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# Appeal Decision

Site visit made on 7 February 2023

**by Simon Hand MA**

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

**Decision date: 15 February 2023**

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**Appeal Ref: APP/W0340/C/22/3308166**

**Land at Land Adjacent to Holtwood Farm, Hamstead Marshall, NEWBURY, RG20 0JH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kevin Barbey against an enforcement notice issued by West Berkshire District Council.
  - The notice was issued on 23 August 2022.
  - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Land to a mixed use of agriculture and residential by way of: 1. The siting of a touring caravan for purposes associated with the unauthorised residential use. Without planning permission, the unauthorised development of agricultural land by way of: 1. The erection of a new building which contains 2no residential flats on a mezzanine level including kitchens, bathrooms, bedrooms and other domestic paraphernalia. 2. The erection of a new building which contains an equine facility on the ground floor including stables and other equine paraphernalia. 3. The erection of a new building which has not been constructed in accordance with plans submitted under planning application 20/00770/AGRIC and includes additional fenestration, doorways, a substantially increased footprint and other openings.
  - The requirements of the notice are: (a). Cease the unauthorised residential use of the Land the extent of which is identified within the redline plan attached and located approximately within the green shaded area. (b). Remove the mobile home and all paraphernalia associated with the unauthorised residential use from the Land, the extent of which is identified within the redline plan attached and located approximately within the green shaded area. (c). Demolish the new building and remove all other items and paraphernalia associated with the unauthorised development from the Land, the extent of which is identified within the redline plan attached and located approximately within the red shaded area. (d). Remove from the land all resultant materials from the compliance of steps b – c and restore the Land to the condition it was in prior to commencement of the unauthorised development.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f), (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.
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## Decision

1. It is directed that the enforcement notice is varied by deleting requirements (c) and (d) and replacing them with "*(c) reduce the length of the barn by 6m; (d) permanently cease the residential use of the barn and remove from the mezzanine floor all bathrooms and kitchens; (e) Remove from the land all materials arising from the compliance of steps (b) – (d) above*".
2. Subject to these variations 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.

### **Background to the Appeal**

3. The site is part of a larger land holding on which an equine business is run. Planning permission has been granted for the whole area of land for mixed agriculture and equine uses. The land holding was split and the appeal site part is now run by the appellant, who was an employee of the original equine business. The equine business operates on the rest of the land.
4. The appellant has decided to run an alpaca farming business from the site and employs a couple to manage the day-to-day operation of the farm. The prior approval process was completed for a barn in March 2020 and a barn was constructed on the site. However, it is considerably larger than that shown on the plans that were submitted with the prior approval process, has doors in different places and on the mezzanine floor (which was shown on the plans as storage) there are two residential flats. Clearly the barn does not benefit from the prior approval process and is, as it stands, unlawful.

### **The Appeal on Ground (e)**

5. The appellant claims never to have received a copy of the enforcement notice and only heard about it from the Parish Council. However, the Council say they sent it by recorded delivery to his home address and it was emailed to the 2 email addresses on the Land Registry entry. The appellant has not claimed the physical or electronic addresses to be inaccurate. In any event, he is aware of the notice and has made an appeal so even if he did not receive a copy of the notice there has been no injustice. The appeal on ground (e) fails.

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

6. This appeal relates only to the second allegation of the erection of a building containing an equine facility including stables and other equine paraphernalia. The Council say that on their visit they saw the floor of the barn was covered in a rubber crumb that is usually associated with an indoor manege. They also saw equine paraphernalia. However, there is no evidence of any horses in the barn, or of an actual equine use. The appellant explains the rubber crumb was simply left over from a bulk order by the equine business and used to provide a damp free floor to store hay on. The owner of the equine business supports that explanation and says categorically that no horses have been in the barn. Various photographs over time show the barn being used for storage of hay and farm machinery and that was the case when I visited. On the balance of probabilities therefore I would conclude there has not been an equine use established in the barn. I shall delete that part of the allegation.

### **The Appeal on Ground (a)**

7. This appeal turns on the need for a barn that is larger than that described during the prior approval process and the need for 2 flats to be incorporated into the mezzanine floor.
8. Firstly the appellant argues there is only 1 flat. On my site visit I saw that half the mezzanine had been converted into residential accommodation, with a living room/diner/kitchen, a separate bathroom and separate bedroom. This is to house the couple who run the alpaca farm. The other half of the mezzanine floor would seem to be set up in the same way, that is a second self-contained residential unit has been created. But this is used, apparently, as a staff restroom. It did not look as if it was currently lived in, although the bed was

- made, but it did contain all the facilities necessary for day to day living and despite its current use I would conclude the allegation of 2 residential flats was accurate.
9. It was not explained why there needed to be a separate staff room, when the staff had their own flat. There is downstairs another toilet and sink area, and a large garage space, which contained some small agricultural vehicles but also a sofa, chairs and a dart board. So there seemed to be plenty of staff space downstairs. The rest of the barn, that is most of it, was used for storage of hay and large agricultural tractors etc. No argument has been made that there needs to be 2 flats as well as the facilities downstairs and I shall treat the ground (a) as being for a single residential unit.
  10. Policy C5 is the relevant policy for rural workers dwellings and sets out various criteria that need to be fulfilled to enable a dwelling in the countryside to go ahead. This includes the usual requirements to demonstrate a person or persons need to live on site, there is nowhere else they can live, and the business is financially viable. It explains that in the case of new rural businesses a temporary period of 3 years is usually required to show the business is viable. Usually in those cases a mobile home is brought onto the land.
  11. The business here is an alpaca farm. The animals are bred for sale, and for stud, as well as their wool being collected and turned on-site into yarn for sale. I saw a loom in the downstairs part of the mezzanine where wool was turned into yarn. A business plan has been provided showing the business is financially sound.
  12. However, I agree with the Council, the business plan is really nothing more than a series of hopeful guesses as to how much money they can get from the sale of animals and yarn. It is possible, that if everything goes well, the farm may well make the profits suggested, but in my experience the optimistic projections of income are often not realised in the first few years of operation, as a business develops and finds its markets. In fact over half the income comes from renting grazing land back to the equine business and selling hay. The alpaca business, for which the accommodation is required, is clearly not profitable on its own.
  13. In my view very little evidence has been provided to show how the criteria of policy C5 have been met. No information on alternative accommodation has been provided. I have considerable experience of alpaca farm appeals and in my view the need for constant attention that the alpacas apparently require is somewhat exaggerated. Looked at another way, the appellant has decided to farm an animal that is clearly unsuited to English conditions unless it is attended to on a daily basis by someone living on site. On that basis he needs to provide accommodation where there is none. That suggests to me the site was unsuitable for alpaca farming in the first place as the Council have strict policies on rural dwellings. The dwelling here is clearly contrary to C5 and should not be granted planning permission.
  14. The barn itself is larger than that approved. However, the appellant has suggested it can be reduced in size by removing 1 bay, to bring it within the original floor plan, and has provided a quote from a company for the work. I agree with the Council that it is a very large structure and although it is set down partially below ground level it is still massive and highly visible. I do not

think its impact can be reduced by screening. There is also an issue that some of the machinery stored there appears to be for contracting out to other farmers. This is not an agricultural use but a separate business which would require planning permission. No details of that use have been provided but it adds to the sense the barn is too big for the needs of the holding. It is therefore contrary to policy CS14 and CS19 as it fails to respect the landscape on the AONB.

15. It was far from full when I visited and a portion of it is taken up by the unlawful residential use. That said, had it been built in accordance with the plans it would still have been large. There was no dispute at the time that the barn was necessary for the agricultural needs of the unit – although it is clearly insufficient for the alpaca business as a string of alpaca sheds have been erected along the outside wall to house the alpacas in the bad weather. Nevertheless, to require it to be pulled down would be unnecessary to remedy the harm when another smaller one could be built and is likely to be given the need to store hay and various agricultural machines. If the barn were reduced by 1 bay and the residential units removed that would return the holding to the situation it should have been in when the prior approval process was completed.
16. The appellant suggests the residential unit should be granted a temporary 5 year permission to enable the business to be established. Ordinarily such a suggestion would have come before the business was begun and temporary accommodation such as a mobile home would be used. It would have been accompanied by a report showing that no alternative accommodation had been considered, the business was planned on a sound footing and that permanent on-site presence was necessary. None of that is available at this time, so I do not think a temporary permission is acceptable.
17. The notice also refers to a caravan that was on site. This has been removed so that part of the notice has been complied with.

### **The Appeal on Ground (f)**

18. I agree the requirements are too onerous in that the barn need not be removed in its entirety. I shall vary the requirements to enable it to remain albeit reduced in length by 6m. Although the downstairs toilet and sink are acceptable facilities for a farm, the two upstairs flats are not and should be removed. I shall thus retain requirements (a) and (b) as they have been complied with. I shall delete requirements (c) and (d) and add new requirements to reduce the barn by 6m in length and to cease the residential use in the barn and remove the bathrooms and kitchens from the mezzanine floor.

### **The Appeal on Ground (g)**

19. Given the various changes I have outlined above, a period of 6 months would seem perfectly acceptable. I am not convinced that the works quoted for to reduce the barn in size should take longer than that.

*Simon Hand*

INSPECTOR