vehicle and machinery scrapyards or salvage yard with the majority of the items not having been operational for some time as indicated by the vegetation growing in and around them.
4. In 2007 an appeal was dismissed for three dwellings, a workshop, covered yard and hay barn. (APP/R3325/A/06/2025222).
5. In September 2014, it was determined that prior approval was not required for the erection of an agricultural building for the storage of hay/machinery. In August 2010 it was determined that prior approval was required for the erection of an agricultural building for the storage of hay and machinery. In August 2006 it was determined that prior approval was not required for the erection of a hay and machinery store. None of the buildings subject to prior notification has been erected.
6. Enforcement investigations commenced in July 2012 following the construction of an access.

Appeal on ground (c)

7. An appeal on this ground is that there has not been a breach of planning control.
8. The appellant states that there is much agricultural machinery which is based on the farm which needs to be serviced and repaired regularly and this has happened since 2003. He states that there is also ground working and other machinery, diggers, etc, which although are used the majority of the time for 'diversionary' purposes, they are maintained in the same areas and workshops.
9. It is clearly evident from my site inspection that there is agricultural, residential and commercial/storage use taking place on the site. The siting of a residential mobile home, storage of large quantities of non-agricultural items, the maintenance of machinery and vehicles and the creation of earth bunds are either non-agricultural operations or are not considered to be reasonably necessary for the purposes of agriculture. Whilst the appellant refers to 'diversionary' purposes, I assume that this is a reference to farm diversification. Notwithstanding this, the extent of the non-agricultural use of the land is extensive and no planning permission exists for such uses. Additionally, the appellant has not provided evidence to demonstrate the scale of the agricultural engineering side of his activities is not significant in planning terms.
10. The appellant states that the accepted use of the farm is agricultural and as it is a working farmyard for several people, the mobile home serves as the only

toilet/bathroom/washroom facility; it is the allocated place for first aid; it is a heated rest room, needed in winter months; provides canteen and reception facilities to complement the adjacent farm office; and provides a 24/7 presence on site for security purposes.

11. There are two mobile homes on the site. The one that the appellant says has been lived in since 2012 and which he claims is a building by virtue of its attachment to the ground, was full of rubbish internally and can only be described as representing squalid living conditions. The other, which is not part of the allegation of residential use, is claimed by the appellant to be used occasionally by his son but it is not clear from the evidence whether this mobile home is the one used as a mess/rest room. Nevertheless, no permission exists for the residential use of the appeal site.
12. As no planning permission exists for the mixed use, the appeal on this ground fails.

Appeal on ground (d)

13. An appeal on this ground is that it is too late to take enforcement action against the matters alleged.
14. The appellant states that his original farmyard at Home Farm was subject to a Discontinuance Order and this had been subject to a public inquiry and challenge in 2000/2002. From 2004 to 2007, the family applied for 3 dwellings at Somertonfield Farm but was unsuccessful. The appellant says that whilst his family were moving to Somertonfield Farm from Home Farm, both sites were used to run their farm and other businesses for a while. Somertonfield Farm has been used for more than 10 years prior to the date of the notice, which was 27 July 2017.
15. The appellant also states that the mobile home was placed at Somertonfield Farm on 22 May 2012 and has been lived in without a break since that date. As the mobile home was moving in the wind it was concreted along the left and right hand chassis around Christmas 2012. He claims that it is no longer mobile it is a building and as it has been fixed for more than 4 years on 27 July 2017 it 'had established its planning permission'. The Council challenges the accuracy of these assertions based on their observations, photos and file notes made in February and June 2013 (appendices D, E and F of the Council's statement), which do not indicate any record of the provision of services or the permanent fixing of the mobile home to the ground.
16. I observed at the site inspection that the mobile home was sitting on a number of concrete blocks and that it had services connected. Its means of support did not appear to be significantly different to the normal siting of a mobile home and any concreting as claimed by the appellant was limited and would not, in my view, have prevented the moving of the mobile home as it could be picked up intact and placed on a lorry by crane or hoist. It had not achieved the characteristics of a building through size, permanence or physical attachment. In any event, s171B(2), which engages the four year rule would only apply if a change of use of a building to use as a single dwelling house had taken place. No such change of use has occurred in this case based on the statement of the appellant to the Council that the mobile home was used 4 to 5 nights as overnight accommodation (appendix E to the Council's statement) and that the use commenced in May 2012.

17. The stationing of the mobile home and its use for residential purposes represents a use of land to which s171B(3) applies where the period for immunity from enforcement action is ten years beginning with the date of the breach.
18. The Council opened its enforcement case in July 2012 when a new opening had been made for access and the addition of the non-agricultural plant and machinery and other items followed the siting of the mobile home. Before that time the use of the site had been for the purposes of agriculture.
19. Where legal grounds of appeal are made, the onus of proof rests with the appellant and the level of proof is the balance of probability. The appellant has not submitted any documentary or other evidence to show that a mixed use has been taking place without interruption for a period of 10 years prior to the serving of the enforcement notice or that the concreting of the chassis took place at Christmas 2012.
20. In the absence of unambiguous evidence to show that the period of immunity has been achieved, the appeal on this ground fails.

Appeal on ground (a)

21. The issues in the ground (a) appeal that planning permission should be granted for the unauthorised development are, firstly, whether there are any exceptional circumstances justifying the site of a mobile home used for residential purposes in open countryside or for the operation of a non-agricultural business; and secondly, the effect of the development on the character and appearance of the countryside.
22. The appellant claims that the mobile home has not only been lived in since 2012 but is also used as a mess hut and toilet facility although there is uncertainty to which mobile home is being referred to as the mess hut by the appellant. The residentially occupied mobile home is either one thing or the other. The only justification for its use for residential purposes appears to be for the provision of security but there is no evidence before me to justify this claim. Indeed, the site is not even gated or locked which indicates to me that the appellant could improve security without the need for residential occupation. Policy HG9 of the adopted South Somerset local Plan relates to housing for agricultural and related workers and sets out a number of criteria that need to be met if permission is to be granted but these have not been addressed. Similarly, the development fails to satisfy the National Planning Policy Framework 2018 (the Framework), which, at paragraph 79, sets out relevant considerations for the development of isolated homes in the countryside.
23. Paragraph 83 of the Framework supports the development and diversification of agricultural land-based rural businesses but as paragraph 84 indicates, development for business needs in rural areas should be sensitive to its surroundings.
24. The appeal site is in the open countryside that is characterised by open fields with hedgerows and a general absence of development. The appellant states that the banking /screening arrangements were put in place for security and the grass banks and foliage blends in better than walls or heavy fencing. In my view, the mounds are intrusive and uncharacteristic in this location.

25. The appellant considers that the diversionary activities make no difference to visual amenity and the location of the farmyard in the south west of the field makes it barely visible from any public access areas, except for the tops of buildings and the hay and straw stacks.
26. From my own observation, the appellant's claim that the agricultural presence (hay, straw, timber from forestry activities), and machinery takes up about 95% of the used space of the farmyard is completely incorrect. Just accounting for the areas occupied by the seventy or so vans and cars, which have no operational connection with the agricultural use of the site, a considerable area is taken up and this affects the character and appearance of the countryside, as does the open storage of reclaimed building materials, hardcore and rubble.
27. The visual impact of development can sometimes be reduced by sensitive and good design, screening and landscaping. This has not been achieved in the use of the land the subject of this appeal, nor could it realistically be achieved through the imposition of conditions.
28. I conclude that there is no essential need for the accommodation of a rural worker, no case has been made for the non-agricultural business use of the site and that the development adversely affects the character and appearance of the countryside.
29. For the reasons given above I conclude that the appeal on ground (a) does not succeed.

Other considerations

30. The appellant states that the loss of the family's diversionary activities necessary for income and the employment of at least 3 people would be a gross abuse of the Human Rights.
31. The protection of the public interest cannot be achieved by means which are less interfering with the appellant's rights. The requirements of the notice are proportionate and necessary in the circumstances and would not result in a violation of his rights under Article 8 of the European Convention of Human Rights.

Conclusions

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

33. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

Inspector