The Planning Inspectorate

Appeal Decisions

Hearing Held on 19 March 2019

Site visit made on 19 March 2019

by Simon Hand MA

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

Decision date: 3 April 2019

Appeal A: APP/X0360/C/18/3201164
Land adjacent to Worleys Lane, Wargrave, Reading, Berks, RG10 8NT

- 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 David Ormandy against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 13 March 2018.
- The breach of planning control as alleged in the notice is: i) without planning permission, the formation of an earth bund the approximate position of which is shown in solid blue on the plan attached to this notice annotated 'Bund 1'; ii) without planning permission, the formation of an earth bund the approximate position of which is shown in solid blue on the plan attached to this notice, annotated Bund 2'; iii) without planning permission, the material change of use of the Land from agriculture to a mixed use of agriculture and the siting of a caravan for human habitation.
- The requirements of the notice are; i) excavate the earth bund, the approximate position of which is shown in solid blue on the plan attached to this notice and annotated 'Bund 1' and remove from the Land all resultant material; ii) excavate the earth bund, the approximate position of which is shown in solid blue on the plan attached to this notice annotated 'Bund 2' and remove from the Land all resultant material; iii) cease the use of the Land for the siting of a caravan for human
- Habitation; iv) remove the caravan from the Land; v) remove from the Land all utilities, pipework, septic tanks and hard standing associated with the siting of a caravan for human habitation use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
- A similar appeal without the ground (a) has been made by Lyn Edmonds, APP/X0360/C/18/3201167

Appeal B: APP/X0360/W/17/3190455
Davlin Farm, Worleys Lane, Wargrave, Reading, Berks, RG10 8NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by David and Lyn Ormandy against the decision of Wokingham Borough Council.
- The application Ref 172323, dated 28 July 2017, was refused by notice dated 17 October 2017.
- The development proposed is the erection of a mobile home to provide a temporary agricultural worker's dwelling.

Decisions

Appeal A – 3201164 & 3201167

1. The appeals are 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.

Appeal B - 3190455

2. The appeal is dismissed.

Background to the Appeal

3. The appellants own a 2.2ha field outside of the hamlet of Cockpole Green. In 2013 approval was given for the construction of a barn in the south-west corner of the field and this was completed in that year. Since then a smaller lean-to storage structure has been built next to the barn, a mobile home has been brought onto the site next to the lean-to and the corner of the field separated off by two earthen bunds. The compound so-created has a gravelled base and is used for storage of agricultural machinery and items and a small sitting out are associated with the mobile home. The appellants operate an alpaca farm on the land with some chickens.

4. It was not contested that the site is isolated in the countryside and lies in the green belt. Although the stationing of the mobile home is a material change of use, such changes of use are inappropriate if they harm openness. It was accepted there was an impact on openness and so the mobile home is inappropriate development in the green belt. The effect of the bunds was disputed and is dealt with below. At the Hearing the appellant introduced a ground (d) argument for the bunds and this is also dealt with below. The legal grounds (b, c and d) relate only to the bunds.

The Appeal on Ground (b)/(c)

5. Although only ground (c) was raised, there was an argument that the bunds were not really development at all, which is a ground (b) issue and I shall deal with them together here. There are two bunds which enclose the compound in the corner of the field as described above. Although I do not have measurements, each is about 8m long, 2m wide on the top, considerably wider at the base and about 1m tall. The appellant argued they are not bunds, which are used to contain water, but earth banks, more akin to a typical hedge bank, and I noted they had a hedge planted on top. However, I am not convinced this argument. A bund doesn't need to be associated with liquid, in planning it is a general term to describe a large earthen bank. As such the use of the word 'bund' is perhaps a red herring as large earthen banks are capable of being development. In this case they clearly are substantial works that amount to development; the question is what sort.

6. The appellant argued they were not engineering works, as they did not require a skilled engineer to construct, merely a competent person with a digger. In my view the phrase 'engineering works' covers a wide variety of constructions and the skill of the person responsible is not a relevant factor. Bunds and other forms of earth movements are usually considered as 'engineering works' and I can see no reason why they should not be in this appeal.

7. The appellant originally argued they were covered by one of two options in the General Permitted Development (England) Order 2015. Either Class B of Part 6 which allows the deposit of waste on an agricultural unit of les than 5ha or Class A of Part 2 which allows the construction of a means of enclosure. However, it was accepted at the Hearing that condition (3)(b) of Class B, Part 6 ruled out that Class as the condition required that the surface of the land should not be materially increased by any waste deposits, and the bunds clearly had raised the land surface.

8. Class A of Part 2 permits "*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*". I was directed to an appeal decision from 2014[1] which dealt with a very similar case and which referenced the concept of 'ejusdem generis'. This is that in a law where there is a list of specific classes of persons or things which then refers to that list in general terms, the general statement only applies to the same kind of persons or things specifically listed. So in this case the "*other means of enclosure*" must be of a similar nature to a gate, fence or wall. In the 2014 appeal it was noted that other appeals had been decided both ways, it was a matter of fact and degree in each case. In that appeal the Inspector found the bunds were not a part of the list of means of enclosure, because of the nature and scale of their construction.

9. In this appeal the bunds would not seem to be as massive as those in the 2014 appeal, but nevertheless they are substantial constructions, containing many tons of earth and no doubt other spoil. In my view a fence or wall is essentially a narrow linear structure and an earth bund is quite a different construction. Even a relatively modest one is a much more massive structure, taking up much more space and with a much greater degree of permeance. Consequently, I do not consider the bunds fall within Class A of Part 2 of the GPDO and therefore do require a separate planning permission.

The Appeal on Ground (d)

10. The appellant suggests the bunds were created out of the waste soil that was excavated from the site of the barn. The level of the land was lowered in order to make the barn less visible and that, along with the footings, created sufficient spoil to enable the bunds to be built. It was decided to use the spoil in this way to help conceal the barn from views and so reduce its impact on the character and appearance of the area. The barn was completed in 2013 and the four year date begins on 13 March 2014, therefore the bunds are immune from enforcement action by the passage of time.

11. The appellant's evidence is limited to showing when the barn footings were created and does not relate directly to the use of the spoil. However, the Council provided three aerial photographs. The first dated 9 March 2014 shows the barn in place and what looks like a large pile of spoil to its north. Although the photograph is quite fuzzy, three dimensional objects are clearly shown, even if they cannot be readily identified, and the grass area where the bunds now are is clearly undisturbed and flat. A second photograph from 2015 is of a much better quality and shows one of the bunds has been newly created, but the second would not seem to be in place yet. Piles of spoil appear to exist either side of its location. The third photograph from March 2017 shows the bunds in place and the compound cleared and gravelled. Residual spoil is still

[1] APP/Y9507/X/13/2202668

in a pile to the north. This area, I saw on my site visit, was now flattened but consisted of dug over earth. Mr Ormandy explained it was the earth left over from the creation of the track that had been given approval and which links the compound to the field gate. This track was completed sometime after March 2017 as it does not appear on the latest aerial photograph.

12. All this evidence suggests to me the Council's explanation for the creation of the bunds is most likely to be correct. The spoil from the barn was excavated and heaped up in two piles, which were, sometime later in 2015, used to create the two bunds. There is no evidence to suggest that either were in place in March 2014 and considerable evidence to suggest they were constructed in 2015. On the balance of probabilities therefore the appeal on ground (d) fails.

The Appeal on Ground (a) and the Planning Appeal

13. The ground (a) appeal refers to both the mobile home and the bunds, whereas the planning appeal relates only to the mobile home. I shall deal with both of them here.

14. In my view the bunds are engineering works for the purposes of paragraph 146 of the NPPF and given their size they clearly have a limited but definite effect on openness. This effect would be more obvious if the mobile home and compound were to be removed whereupon the bunds would be left as isolated and obvious structures in the field. Therefore both the bunds and the mobile home are inappropriate development in the green belt and should not be approved except in very special circumstances.

15. The mobile home also represents an isolated home in the countryside which paragraph 79 of the NPPF says should be resisted unless "*there is an essential need for a rural worker ……. to live permanently at or near their place of work in the countryside*". The Council's policies largely follow the NPPF in terms of the green belt and rural workers dwellings. In addition CP9 and CP11 of the Core Strategy 2010 require rural development to be sustainably located.

16. It was agreed at the Hearing that the first question is whether there is an essential need for a rural worker to live on site, and if so, does that outweigh the harm to the green belt and any other harm, such as the lack of a sustainable location, so as to amount to very special circumstances.

Is there an essential need for a rural worker?

17. The appellants have started a fledgling alpaca farm. They provided a business plan and profit forecast for 5 years. They already have 17 alpacas on site and a number of chickens and quails. They intend to make money mainly by selling pregnant female alpacas, some gelded males and chicken and quail eggs. There was some mention at the Hearing of selling the alpaca fleeces, but I have been given no information on their value, or whether there is a market for alpaca wool.

18. It was obvious from the evidence at the Hearing that the business plan was somewhat optimistic as annual profits included the book value of the stock. In terms of actual revenue generated, there were not intended to be any sales of females (who are the most expensive) until year 5. There seemed to be no allowance for any loss of stock through illness or accident. A pregnant female is worth £6000, so any loss would have a significant impact on the enterprise.

19. The first alpacas came on site in 2017 and so far there have been no sales of any sort, so the first two years have been entirely funded by the appellants themselves. It is intended to eventually have 20-25 alpacas on the land, and that is about the maximum capacity of the site, especially as some of the 2.2ha has been fenced off for the chickens and for the compound. Mr Ormandy suggested he might be able to rent some more land nearby, but no evidence was provided as to how much or when, or what the cost would be.

20. The Council in their statement, accepted the financial figures could support a full time worker by year 3, but resiled from this position at the hearing, suggesting that the small scale of the enterprise would prevent it from being commercially viable. Even allowing for some income from eggs, the evidence would tend to suggest this was the case. Particularly as the income is less than £4000 for the first four years. So even though I accept this is a trial period to enable the success of the business to be demonstrated, there does not seem to be a reasonable prospect of a financially viable business being developed on the site.

21. The Council also argued there was insufficient labour to warrant a full time worker. There are genuine difficulties in calculating alpaca labour requirements. The Council's agricultural expert initially compared them to sheep, in which case 25 alpacas would require very little input, but it was accepted they were quite different to sheep or cows. The Council opted for figures from Australia, which suggest that each breeding alpaca requires 8 man days of effort per year which amounted in this case to significantly less than 1 full time worker.

22. The appellant provided an hours-worked figure, based on experience from other alpaca farms and adapted for the numbers involved in the appeal farm. This concluded that 2400 hours of labour were required for the farm which coverts to 300 days, or 1.09 workers (a man year is 275 days). However, half these hours were taken up by daily monitoring, feeding and checking of the stock. It seemed to me there would be considerable overlap with the less regular events such as toe clipping, worming, vaccinating, weighing, breeding supervision, birthing, halter training and so on. All of which would also involve checking, watering etc. A number of events would also be carried out by others who would come to the site such as shearing and vet inspections. All of this would reduce the actual hours required. Given the figures only just exceeded a single worker, it would not take a great reduction to weaken the case for a full time worker and that is assuming these figures are to be preferred to the Council's. The appellant's agricultural expert suggested breeding alpacas were more akin to horses with foals, who require 70-80 man days a year each. On that basis just 4 breeding alpacas would warrant a full time worker which seems excessive and suggests Davlin Farm is seriously undermanned.

23. Given the competing evidence and lack of any accepted standards for alpacas I find it difficult to reach any firm conclusions on whether a full time worker is justified. However, the appellant argued that to place too much emphasis on this issue was to miss the point. The alpacas required a full time presence, 24 hours a day, solely for reasons of animal welfare. Convincing evidence was provided that alpacas and especially the crias, are susceptible to a number of potentially life threatening problems that need close monitoring in order that they can be dealt with before they become serious. However, the majority of

issues revolved around giving birth and the early days for the cria. Alpacas can only mate when in heat and cannot be artificially inseminated, but nevertheless mating is organised and controlled as no breeding males will be on site but will be sourced from a nearby commercial unit. It is desirable to ensure births are in the spring and early summer and they naturally occur in the morning. But as the appellant explained, there is a varied gestation period and some births will occur at any time of day or night which means they are not readily predictable. Nevertheless, winter births are highly unlikely, unless deliberately engineered for commercial reasons. The Council suggested a seasonal caravan could be considered but this was rejected due to the need for round the clock monitoring for general health reasons.

24. I am not entirely convinced by these arguments. If the appellants did not live on site, at least one of them would need to be there during daylight hours most days to carry out all the regular checks and work. I have come across several cases where a caravan is used as a day room to provide shelter for a worker. If a seasonal caravan is added for the spring/early summer breeding season, a large proportion of the welfare requirements of the animals would be met. It is obviously hugely convenient to live on site, but that does not necessarily make it essential. The case is further weakened by my doubts that a full time worker is warranted, given the relatively small scale of the enterprise, and that a functioning business is unlikely to succeed on the site.

Harm to the green belt and sustainability

25. The mobile home causes obvious harm to the green belt in terms of openness and along with the scatter of residential paraphernalia also causes some harm to visual amenity. At this time of year, the mobile home and surrounding compound are clearly visible from the lanes in the area and from the footpath that crosses the farm. This visibility will reduce as the hedgerows around the lanes come into leaf. The public footpath bisects the field diagonally and the appellant has lined both sides with a newly planted hedgerow of native species. As this matures it will also screen the site from views. However, the hedgerow itself is somewhat intrusive. Its only purpose seems to be to screen the fields on either side from any public views and, once mature, will create a tunnel for walkers that is clearly not as attractive as a stroll across the open field would have been. However, this hedgerow is not part of the appeal.

26. The appellant accepted that the site is not sustainably located, only a primary school and pub are in walking distance, and then down either unlit lanes with no pavement or across potentially muddy fields on the public footpath. Other facilities are much further away and public transport links are weak of non-existent. I agree with the appellant that locational unsustainability is often an inevitable consequence of rural development and this is picked up in the NPPF at paragraph 103 which notes that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, the site is not well located and so is contrary to policies CP9 and CP11 of the Core Strategy.

Conclusions

27. Taking all this together the mobile home is inappropriate development in the green belt, it causes harm to visual amenity and to the openness of the green belt. It is also locationally unsustainable. These amount to significant objections. I accept the welfare of the animals would best be served by a

permanent on-site presence, but that is not to say it is essential. I am far from convinced there is a need for a full time worker at the site, or that a sound agricultural business can be established here. Consequently, I do not consider the case for an essential need for a rural worker has been made out. I am also aware there is no pressing need to farm in this particular location in the countryside in the green belt. The appellant bought the land some years ago and rented it out for sheep. It seems an odd choice to deliberately start up a business which it is claimed can only work with a permanent on-site presence in a sensitive green belt location where such a presence is contrary to long standing policies at national and local level. In my view therefore very special circumstances have not been demonstrated.

28. I accept that only a temporary planning permission is sought, and the harm caused by a temporary permission is less than for a permanent permission. However, that does not alter the balance of my conclusions above

29. Taken on their own, the bunds have a modest but definite impact on the openness of the green belt and are inappropriate development. There is no real reason for them to be there, other than to help screen the mobile home. Once that is removed, there is no need to screen the barn, which is just a typical agricultural structure. Consequently, I can find no very special circumstances to warrant allowing the bunds to remain.

30. I shall dismiss the appeals and uphold the enforcement notice.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Douglas Simon – Agent
Claire Whitehead – Camelid Veterinary Services Ltd
David Ormandy
Lynda Ormandy

FOR THE LOCAL PLANNING AUTHORITY:

Simon Taylor – planning
Roger Johnson – highways
Olivia Wojniak – Reading Agricultural Consultants
Jerry Hedley - enforcement

DOCUMENTS

1 Aerial photograph from 2015