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## Appeal Decisions

Site visit made on 18 July 2023

**by R Hitchcock BSc(Hons) DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 August 2023**

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**Appeal A Ref: APP/C3430/C/22/3306177**

**Appeal B Ref: APP/C3430/C/22/3306178**

**Willow Farm, Hollies Lane, Pattingham, Wolverhampton WV6 7HJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Mrs Caroline Anning against an enforcement notice issued by South Staffordshire District Council. Appeal B is made by Mr Gary Anning.
- The notice, numbered 18/00676/UNCOU, was issued on 2 August 2022.
- The breach of planning control as alleged in the notice is i) Without planning permission, the making of a material change of use of the Land, to a mixed use for residential and agricultural use together with the siting of a caravan with a wooden extension to facilitate that material change of use; and ii) Without planning permission, unauthorised operational development consisting of an earth bund.
- The requirements of the notice are to:
  - i) Cease the use of the land for domestic residential purposes.
  - ii) Remove the caravan and wooden extension from the Land, (shaded blue in the approximate location shown on the red line plan).
  - iii) Remove from the Land all materials and waste arising from ii) above.
  - iv) Remove the unauthorised operational development consisting of the earth bund from the Land, (shaded green in the approximate position shown on the red line plan).
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on grounds (f) and (g).

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### Decisions

1. It is directed that the enforcement notice is corrected and varied by:

In section (5) The periods for compliance – the words ‘within six months from the date the notice takes effect’ are deleted and replaced with:

‘For steps i), ii), and iii) above, nine months from the date the notice takes effect; and,

For step iv) above, six months from the date the notice takes effect’.

The plan attached to the Notice is substituted by the plan attached to this Decision.

**Appeal A** - Subject to the correction and variation the appeal is dismissed, 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.

**Appeal B** - Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld.

### **Procedural Matters**

2. The Land was the subject of appeal Ref. APP/C3430/W/20/3253786 under s78 of the Act for the siting of a caravan as a temporary agricultural worker's dwelling. That appeal was dismissed in 2021. Subsequent appeals<sup>1</sup> under s174 of the Act against an enforcement notice served by the Council which sought the cessation of the use of the land for the siting of a caravan used for residential purposes, associated structures and the removal of an earth bund were successful. On that occasion, the notice was determined to be invalid and was quashed.
3. For the purposes of the ground (a) appeal, the appellant in Appeal A has provided details of a log cabin in lieu of the existing caravan and extension referenced in the Notice. This sought to address concerns raised in the s78 appeal and formed the basis of a planning application which was declined to be considered by the Council pursuant to the provisions in s70C(1) of the Act.
4. However, the deemed planning application under s174(2) ground (a) is limited to the matters stated in the Notice. The operational development consisting of a log cabin as a temporary form of rural worker's accommodation is distinct from the allegations in the Notice. The log cabin proposal is not therefore considered in the appeal.

### **The Notice**

5. For the avoidance of doubt, the plan attached to the Notice is amended to show a more accurate representation of the location and orientation of the earth bund. As it merely improves the accuracy of the Notice, no party is prejudiced by my correction.

### **Ground (a) / the deemed application for planning permission**

#### *Background and Main Issues*

6. The Notice identifies the Land as consisting of some 6.7 Ha. The majority is sloping pasture. Operational areas and a recently constructed agricultural shed are located on a more level area of the site towards its northern extent. A caravan, container and other small structures lie close to the shed approved under planning permission Ref. 20/00223/AGR. The wider site is bordered by hedging and trees. At the time of my site visit, the major part of the site was in use for the keeping of livestock including the grazing of sheep and cows.
7. The site lies within the Green Belt. There is no dispute between the main parties that the material change of use of the land for the siting of a caravan for residential purposes constitutes inappropriate development in the Green Belt. However, there is little commentary provided by the appellant on the matter of the presence of the earth bund or its purpose.

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<sup>1</sup> APP/C3430/C/21/3288846 and 3288847

8. Accordingly, the main issues are:

- whether the earth bund is inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and any relevant development plan policies
- the effect of the development on the character and appearance of the locality
- whether or not there is an essential need for a dwelling to accommodate a rural worker on the Land
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

*Green Belt – inappropriateness*

9. The Government attaches great importance to Green Belts, the essential characteristics of Green Belts are their openness and their permanence. Section 13 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. Policy GB1 of the South Staffordshire Council Core Strategy Development Plan Document [2012] (the CS) states that the West Midlands Green Belt will be protected from inappropriate development and proposals will be considered in the light of other local planning policies and the policy restrictions relating to Green Belt in the Framework.
11. Paragraph 150 of the Framework states that certain forms of development are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. Para. 150 b) includes engineering operations.
12. At my site visit I saw that the bund appears as a linear stockpile of earth. It is several metres wide at its base reducing in width at a few metres in height. The mound is located close to the western boundary and extends across the larger proportion of the width of the fenced upper pasture. It has some vegetation cover establishing along the top and parts of its slopes.
13. As a feature of some scale, the bund gives rise to both visual and spatial effects on openness. It is visible on the approach road from the south. From elsewhere, views are more limited on account of the existing boundary hedges and trees. However, as much of the surrounding vegetation is seasonal in nature, the effect on visual openness will vary throughout the year.
14. As a purposefully formed stockpile, it appears as a form of encroachment into the gentle slope of the open rural pasture. Accordingly, I find it neither preserves the openness of the Green Belt nor avoids conflict with the purpose of safeguarding the countryside from encroachment.
15. For those reasons, I conclude that the bund constitutes inappropriate development within the Green Belt. As such, it is contrary to Policy GB1 of the CS. For similar reasons, the development does not fall within the exceptions outlined in the Framework.

### *Rural workers accommodation*

16. Subject to compliance with other policies in the CS, Policy EV8 supports agricultural and related development by encouraging farm diversification which is complimentary to and helps sustain the existing agricultural enterprise. This may include agricultural workers dwellings provided that they are guided to the least environmentally sensitive locations.
17. Part g) of the policy sets out the local requirements for temporary and permanent dwellings for agricultural workers to be supported. I consider these in turn below.

#### *The proposed enterprise*

18. The enterprise considered under the s78 appeal was materially different to that now proposed. The earlier appeal considered the retained sheep breeding enterprise, consisting of some 270 ewes and 10 rams, alongside a livestock procurement enterprise and a beef finishing enterprise. A calf-rearing enterprise was not envisaged until year-3 in the previously considered scenario. The appeal concluded that only a seasonal functional need for full-time accommodation existed. This was primarily for the duration of the lambing season.
19. The appellants have since ceased the procurement element of the business and state that they are seeking to develop a new enterprise alongside the sheep breeding business. This would be a diversification project to reduce the business' susceptibility to fluctuating market conditions. The cattle rearing business would consist of the purchase of up to 5 batches of 60 young calves at 2-3 weeks of age per year. The calves would be milk fed before being weaned and reared further for a period of about 10-12 weeks in total before onward sale.
20. The process would involve housing the calves in 'igloos' and under verandas in groups of 15-30 individuals depending on their size, age and condition. The livestock would require arrival management, feeding training and supervising, general welfare management and associated administrative duties.

#### *Intention and ability to develop the enterprise concerned*

21. As a new-start business, there is a high degree of uncertainty as to whether the proposed calf-rearing could achieve long-term sustainability as a viable commercial enterprise in conjunction with the existing lambing business. In such circumstances the Planning Practice Guidance (the PPG) provides for consideration of a temporary dwelling. This requirement could be met by the existing caravan.
22. As the appellants have invested in the purchase of the Land, have recently installed a modern agricultural storage building, and have operated other livestock businesses both on the site and utilising rented land, I have little doubt about their intention to develop a complementary business alongside the established sheep operations. Furthermore, there is little before me to indicate that their ability to do so is doubted.

#### *Functional need for a full-time worker*

23. At the projected numbers and young age of the cattle, I also have little doubt that an on-site presence would be required for the majority of the time. Requirements to isolate individual animals, administer medication at short notice, or deal with emergencies to manage losses or down-the-line higher costs, provide a legitimate justification in ensuring high standards of animal welfare.
24. I note the Council indicates that as signs of illness would largely be identifiable during the daytime and emergency situations during the nighttime would be infrequent such that an overnight presence would be an unusual requirement. However, I find it is not unreasonable to allocate more time requirements to the earlier weeks of care compared to a standardised figure for worker requirements considered over the first 6 months of calf rearing.
25. Accordingly, the likely hours of attendance to perform the necessary tasks to achieve a high standard of animal welfare, to minimise risk, or to deal quickly with emergencies would be considerable. They would be well beyond that of a standard working day.
26. There is no dispute between the main parties that, as the sheep-rearing enterprise remains at a similar level to that previously considered, the associated seasonal requirement for a continuous site presence remains in conjunction with that element of the enterprise. When at the projected year-3 capacities, I find the combined on-site requirement would result in the need for an on-site presence for much of the year in order to sustain the business.

*Other accommodation*

27. There is no other accommodation on the site. More distant accommodation would not provide the same degree of livestock monitoring or ability to quickly react to welfare requirements. As I have found that a full-time presence would be required to effectively deliver the combined rural enterprise, there is no further need to consider potential alternative housing elsewhere.

*Sound financial basis*

28. In support of the proposal, the appellant has provided revised forecast profit and loss accounts for the combined enterprise. It is claimed that the level of profits would support an individual worker. However, there is some dispute between the main parties as to the actual income that could be generated by the combined businesses.
29. As a new enterprise, the financial assessment of the proposed calf-rearing business relies on industry standard guidelines against anticipated costs. Some variation to those standardised figures are justified to reflect the particular circumstances of the earlier stage of life of the animals. Additionally, reasonable adjustments could be made for the size of the holding.
30. However, the functional requirement is based on the combined enterprises. The calf business would initially be dependent on the provision of moveable structures on the Land. This would consist of igloos and verandas paired to provide optimum environmental conditions for the young calves. The Council's evidence suggests a single igloo and veranda would cost some £7,250 as a minimum in 2021. Longer term, the appellant anticipates that the numbers of cattle per year would require a more permanent purposely designed cattle building. Although the accounts seek to demonstrate the self-funding of the

capital investments in acquiring additional livestock, the infrastructure to keep them has not been factored into the accounts.

31. Furthermore, as a diversification project, the calf-rearing business would be financially interdependent with the sheep enterprise. The s78 appeal concluding in 2021 found that losses had occurred during 2018 and 2019. No accounts were provided for 2020. Although the business had existed on the land for more than 3 years, the viability of the enterprise in its various guises and over its time of development were found to be unclear and at the time of the decision were not considered sustainable.
32. Notwithstanding that the current combined scheme is a different enterprise to that considered under the previous s78 appeal, the level of detail in relation to sheep rearing element of the business has not been duly clarified. Despite concerns raised by the previous Inspector, there is little substantive supporting evidence to validate the claims in relation to costs or productivity associated with the existing sheep enterprise.
33. The absence of detailed trading accounts or tax returns to demonstrate the progress of the sheep business to date, and its potential to become independently or codependently financially sustaining, substantially reduce confidence in the financial planning figures provided. Furthermore, figures such as land rental costs - highlighted as omitted in the previous appeal, have also not been accounted. The appellant has neither demonstrated that profits to date could facilitate purchase of initial stock and infrastructure or, in the alternative, account for the cost of borrowing to provide them.
34. Moreover, when seeking to demonstrate the potential long-term viability of the business, alongside which the appellant anticipates a permanent dwelling on the site, there is little evidence that this cost has been factored into the business accounting. Any likely viability beyond a stay of 3 years (being the typical tolerance for establishing new rural land-based enterprises) has therefore not been proven.
35. I note the appellant's contention that the existing trading accounts are not likely to prove useful to assess fixed costs as the proposal includes a new enterprise. However, they would describe the condition and status of the existing enterprise which is to be retained. They would demonstrate the reliability of that element of the proposed enterprise and capability to cross-fund.
36. Even when accounting for the consideration in the Planning Practice Guidance's allowance allows for temporary forms of rural worker's accommodation, the gaps in the financial planning for the enterprise limit the degree to which there is confidence that the agricultural enterprise will become viable in the foreseeable future. For those reasons, I am not persuaded on the evidence before me that the enterprise as proposed is financially viable, it would conflict with Policy EV8 of the CS as it requires clear evidence that the proposed enterprise has been planned on a sound financial basis.

#### *Character and appearance*

37. The Land is located within an undulating rural landscape of open fields, wooded areas and sporadic buildings which are primarily in residential or agricultural use. As an isolated residential caravan with a lean-to appendage, it appears



incongruous with the prevailing character of development in the locality. Although the accommodation benefits from the established hedgerows and some screening afforded by the agricultural shed, they are visible from within the wider landscape as noted by the previous Inspector.

38. A planning condition requiring new site landscaping would potentially provide a degree of assimilation. However, given my finding that the sustainability of the enterprise remains unproven such that a time-limited permission might be appropriate if permission were to be granted, then it is unlikely, in my view, that landscape planting would be effective in addressing the visual impact of the accommodation.
39. As an artificial landform with little apparent functional purpose, the earth bund also appears discordant in its setting. Although inevitable colonisation by vegetation would increase its assimilation to some degree over time, it would retain a predominantly unnatural appearance as a man-made element of the local landscape. Notwithstanding that the location benefits from the site's peripheral screening, as above, it is visible from the roadway and will appear prominent in the outlook from the nearby buildings at Grange Farm.
40. For those reasons, I find the development conflicts with Policies EQ4 and EQ11 of the CS as they seek development to be of high-quality design and account for local character and distinctiveness and its landscape setting.

*Other considerations*

41. The appellant contends that a caravan could be sited on the land for use solely in conjunction with the use of the site for agricultural purposes. This would potentially have similar effects on the openness of the Green Belt and on the character and appearance of the locality as the existing caravan. As a measure that could be undertaken without recourse to seek planning permission, I recognise that the siting of an incidental agricultural welfare facility could have some similar effects on the openness of the Green Belt. It could also affect the character and appearance of the landscape in a similar way. However, as a residential use of the land could introduce associated domestic paraphernalia and activities not characteristic of agricultural uses, I find this is a matter of only moderate weight.
42. As a low cost form of accommodation, the presence of a residential caravan on the site would contribute to the range of affordable types of housing in the local area. However, as a temporary form of 'housing' and one requiring strict justification such that wider availability would be restricted, I find this a matter of only limited weight.
43. The site borders the grounds of the Grade II Listed Building at Grange Farmhouse. The farmhouse is set within a traditional farmstead group which is partially screened from the Land by a line of established trees along the site's western boundary. There is no dispute between the main parties that the Listed Building and its setting would not be harmed. Given the modest scale of the caravan and the distance from the Listed Building, I find no reason to disagree with that conclusion. As a requirement of local and national policy, this is not a benefit in favour of the development.
44. I note the appellant's contention that justified rural workers dwellings are, in themselves, capable of providing the necessary very special circumstances to

justify development in the Green Belt. However, consequent to my finding that the financial planning of the enterprise has not provided sufficient confidence that it will become viable in the short term, this is a matter of limited weight.

45. I acknowledge the Council's concerns in relation to the effect of a legal covenant covering part of the site. However, this is beyond the scope of my considerations; it is therefore of negligible weight in the context of the appeal.

### *Conclusion*

46. The siting of the caravan, its extension and the bund are inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it. In addition, the development causes harm to the spatial and visual openness of the Green Belt and conflicts with one of its purposes. These matters also attract substantial weight. The effect on the character and appearance of the locality and the quality of the landscape would be modest.
47. In the absence of demonstrating that the proposed rural enterprise would be based on sound financial planning, I find that the considerations presented by the appellant, whether taken individually or together, do not clearly outweigh the totality of the harm to the Green Belt and the character and appearance of the locality. Consequently, the very special circumstances necessary to justify granting planning permission do not exist. Furthermore, the development would be contrary to the adopted development plan and there are no other material considerations to indicate a decision otherwise than in accordance with it.
48. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed.

### **The appeals on ground (f)**

49. For the appeals to succeed on this ground, I need to be satisfied that the steps in the requirements of the Notice exceed what is necessary to remedy the breach of planning control or any injury to amenity.
50. The appellants have not forwarded arguments in relation to the earth bund and no alternative steps are proposed by them. Pursuant to my finding that it causes harm to the Green Belt and the landscape character and appearance, I find no lesser steps than specified would remedy the effects of this element of the breach.
51. The appellants contend that following *Wealden DC v SSE & Day* [1988] JPL 268, the Council cannot require the removal of the caravan and extension. However, in that instance, a caravan sited on agricultural land for the purpose of storage, shelter and food preparation was considered as ancillary to the primary agricultural use of the land. It did not introduce an additional primary use. It is therefore distinct from the case before me.
52. It is settled case law (*Mansi v Elstree RDC* [1964] 16 P&CR 153387) that the requirements of the enforcement notice must not purport to stop a developer from doing something they are entitled to do without planning permission by relying on existing lawful use rights. The latter includes rights under the Town and Country Planning (General Permitted Development) (England) Order 2015



(the GPDO) and the right to carry out anything exempted from the definition of development under section 55(2) of the 1990 Act.

53. I acknowledge that a welfare facility could be provided on the site in the form of a caravan, within part of the recently erected building, or through provisions in the GPDO. I also note that a caravan was previously sited elsewhere on the Land for that purpose.
54. However, as the caravan and extension are used in conjunction with a continuous residential use of the Land, and therefore core to the alleged change of use, their removal is necessary to prevent its recurrence and effectively secure the purpose of the Notice. The retention of a caravan and an extension designed for human habitation, would unreasonably frustrate the Council's ability to monitor compliance with the requirements of the Notice. Accordingly, I find the requirements in the Notice do not exceed what is necessary to remedy the breach of planning control by discontinuing any use of the land, or by restoring the land to its condition before the breach took place.
55. Moreover, as a Notice concerned at addressing the residential use of the Land, the requirements in step 5 ii) do not affect lawful use rights in relation to default agricultural uses.
56. For the above reasons, the appeals on ground (f) fail.

#### **The appeals on ground (g)**

57. The ground of appeal is that the period for compliance specified in the Notice falls short of what should reasonably be allowed. The period for compliance is 6 months.
58. The appeal on ground (g) is substantially made out in conjunction with the case supporting the change of use of the site. There is little reference to the earth bund, or the requirement for its removal. In the absence of any substantive case for extending the time in relation to the bund, and as the period for compliance includes months when weather conditions are likely to be more favourable to carry out such works, I find little justification to extend the time for the removal of the bund in order to remedy the breach of planning control. Accordingly, the appeals on ground (g) in relation to the earth bund fail.
59. In regard to the residential use of the site, as the requirements of the Notice would have effects on both the appellants' home and business, and the timeframe for compliance would coincide with the next lambing season, I find a period of 9 months would be more reasonable. This would allow time to plan and implement alternative living and working arrangements. It could also provide time for further discussions with the Council, as sought by the appellants.
60. A period of 18 months as suggested by the appellants, however, would be tantamount to a temporary planning permission. It would not provide the necessary balance between the public interest in securing expeditious compliance with the Notice and the private interest bound up in the development, which has persisted for some time.
61. On this basis, the appeals on ground (g) are successful in part, and I shall vary the Notice accordingly.

## Other Matters

62. The appellants reside exclusively at the appeal premises and in light of the extant enforcement notice I recognise that the failure of this appeal would put the residential occupation of the Land by the appellant at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.
63. However, having regard to the legitimate and well-established planning policy aims to protect the Green Belt and avoid harm to the character and appearance of the rural landscape, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellants.

## Conclusions

64. For the reasons given above, I conclude that the ground (a) appeal in **Appeal A** should not succeed. However, in both **Appeals A and B**, I conclude that the period for compliance with the requirements at 5 i), 5 ii) and 5 iii) of the notice falls short of what is reasonable. The appeals on ground (g) succeed to that extent. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Hitchcock*

INSPECTOR

## Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/C3430/C/22/3306177	Mrs Caroline Anning
Appeal B	APP/C3430/C/22/3306178	Mr Gary Anning





## Plan

This is the plan referred to in my decision dated: 03 August 2023

by **R Hitchcock BSc(Hons) DipCD MRTPI**

**Land at: Willow Farm, Hollies Lane, Pattingham, Wolverhampton WV6 7HJ**

**References: APP/C3240/C/22/3306177 and APP/C3430/C/22/3306178**

Scale: not to scale

RED LINE PLAN TO ACCOMPANY ENFORCEMENT NOTICE

