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## Appeal Decision

Site visit made on 11 June 2019

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 July 2019

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**Appeal Ref: APP/B3030/C/18/3199702**

**Plots 3 & 4, Sandyacre, Eagle Road, Spalford, Newark, Nottinghamshire NG23 7HA**

- 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 J Massam against an enforcement notice issued by Newark and Sherwood District Council.
- The enforcement notice was issued on 4 April 2018.
- The breach of planning control as alleged in the notice is the material change of use of the land from agriculture to the storage of miscellaneous items, vehicles and domestic paraphernalia, the erection of structures and hardstanding and the altering of land levels.
- The requirements of the notice are:
  - A. Remove from the land all structures, building materials, miscellaneous paraphernalia, lorry backs and hardstanding.
  - B. Cease using the land for the storage of miscellaneous items and only use the land for agricultural purposes.
  - C. Return the land levels to their former condition.
- The periods for compliance with the requirements are 3 months (A and B) and 2 months (C).
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and the notice is upheld with corrections.**

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### The Appeal Site and Background

1. The appeal site which, according to the Council is 0.45ha in extent, is in the countryside on the eastern fringe of Spalford. It is rectangular shaped and extends westwards from an access track that joins Eagle Road to the north. On the site's eastern edge are several structures, the largest of which comprises 3 co-joined lorry backs clad externally in timber boarding used to accommodate poultry. To the north of this is a wooden storage shed, a structure that seemingly functions as a rest room (or tea hut, as the appellant puts it), a small metal water supply cabinet and a modest sized brick structure housing an electricity supply, together with another structure containing a toilet.
2. Some planting has been carried out in the vicinity of the smaller structures and alongside the poultry building is an outdoor poultry enclosure. Close to the site's northern boundary are 2 hard surfaced areas, and near to the western edge of the land is an irregular shaped excavation, together with associated

excavated material. The Council confirm that the latter area is where the land levels referred to in the allegation have occurred.

3. The site's planning history, as set out in the Council's statement, includes 2 renewals of planning permission for 3 ostrich houses, the re-siting of a polytunnel, 2 rearing sheds for poultry, a storage container for chiller units, and yearling feeding and captive houses.

### **Legal Grounds of Appeal**

4. Grounds (b), (c), and (d) are legal grounds of appeal, distinct from any planning merits. The Courts have held that the onus on proving them lies with the appellant.

### **Appeal on Ground (b)**

5. In order for the appeal to succeed on this ground, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact.
6. The appellant claims that there has been no change of use of the land which has remained as agriculture. There was no residential or storage use, including the storage of vehicles, and no new hardstanding had been formed. There had been a spoil heap which was spread because it blocked the site entrance, but this did not alter the land levels.
7. The Council acknowledge that the site was previously used for poultry farming. Although the land seemingly was no longer in active agricultural use when it was acquired by the appellant, the Council make no claim that this use had been abandoned. And, while it may be that the overall character of the use of the site changed – a matter I address in my consideration of the appeal on ground (c) – it appears to me that on the balance of probability agriculture remained a component of the use of the land, albeit the use may have been dormant for a period.
8. Accordingly, therefore, I am unable to concur with the Council's view that there was no mixed use. That said, rather than providing a basis for success on ground (b), my finding merely points to a defect in the allegation – something that I can rectify by using my power to correct the notice accordingly. As this measure would only amount to re-labelling the allegation, as opposed to extending its scope, I am satisfied that this would not give rise to injustice.
9. As to the other matters, the Council's photographic evidence shows a number of items, including picnic tables, swings and what appear to be paving stones placed on the land. Even though the appellant has indicated that various items on the land were due to be disposed of, their presence is not disputed. In addition, one of the lorry backs depicted appears to have been placed on a concrete base, the presence of which is not apparent on the 2016 aerial photograph included in the Council's statement of case. And, while it is stated that no work was undertaken to form a pond, the excavations on the western part of the site, together with the resultant mounds of excavated material on its fringes, have resulted in a readily discernible physical feature which, in my view, has amounted to a change of levels here. In the light of this, I am not satisfied that the appellant's submissions are sufficient to demonstrate that the matters alleged in the notice have not occurred as a matter of fact.
10. The appeal on ground (b) therefore fails.

### Appeal on Ground (c)

11. In order for the appeal to succeed on this ground it has to be shown that the matters alleged in the notice do not constitute a breach of planning control.
12. According to the appellant, the objects on the land were solely for use in the course of replacing previous buildings with a new one. Things appear to have moved on somewhat since the notice was issued in that the lorry bodies, which the Council have confirmed are the vehicles referred to in the allegation, have been adapted for housing poultry and now perform that role. Nor was any trace of the remains of the previous buildings that stood on the land evident to me.
13. In the light of the foregoing, I find the appellant's submission that, for the most part, the items on the land were associated with this work highly plausible. In the light of the circumstances as described by him, I am not satisfied that the presence of the items on the land amounted to a main storage use in its own right. This plausibility also applies to the hardstanding. Although I regard its provision as an act of operational development, by providing a base for what is now the poultry structure, it appears to have been part and parcel of the construction of the latter, as opposed to a separate physical entity in its own right.
14. As the term 'domestic paraphernalia' referred to in the allegation is not elaborated upon, this imparts an element of uncertainty into the notice. But, while the tables and swings depicted in the Council's photographs, together with the barbeque referred to, are not items I would normally associate with agriculture, as a matter of fact and degree, I am not satisfied they are indicative of any residential, domestic or significant recreational use of the land. Their effect on the overall character of the site is such that I do not consider that either their presence (they were not there when I visited the site), or the bicycle referred tool, amounted to a main use of the land.
15. Pointing out that the rest room (said by the Council to be another of the vehicles referred to in the allegation) is a mobile structure, and citing *Wealden DC v Secretary of State and Day [1988] JPL 268*, it is submitted that the 'tea hut' is a lawful incidental use of the land. Even though it is acknowledged that this structure has no wheels, the claim that they could easily be re-attached has not been challenged by the Council. Although the structure is not a caravan, I consider it has essentially the same characteristics insofar as mobility is concerned, and I therefore find the judgement in *Wealden* highly relevant.
16. As a matter of fact and degree, by providing a facility for shelter, rest and refreshment for the appellant, I consider it reasonable to regard the structure as being ancillary to the agricultural use of the land. As such, I am not satisfied that its presence constitutes a breach of planning control.
17. In the light of the foregoing the appeal on ground (c) succeeds insofar as the alleged change of use and hardstanding are concerned. The allegation will be corrected, to reflect this. It will also be necessary for me to make consequential amendments to the requirements. In the light of this, there is no need for me to consider the appeal on ground (d).

### **Appeal on Ground (a) and the Deemed Application**

18. I consider the main issue is whether the character and appearance of the area would be adversely affected.
19. Planning policies for the area are contained in the Council's Core Strategy Development Plan Document (CS) and the Allocations and Development Management Development Plan Document (ADM). Since the appeal was lodged, an amended CS was adopted in March 2019. The appellant was invited to comment on the up-to-date CS and I have had regard to his response.
20. CS Spatial Policy 3 states that the countryside will be protected. Both CS Spatial Policy 3 and ADM Policy DM8 indicate that development in the open countryside will be strictly controlled and restricted to uses which require a rural setting. The latter, as set out in ADM Policy DM8, include agricultural development. CS Spatial Policy 9 is directed at design; it indicates that a high standard of sustainable design is expected that both protects and enhances the natural environment. CS Spatial Policy 13 seeks to ensure that landscapes are protected and enhanced.
21. The lorry backs in their own right would have been stark and visually intrusive features and the Council's concern in this respect was perfectly understandable. However, notwithstanding the Council's reservations about the nature of the use to which the appeal site was being put at the time the notice was issued, subsequent events have tended to put things in a clearer light. To my mind, all the structures involved now appear to be related to the agricultural use of the land, either directly, or incidental to it. In particular, the lorry bodies have been further adapted in that they are now clad externally in timber boarding. Not only has this had the effect of disguising the former function of the main components of this structure, but it has also led to the structure as a whole looking very much like a functional rural building used to accommodate animals or, as is the case here, poultry.
22. As regards CS Policies 9 and 13, my impression was that all the structures in question serve the purpose they were intended for. In my experience, the poultry structure as it now appears is not dissimilar from most agricultural or agriculturally related buildings in the countryside. And, as for the most part, the appearance of such structures tends to be essentially functional, as opposed to displaying high architectural merit, I consider that this is a weighty consideration to be taken into account when assessing the development in question against the provisions of CS Spatial Policy 9. Another weighty consideration is that it is clear from the site's history that agricultural structures were present on the land previously, some of which at least were deemed acceptable, and it is therefore reasonable to regard the structures in question as replacements of sorts, as opposed to being an incursion onto a tract of previously undeveloped land.
23. The National Planning Policy Framework (The Framework), indicates that the intrinsic character and beauty of the countryside should be recognised. But, as the appellant notes, The Framework also supports a prosperous rural economy. The latter point is a factor to which I attach a good deal of weight in this case to the extent that it is a consideration that outweighs any conflict with CS Policies 9 and 13. While the appellant's initial activity on the land may well have given the Council good reason to be concerned, there is now tangible evidence that he is endeavouring to establish a productive smallholding on the

site. Viewing the development in question in this context, I find that it accords with ADM Policy DM8.

24. None of the structures on the site, either individually or collectively, could be said to enhance the local environment or landscape. But as their scale is fairly modest, and mindful of the site's history, the circumstances of this case are such that, for the most part, I do not consider the character and appearance of the area has been adversely affected to an unacceptable degree.
25. The above conclusion does not, however, extend to the excavation near the site's western boundary. I acknowledge that this work may have been a precursor to the creation of a duckpond. Judging from the appellant's comments though, it appears that duck rearing is no longer envisaged. I acknowledge that the appellant has also indicated that his plans for the smallholding envisage a wildlife pond, but there was no sign of any water in the depression in the ground. And, judging by the very sandy nature of the ground, it seems likely that a good deal of additional work would be needed to make the excavated area watertight – the appellant's case is silent on this point. To my mind, the lack of clarity regarding the exact purpose of the excavation work is such that I am not inclined to much weight to the appellant's intentions in this respect.
26. The excavations and the associated mounds of material on its fringes have given the part of the site where this work has been undertaken a markedly raw and unkempt appearance which is far from pleasing to the eye. Even though this particular area is relatively secluded, the works have detracted from the appearance of the local landscape and its character. I therefore find this element of the development in question contrary to both The Framework and CS Spatial Policy 13.
27. In the light of the foregoing, the appeal on ground (a) succeeds insofar as the structures are concerned, but fails in respect of the alterations to the land levels. A split decision will therefore be issued on the deemed application. As a result of this, and mindful that the appeal on ground (f) is not directed at requirement C, there is no need for me to consider the appeal on this ground.

### **Other Matters**

28. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.
29. No conditions have been suggested by the parties, but for the avoidance of doubt and in the interests of clarity, I consider the structures which are to be approved should be identified.

### **Formal Decision**

30. I direct that the enforcement notice be corrected:
  - a. In section 1 by the deletion of "the material change of use of the land from agricultural land to the storage of miscellaneous items, vehicles and domestic paraphernalia;" and by the deletion of "and hard-standing".
  - b. In section 5 by the deletion of Requirements A. and B.
  - c. In section 6 by the deletion of parts A. and B.

31. I allow the appeal insofar as it relates to the structures on the land and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of structures at Plots 3 & 4, Sandyacre, Eagle Road, Spalford, Newark, Nottinghamshire subject to the following condition:

The structures hereby permitted are: the poultry building; the wooden store; the electricity supply housing; the water supply housing; and the toilet structure.

32. I dismiss the appeal and uphold the notice insofar as it relates to the altering of land levels and I refuse to grant planning permission in respect of these works on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*D H Brier*

Inspector