



Appeal Decision

Inquiry held on 8 and 9 May 2013

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 13 June 2013

Appeal Ref: APP/J3720/C/12/2185174

Lower Fox Farm, Bascote Heath, Southam, Warwickshire CV47 2DN

- 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 G Byrne against an enforcement notice issued by Stratford on Avon District Council.
- The Council's reference is 07/00699/PR2ENF.
- The notice was issued on 12 September 2012.
- The breach of planning control as alleged in the notice is the change of use of the land from agriculture to a mixed use comprising: a) agriculture and associated storage; b) residential use and associated storage; c) private equestrian; d) leisure use; e) landscaping/tree surgery/off-site forestry business and associated storage; f) agricultural contractors business and associated storage; g) retail sales and associated storage; h) the processing of timber from landscaping/tree surgery/off-site forestry business and associated storage; i) the storage of vehicles, domestic items/paraphernalia, pallets, metal and metal trolleys; j) the stationing of a mobile home for residential purposes (in the approximate position marked 'A' and hatched black on the plan); k) the storage of a mobile home (in the approximate position marked 'B' and hatched black on the plan); l) the stationing of a container (in the approximate position marked 'C' and hatched black on the plan); and m) the stationing of lorry bodies (in the approximate position marked 'D' and 'E' and hatched black on the plan).
- The requirements of the notice are a) cease the use of the land for residential use; b) cease the use of the land for equestrian use; c) cease the use of the land for leisure use; d) cease the use of the land for landscaping/tree surgery/off-site forestry business and associated storage; e) cease the use of the land for agricultural contractors business and associated storage; f) cease the use of the land for retail sales and associated storage; g) cease the use of the land for the processing of timber from off-site landscaping/tree surgery/off-site forestry business and associated storage; h) cease the use of the land for the storage of vehicles, domestic items/paraphernalia, pallets, metal and metal trolleys; i) remove from the land the mobile home (marked 'A' and hatched black on the plan) ; j) remove from the land the mobile home (marked 'B' and hatched black on the plan); k) remove from the land the container and lorry bodies (marked 'C', 'D' and 'E' and hatched black on the plan); l) cease the use of the land for the stationing of a mobile home for residential purposes; m) cease the use of the land for the storage of a mobile home; n) cease the use of the land for the stationing of containers; and o) cease the use of the land for the stationing of lorry bodies.
- The periods for compliance with the requirements is 2 months for requirements f), j) and m), 3 months for requirements h), k), n) and o), and 6 months for requirements a), b), c), d), e), g), i) and l).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. The enforcement notice is varied by:
 1. the deletion of uses c) and d) in section 3 of the notice, requirements b) and c) in section 5 of the notice, and periods for compliance b) and c) in section 6 of the notice;
 2. the deletion of '6 months' in periods for compliance a), d), e), g), i) and l) in section 6 of the notice and the substitution instead of, in all cases, '12 months'.
2. Subject to the variations the appeal is dismissed and 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.

Application for costs

3. At the Inquiry an application for an award of costs was made by Mr G Byrne against Stratford-on-Avon District Council and by the Council against Mr G Byrne. These applications are the subject of separate Decisions.

Background Information

4. Lower Fox Farm is about 4.8 hectares and is located in open countryside and within the dispersed settlement of Bascote Heath. The holding has a long boundary to the C97, which has a junction with the A425 about 200 metres to the south, as is bounded to the north by Ufton Wood. Alongside the north boundary of the holding is a public footpath. An access track into the site off the C97 leads to an area of hardstanding used for parking and storage. Alongside this area of hardstanding are the two buildings on the land; an agricultural building about 20 metres by 27 metres, and an open fronted storage building about 9 metres by 7 metres. Both of the buildings are close to the north boundary of the land
5. Behind and to the north-east of the agricultural building is a fenced area occupied by chickens and to the south-east of the same building is a fenced area occupied by pigs. The Appellant, who resides in a static caravan that is inside the agricultural building, also has a small breeding flock of sheep, a small number of table roosters and rears game birds. About 60% of the holding is grazing land some of which is let to neighbours for the grazing of horses. The Appellant rents or manages a number of blocks of woodland. Offcuts and thinnings from his management of the woodland, and timber from his tree surgery business, are brought to Lower Fox Farm for seasoning, sawing up and splitting into firewood.

Reasons

The ground (b) appeal

6. At the Inquiry the Appellant's Agent confirmed that the ground (b) appeal relates to elements c), d) and g) of the alleged mixed use of the land.
7. Private equestrian, use c) of the alleged mixed use, relates to the grazing or keeping of horses on the land. The Council has no concern about the use of the land for the grazing of neighbours' horses; grazing of horses being an agricultural use. The Council's only concern is with the keeping of ponies which, the Council noted after a site visit on 8 November 2011, the Appellant "...consider...to be pets". The 'pets' were two Shetland ponies which the Appellant rescued. There is no

doubt that the Appellant cared for the ponies, which are no longer on the land, and his comment at the site visit that they were pets was probably made because they served no business or agricultural purpose. The use of the land to care for the two ponies did not equate to a material private equestrian use. A private equestrian use of the land has not occurred as a matter of fact and the ground (b) appeal succeeds in relation to use c) of the alleged mixed use of the land.

8. Leisure use, use d) of the alleged mixed use, relates to part of a vegetable patch where stones and paving slabs have been laid, on which there is a circular metal seat surrounding an ornamental tree. A seat, given that tending a vegetable patch is manual work, can be regarded to be ancillary to the main use, which is an agricultural use, the paving is required to support the seat, and a tree cannot be regarded to be a leisure item. The area of land that is the subject of use d), furthermore, is small and the 'leisure' use of the land can be regarded to be *de minimis*. A leisure use of the land has not occurred as a matter of fact and the ground (b) appeal succeeds in relation to use d) of the alleged mixed use.

9. Retail sales and associated storage, use g) of the alleged mixed use, relates to the use of a container on the land. It does not relate to the sale of eggs or firewood as these uses are ancillary to main uses of the land. The container has been used for the sale of dog food and other dog related products brought on to the land. This use was started on a trial basis but the Appellant cannot expect that such a use, just because it was a trial, falls outside planning control. The use of the container for the sale of dog food and dog products was ongoing on the date of issue of the enforcement notice even though the importation of goods may have ceased by that date. The use of the land for retail sales and associated storage has occurred as a matter of fact and the ground (b) appeal fails in relation to use g) of the alleged mixed use of the land.

10. The ground (b) appeal succeeds in relation to uses c) and d) of the alleged mixed uses of the land and the enforcement notice has been varied by the deletion of these uses from the alleged mixed use and by the deletion of the requirements for the cessation of these uses. The ground (b) appeal fails with regard to use g) of the alleged mixed use of the land.

The ground (c) appeal

11. At the Inquiry the Appellant's Agent confirmed that the ground (c) appeal does not relate to elements a), b), j) and k), and elements c) and d) have been deleted from the enforcement notice under the ground (b) appeal.

12. It is the Appellant's Agent's case that element e) of the alleged mixed use of the planning unit, landscaping/tree surgery/off-site forestry business and associated storage, is a forestry use of the land. He claims that such a use is not development of land and does not therefore constitute a breach of planning control. The Appellant brings timber to his property from the forestry land that he rents and that he manages for others. This includes 6 hectares at Bishops Itchington, 36 hectares at Princethorpe, and 4 hectares at Lighthorne. The nearest of these woods is about 5 kms from Lower Fox Farm.

13. The Appellant's Agent's case is confused. There is no forestry at Lower Fox Farm so forestry is not one of the mix of uses of the planning unit. The storage and keeping of timber that falls or is cut from forest trees is an ancillary use to a primary forestry use. But this use can only be ancillary if it is carried out within a

planning unit that is in primary forestry use, or that has forestry use as a part of a mixed use. It cannot be an ancillary use if the timber is transported by road to another planning unit. This conclusion is consistent with that in the ground (c) appeal in the Owlsbury Farm appeal decision referred to by the Council.

14. The Appellant's Agent has sought to rely on the judgement in *Farlayer v Secretary of State for Scotland*. This case resulted from an enforcement notice being issued against the use of land for the storage of timber extracted from an area of forestry. The notice was upheld at appeal but the Courts found, as the land used for timber storage was the closest point that lorries could reach to the area of forestry for the extraction of the timber, that the land was in ancillary use to the forestry use. The circumstances in that case were entirely different to the circumstances in this case.

15. The Appellant brings timber from areas of forestry that he rents and manages, by road, to Lower Fox Farm. He also brings timber to Lower Fox Farm from his off-site landscaping and tree surgery operations. The timber brought to Lower Fox Farm is stored on the land and is then turned into firewood which the Appellant sells. The Appellant's landscaping/tree surgery/off-site forestry activities are part of his business operations and timber stored on the land is storage associated with those activities. Element e) of the alleged mixed use of the planning unit, given the lawful use of the land, is a breach of planning control.

16. The Appellant has stated that he spends 40-45% of his time on farming activities. He mentioned at the Inquiry that he spends about the first two hours of his working day at Lower Fox Farm dealing with on-site farming requirements. This would be, given that he is likely to work in excess of eight hours per day, about 25% of his working day. So about 15-20% of the Appellants time must be spent on off-site agricultural activities working as an agricultural contractor at other farms in the area. This cannot be regarded to be a *de minimis* part of the Appellant's business activities.

17. Lower Fox Farm is used as a base for the Appellant's off-site agricultural contracting business activities and for storage associated with these activities. Element f) of the alleged mixed use of the planning unit, given the lawful use of the land, is a breach of planning control.

18. As detailed in paragraph 9 retail sales and associated storage, use g) of the alleged mixed use, relates to the use of a container on the land. The container has been used for the sale of dog food and other dog related products. The dog food and dog products have been purchased elsewhere, probably on a wholesale basis, have been brought to the land, and have been sold on a retail basis to customers. This is a retail use just like a shop in a town or village. Element g) of the alleged mixed use of the planning unit, given the lawful use of the land, is a breach of planning control.

19. Element (h) of the alleged mixed use of the planning unit, processing of timber from landscaping/tree surgery/off-site forestry business and associated storage, follows the storage of timber brought to the land. On the land is equipment solely used for the processing of timber, which is a use in its own right and akin to a Class B2 light industrial use. Element h) of the alleged mixed use of the planning unit, given the lawful use of the land, is a breach of planning control.

20. Element i) of the allegation in the enforcement notice, the storage of vehicles, domestic items/paraphernalia, pallets, metal and metal trolleys, is not

associated with agriculture, the lawful use of the land, and is therefore a breach of planning control. The container that is the subject of element l) is the container used for the retail sale of dog food and dog products. The container is not related to the lawful agricultural use of the land and is therefore a breach of planning control. The lorry bodies that are the subject of element m), as noted at the site visit, are primarily used for the storage of items mentioned in element i). They are not on the land for purposes ancillary to the lawful agricultural use of the land and are therefore in breach of planning control.

21. Elements e), f), g), h), i), l) and m) are not associated with, or ancillary to, the lawful agricultural use of the land. They are therefore uses of the land that are in breach of planning control. The ground (c) appeal thus fails.

The ground (d) appeal

22. To be successful under ground (d) the Appellant must demonstrate that, on the balance of probability, the mixed use of the land alleged in the enforcement notice commenced more than ten years before the date of issue of the enforcement notice. The critical date is 12 September 2002. The Appellant's Agent's case under ground (d) is flawed for several reasons.

23. The Appellant's Agent, at the Inquiry, made a claim that the mobile home within the agricultural building is a separate planning unit in residential use. This claim was made even though it is known that the mobile home is not used as, and cannot support, independent residential occupation. The mobile home is not connected to a sewer and the Appellant uses a toilet in the barn. The Appellant, furthermore, uses a kitchen in the barn for cooking purposes. Lower Fox Farm is a single planning unit in a mixed use. There is no dispute that the lawful use of the planning unit is agriculture.

24. The Appellant purchased Lower Fox Farm from Mr S West in 2003. He maintains that "Nothing I am doing on the farm has changed significantly from that which Steven West did when he owned it. The use of the farm has not changed, therefore, from 1997, when he bought it". The Appellant has stated that "Steven West carried out a number of activities, during his tenure. As well as farming...he dealt in scrap metal and re-cycling, traded in building materials, soils, woodchip, aggregates, pallets, bricks, slabs, logs and other items".

25. The only common use from 1997 to now is the lawful use of the land, agriculture. The Appellant does not deal in scrap metal and does not trade in building materials. Mr West did not, as does the Appellant, use the land as the operational base for off-site forestry, tree surgery and landscaping activities. There is a material difference between Mr West's mixed uses of the planning unit and the Appellant's mixed uses of the unit. There was a material change in the mixed use of the planning unit in 2003, which is within the ten year period.

26. There was also a material change in the mixed use of the planning unit when the Appellant stocked a container on the land with dog food and dog products and commenced the retail sale of these products. It is surprising that the Appellant's Agent has failed to understand the significance of this and other events in the light of *D Beach v The Secretary of State for Transport and the Regions and Runnymede Borough Council* (Beach). Beach is well known and well understood case law.

27. It matters not that the retail sale of dog food and dog products was initiated on a trial basis; this argument could be used however long a use had been in

existence. It also matters not that the use was operated alongside other uses of the land. It does matter, however, that the retail use was not ancillary to any other lawful or unlawful use of the land and was a new additional use of the land. The introduction of retail sales was a material change of use of the planning unit, which occurred within the ten year period.

28. The mobile home in the agricultural building on the land was, on the Appellant's own evidence, in place when he bought Lower Fox Farm. At that time the mobile home was not occupied, was not, apparently, used for purposes ancillary to the lawful agricultural use of the land, and was simply stored on the land. This use of the land was the 'storage of a mobile home'. The Appellant commenced occupation of the mobile home on a permanent basis in 2007. This constituted a material change in the use of the land from the 'storage of a mobile home' to 'residential occupation of a mobile home'.

29. Lower Fox Farm is a single planning unit and, setting aside whether or not the various uses of the planning unit are lawful, there has been a material change of use of the planning unit on at least three occasions during the ten years prior to the date of issue of the enforcement notice. Under the provisions of Section 55(1) of the Act a material change in use of land constitutes development and, under Section 56(1), development of land is taken to be initiated when the new use is instituted. The mix of uses of the land at the date of issue of the enforcement notice has subsisted for less than ten years. The ground (d) appeal thus fails.

The ground (a) appeal

30. Planning permission can only be granted, under a ground (a) appeal, for the alleged breaches of planning control, as varied in this decision.

31. The main issues in the ground (a) appeal are; first, whether the residential use of the mobile home on the land accords with local planning policy; second, whether the retail sale of products not associated with the lawful agricultural use of the land accords with local planning policy; and third, the effect of other unlawful uses of the land on the character and appearance of the countryside.

The first issue - residential use of the mobile home

32. Local planning policy is found in saved policies of the Stratford-on-Avon Local Plan Review (LP). Low Fox Farm is in the countryside and LP policy CTY.1 states that all forms of development in the countryside, other than those in accordance with provisions elsewhere in the LP, will generally be resisted in order to preserve its character, and that proposals for forms of development in the countryside not covered elsewhere in the LP will have to be fully justified. LP policy CTY.1 provides no support for the residential use of the mobile home, neither does LP policy CTY.2, which provides for the re-use of rural buildings.

33. LP policy CTY.2A relates to proposals for the permanent residential conversion of rural buildings and states that this might be appropriate in a mixed use conversion scheme where a dwelling would be ancillary to an existing or proposed use but that this will only be permitted where clearly necessary for and subordinate to the efficient and secure operation of the business use. The Appellant's Agent accepts that the stationing of a mobile home within a rural building is not a conversion of a rural building but maintains that "...its use within such a building amounts to the same thing, in practical terms".

34. It does not amount "...to the same thing, in practical terms". The conversion of a rural building to a dwelling, in accordance with building legislation, would provide a level of amenity for the residents of the dwelling that could not be provided for residents of a mobile home stationed within an agricultural building. The mobile home at Lower Fox Farm, is not suitable for independent residential occupation and does not provide adequate levels of amenity. In any event, the proposed residential use of the mobile home is not a proposal for the permanent residential conversion of a rural building and thus conflicts with LP policy CTY.2A.

35. LP policy CTY.2A, in fact, provides that the conversion of a rural building would only be permitted "...where clearly necessary for...the...secure operation of the business use". This is in line with paragraph 55 of the National Planning Policy Framework (NPPF) which states that isolated new homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work. Clearly, if there is to be any policy support for the residential use of the mobile home then this use must be necessary or essential.

36. It is the Appellant's Agent's claim that residential occupation of the mobile home at Lower Fox Farm is essential so that a worker is "...available at most times in case the farm livestock require essential care at short notice, to deal quickly with emergencies and to secure the property from theft". This claim is undermined by the Appellant's admission at the Inquiry that he spends his working day, after early morning on-site agricultural activities, away from Lower Fox Farm carrying out contracting and forestry work. No one is employed to provide an on-site presence during weekly working hours.

37. Some activities on the farm, such as farrowing, lambing and incubation of pheasant poults and chicks, do require an on-site presence but these activities occur on a small number of occasions and can be planned into and around other business activities. Chickens kept outside are susceptible to attacks by foxes but this is manageable through the introduction and maintenance of appropriate fencing. There is a history of thefts from the farm but security measures are in place and could be supplemented. The agricultural building is substantial and provides a reasonably secure store for valuable items of equipment.

38. The Council's consultant has accepted that the Appellant's "...enterprise can be considered, albeit marginally, economically viable" and could thus support the residential occupation of the mobile home. But a significant proportion of profit is derived from off-site contracting and forestry work and the profit from agricultural activities at the farm would not support an agricultural worker. Nevertheless, a business is in operation and, to prevent future planning difficulties if Low Fox Farm was to change ownership, a condition could be imposed that would restrict occupation of the mobile home to be by the Appellant and his dependants only.

39. However, there is no truly essential need for a rural worker to live permanently at Lower Fox Farm. If there was then the Appellant would have ensured that someone was on site to deal with emergencies when he is off-site carrying out his contracting and forestry operations. This adds further to a conclusion that LP policy CTY.2A does not provide support for the proposed residential occupation of the mobile home. There is no support for the proposal in the NPPF or in LP policies COM.17 and COM.18. The supporting text in the latter policy states that LP policy CTY.2A deals with dwellings to support rural business.

40. There is no essential need for a rural worker to live permanently at Lower Fox Farm. The residential occupation of the mobile home at the farm is not supported by LP policy or by emerging policy in the Stratford-on-Avon District Draft Core Strategy and is, in fact, in conflict with LP policy CTY.1.

The second issue - retail sales

41. The Appellant has ceased buying in dog food and dog products for sale at Lower Fox Farm, though dog products, at the time of the Inquiry, were still stored in the container and were still for sale. Nevertheless, the Appellant has no intention of pursuing the retail sale of products not associated with the lawful agricultural use of the land. Such a use of the land, in a countryside location, is contrary to LP policies STR.1, COM.19 and CTY.1.

The third issue - the character and appearance of the countryside

42. From the public footpath that runs alongside the north boundary of Lower Fox Farm there are views across the land. From the footpath many items of equipment, materials and other sundry items are clearly visible stored on the land between the agricultural building and the grazing land. There are random piles of building materials and timber, various items of equipment, metal racks, containers and timber pallets, amongst other items. There is no apparent order to the storage of items, a greater part of the land is taken up by this storage than is required, and the area of storage is disproportionate to the size of the holding.

43. The agricultural building is large and of more than adequate size to support the lawful agricultural use of the land. Some items, such as building materials, should be stored outside but there is no reason why they cannot be stored in an orderly fashion. Other items could be stored within the agricultural building. The extent of external storage and the type of items stored on the land has had a significant adverse effect on the character and appearance of the countryside, particularly in views from the footpath. The proposed retention of items stored externally on the land therefore conflicts with LP policies CTY.1, PR.1 and DEV.1.

Conclusion

44. There is no essential need for a rural worker to live permanently at Lower Fox Farm, the retail sale of products not associated with the lawful agricultural use of the land is an inappropriate use in the countryside, and some elements of the breach of planning control have, collectively, had a significant adverse effect on the character and appearance of the countryside. The ground (a) appeal thus fails.

Other matters

45. Reference has been made to other developments in the area, particularly the development of live/work units. Little information has been provided on these other developments and it is, in any event, a well established planning principle that a development proposal should be determined on its individual merits.

The ground (f) appeal

46. At the Inquiry the Appellant's Agent confirmed that the ground (f) appeal relates only to requirement i) of the enforcement notice, which requires the removal from the land of the mobile home sited within the agricultural building.

47. All of the arguments advanced in support of the ground (f) appeal relate to the merits of retention of the mobile home on the land, and to the lack of harm caused to any matters of acknowledged importance given its location within the agricultural building. Matters of merit and harm are only relevant to a ground (a) appeal. The mobile home is on the land in breach of planning control and is therefore unlawful. The only remedy to the breach of planning control, in these circumstances, is the removal from the land of the mobile home. Requirement i) of the enforcement notice is not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

48. The substantive requirements of the notice are requirements a), d), e), g), i) and l). The period for compliance with these requirements is 6 months. The periods for compliance with other requirements of the notice are less than six months but either these requirements have already been complied with or they could be complied with within the compliance periods. The Appellant is seeking a compliance period of 24 months for the substantive requirements of the notice.

49. It is not relevant that the Appellant has benefited from the use of the site without planning permission. He is entitled to await enforcement action by the Council and he is entitled to test this action through the appeal system. The Appellant's business is established in the local area and has specific requirements for the storage of bulky items of equipment. It might be difficult to find, and to complete the necessary legal procedures for the purchase of, a suitable alternative site. 24 months is too long a compliance period but 12 months strikes the right balance between remedying the breach of planning control as soon as is reasonably possible and the difficulties that the Appellant is likely to experience in finding suitable alternative premises. The ground (g) appeal succeeds and the period for compliance with requirements a), d), e), g), i) and l) is varied to 12 months.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr C Stratton FRICS MRTPI

He gave evidence and called

Mr G Byrne Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Clover Of Counsel instructed by Mr M Nash, Solicitor for Stratford-on-Avon District Council

She called

Mr R Gardner MTCP(Hons) MRTPI Senior Planner at Stratford-on-Avon District Council

Mr A Kernon BSc(Hons) MRAC MRICS FBIAC Director of Kernon Countryside Consultants Limited

DOCUMENTS

- 1 Council's notice of the Inquiry and list of those notified.
- 2 Opening submissions on behalf of the LPA.
- 3 Planning Contravention Notice dated 18 November 2009 and covering letter.
- 4 E-mail and letter dated 9 August 2009 from Mr Stratton to Mr A Horton.
- 5 Bundle of e-mails between Mr Stratton and Ms C Enyon.
- 6 E-mail dated 18 December 2009 from Ms C Enyon to Mr Stratton.
- 7 E-mail from Mr Stratton to Mr R Thomas at PINS with extract from Farlayer Estate v SoS for Scotland.
- 8 Wealden District Council v SoS for the Environment [1988] 1 PLR 87.
- 9 E-mail dated 28 February 2013 from Mr R Gardner to Mr Stratton.
- 10 Appeal Decision APP/B3410/C/10/2137512.
- 11 Farlayer Estate v SoS for Scotland.
- 12 Council's suggested conditions.
- 13 Closing submissions on behalf of Stratford-on-Avon District Council.
- 14 Closing submissions on behalf of Mr Byrne.
- 15 Pre-Inquiry Costs application on behalf of the Council.
- 16 Inquiry addendum to the Council's costs application.
- 17 Application for costs by Mr G Byrne.