



Appeal Decision

Inquiry held on 14 June 2011

Site visit held on 13 June 2011

by David Harrison BA Dip TP MRTPI

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

Decision date: 20 July 2011

Appeal Ref: APP/B3410/C/10/2137512

Town End Farm, Piccadilly Lane, Upper Mayfield, Ashbourne DE6 2HP

- 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 P W G Brook against an enforcement notice issued by East Staffordshire Borough Council.
 - The Council's reference is EN/25196/009.
 - The notice was issued on 26 August 2010.
 - The breach of planning control as alleged in the notice is the erection of a dwelling without planning permission.
 - The requirements of the notice are (1) Permanently cease the occupation of the dwelling. (2) Demolish the dwelling and remove all arising material from the land.
 - The period for compliance with the requirements is (1) 30 days and (2) 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) [a] [b] [d] [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld as corrected and varied, as set out in the Formal Decision below.

Procedural matters

2. The evidence was heard on oath.
3. An enforcement notice alleging the same breach of planning control was issued on 30 March 2010 and Mr Brook lodged an appeal against it (Ref: APP/B3410/C/10/2128312). The notice was withdrawn on 26 August 2010 because it had not been served on everyone with an interest in the land, and the notice which is the subject of this appeal was issued on the same day. Mr Brook applied for costs and a partial award was made, limited to those costs that were not "re-usable" in relation to the current appeal.
4. At the Inquiry an application for costs was made on behalf of Mr Brook against East Staffordshire Borough Council. This application is the subject of a separate Decision.

Background

5. Mr Brook said that Town End Farm including 24.28 ha (60 acres) of farm land was purchased in 1999 at auction jointly by himself and his sister, Mrs J Domke-Guyot, and ownership of various parts of the holding was subsequently divided between them. The original farm house was not included in the sale but there were three stone barns on the south side of Piccadilly Lane which leads

from Upper Mayfield. One was converted into the dwelling where Mr Brook now lives (Town End Farm), a second has recently been granted a Lawful Development Certificate (LDC) for use as a dwelling (Town End Barn) and the third (currently derelict) has recently been granted planning permission for conversion to a live/work unit (referred to as "The Barn").

6. Mr Brook said that none of the original stone buildings were suitable for modern agriculture and he has since established two groups of buildings on higher (but well screened)¹ ground to the north of Piccadilly Lane. The "bottom yard" has a complex of equestrian-related buildings and the "top yard" has a range of cattle and sheep buildings and the dwelling/mobile home which is the subject of the notice.
7. At the time of the Inquiry Mr Brook was renting additional land adjoining the holding and elsewhere bringing the total land available for grazing and silage/hay to 90 ha (approx 222 acres). Depending on market fluctuations up to 250 bovines and between 250 and 300 ewes are kept on the holding. No information about the scale of the equestrian enterprise in the bottom yard has been provided.

The appeal on ground (b)

Has the alleged breach of planning control occurred as a matter of fact ?

8. The notice is headed "operational development" and alleges the erection of a dwelling without planning permission. The appellant argues that the alleged unauthorised development has not occurred as a matter of fact for two reasons. Firstly, the "dwelling" is not a building. No operational development is involved; a twin-unit mobile home has been placed on the land and it could easily be removed. Secondly, the use of the "dwelling" is not exclusively residential but comprises a mixed use for residential purposes and use as a farm office and farm store for medicines, sprays, ear tags etc.

What development has actually been carried out ?

9. A concrete slab was laid in the top yard and a twin-unit mobile home was brought to the site by lorry in two parts, placed on the slab and joined together. As assembled, the twin-unit has a width of some 5.5 m and a length of some 10 m. The two units each have a steel sub-frame supported by metal struts and each has a pair of wheels which are still attached, with the axles resting on piers. There is a pitched roof with a ridge running along the "join" between the two units. A brick plinth (or skirt) was built below the whole of the unit to exclude vermin but part of this has been removed to allow inspection of the underside of the units and the service connections. Electricity is supplied by underground cable, there is a bottled gas supply, and there is a piped water supply and drainage to a septic tank.
10. Shortly after the units were assembled a brick entrance porch with a cavity wall was added to the side of the mobile home. This is butted up against the wall of the mobile home and has a weather proof seal. The roof is of translucent sheeting which is "tucked under" the eaves of the mobile home.

¹ Mr Brook said that this location was chosen in order to preserve the view from a neighbouring property. To locate them next to the original stone buildings would have been more visually intrusive.

Is it a building or a caravan/mobile home ?

11. Relevant case law reveals that there is no single conclusive answer as to what constitutes a building operation. In *Barvis Ltd v SSE and Essex CC* ((1971) P&CR 710) three tests are set out; the size of the building or structure, the degree of permanence, and the degree of physical attachment to the land.
12. The main issue is whether the operations carried out to the twin-unit mobile home after it was located on the site and fixed together to form one unit mean that it is now a permanent building as defined in section 336 (1) of the 1990 Act. In order to decide whether a structure is a caravan as opposed to a building, I need to ascertain whether the structure has been designed (or adapted) for the purpose of human habitation and whether it is capable of being moved as a single structure. There was agreement that the structure has been designed for human habitation. A structure comprised of not more than two separately constructed sections which are designed to be assembled on site, and when assembled, is physically capable of being moved by road on a flat-bed lorry– but not necessarily the roads that lead to the site – is not excluded from the definition (caravan) only because it cannot lawfully be so moved on the public highway. If, on the balance of probability, this could be done, then it can be concluded that the operations carried out have not led to the formation of a permanent building.

Size

13. The size of the original unit is within the maximum dimensions of a “twin-unit” caravan set out in Section 13 of the Caravan Sites Act 1968 (as amended)². It is also of a size that could reasonably be regarded as a building, and in this case therefore, the “size” test does not help in deciding the matter.

The degree of permanence

14. The twin-unit mobile home has been in place since June 2008. Although Mr Brook says that it is capable of being moved he regards it as a “permanent” solution to the need to accommodate an agricultural worker close to the lambing and calving sheds. He regards the mobile home as a suitable form of residential accommodation and had no plans to apply for planning permission to replace it with a house.

Physical attachment to the land

15. Although opinions were expressed by those present, no evidence in the form of an engineer’s report relating to the feasibility of moving the twin-unit in one piece was put before the Inquiry. In the absence of any specialist evidence on this point my conclusion will be based on my assessment of the views put forward by the parties, my experience of similar cases and what I saw for myself on site.
16. Mr Brook said it would be a simple matter to remove the porch and the rest of the brick plinth, disconnect the services, separate the two units and tow or transport them to another location. He regarded this as sufficient to demonstrate that the development was “mobile” and therefore amounted to a change of use of the land rather than a building operation. The Council argued

² Twin-unit maximum dimensions are 20m by 6.8m by 3.05 high.

that the development as a whole involved a building operation and the twin-unit could not be moved in one piece.

17. I agree that the plinth and porch could be removed without damaging the mobile home. The easiest way of relocating the twin-unit structure would be to separate the two halves. However, it seems to me that, on the balance of probability, there is no reason why the whole of the original twin-unit mobile home could not be lifted in one piece (while being appropriately supported) without sustaining significant damage, and moved to another location. The operations that have been carried out, i.e. the building of a brick plinth and a brick porch, have not led to the formation of a permanent building.
18. I do not consider the description "dwelling" to be wrong. It is the reference to the erection of a dwelling which implies operational development. The development has involved a material change of use of land rather than a building operation and to this extent the appeal on ground (b) succeeds.

The use of the dwelling/mobile home

19. Turning to the appellant's second line of argument, from the evidence I heard and what I saw on site, I consider the primary use of the twin-unit mobile to be residential. There are clearly farm office and farm storage elements, but these are incidental to the residential use. The kitchen, bathroom, bedroom and a major part of the lounge/living room are used for residential purposes. There was a desk with a computer and a row of filing cabinets in the living room but it seems to me that the scale of the office use is not sufficient to amount to a separate use. Nor does the farm storage element, which is mainly confined to the porch. There was a lamb warming box in the porch but the use of this is again insufficient to amount to a separate use from the residential use. The mobile home is used for residential purposes and is not in a mixed residential/farm office/farm store use, and to this extent the appeal on ground (b) fails.
20. I will correct the allegation in the notice to refer to "The stationing of a twin-unit mobile home used for residential purposes and the erection of a brick-built plinth and porch" using powers under S176(1) as I am satisfied that this will not cause injustice to either party. It is simply a matter of changing the label which in this case has no further consequences for the other grounds of appeal.

The appeal on ground (d)

21. The issue to be decided is whether the alleged unauthorised development was substantially complete before 26 August 2006, i.e. 4 years before the notice was issued³.
22. The mobile home was brought to the site in June 2008, but it is argued that it replaced another and that there has been a continuity of the residential use since 1999. Mr Brook said that it was not installed exactly in the position of its predecessor. In paragraph 6 of his written statement he says "I believe I may have acquired lawful use rights to at least have one mobile home on site there having been such a dwelling on site for over 10 years. However, this would relate to the mobile home on what we call the bottom yard which is to be

³As I have concluded that the development involves a residential use the 4 year rule still applies rather than 10 years which would have applied if there was a mixed residential and office use.

replaced with a new one.” Despite this, Mr Prestwich, the appellant’s advocate, maintained that mobile homes had been “broadly in this location since 1999”, a period in excess of 10 years. There might be some merit in this argument if the mobile homes had been in the same position on the site, or even very close to each other. But the earlier mobile homes were not even in the same yard, let alone in the same position. The residential development in the top yard commenced when the twin-unit mobile home was set up and occupied for residential purposes following its delivery to the site in June 2008, well within the relevant 4-year period. The development is not immune from enforcement action through the passage of time and the appeal on ground (d) fails.

The appeal on ground (a)

The deemed planning application

23. The subject of the deemed application (as corrected), is the stationing of a twin-unit mobile home used for residential purposes and the erection of a brick-built plinth and porch. Notwithstanding the “change of label”, the unauthorised use can be regarded as a dwelling (or a temporary dwelling) for the purpose of applying the appropriate planning policy.

Main issue

24. The main issue is whether there is a need for an additional dwelling on the holding to accommodate an agricultural worker.

Planning policy background

25. Planning Policy Statement 7 *Sustainable Development in Rural Areas* (PPS7) includes advice relating to agricultural dwellings. Paragraph 1 of Annex A to PPS7 refers to one of the few circumstances where isolated residential development in the countryside may be justified. This is when accommodation is required to enable agricultural, forestry and certain other full-time workers to live at, or in the immediate vicinity of their place of work. It will often be as convenient and more sustainable for such workers to live in nearby towns or villages, or suitable existing dwellings, so avoiding new and potentially intrusive development in the countryside. However, there will be some cases where the nature and demands of the work concerned make it essential for one or more people engaged in the enterprise to live at, or very close to, the site of their work. Whether this will be essential in any particular case will depend on the needs of the enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved. Annex A sets out two tests; the financial test and the functional test.
26. This national policy is reflected in Policy F11 (*Housing in Open Countryside*) in the Staffordshire and Stoke on Trent Structure Plan 1996 – 2011.

PPS7: The financial test

27. Although it is part of the appellant’s case under ground (b) that the mobile home can be easily removed, Mr Brook said that the mobile home provided an adequate standard of accommodation and he was not seeking to build a permanent dwelling. It therefore seems appropriate to apply the test for “Temporary agricultural dwellings” set out in paragraph 12 of Annex A to PPS7. There should be (i) clear evidence of a firm intention and ability to develop the

enterprise concerned, (ii) a functional need, and (iii) clear evidence that the proposed enterprise has been planned on a sound financial basis⁴.

28. The Council criticised the appellant's failure to submit any farm accounts, but did acknowledge that the investment in farm buildings and equipment (the value of machinery etc. is some £100,000) was consistent with a profitable business. I consider that the evidence of significant investment in buildings, farm equipment and livestock is such that doubts about future the financial viability of the holding do not weigh against the provision of a temporary residential unit if the functional test is met.

PPS7: The functional test

29. Mr Brook is a qualified solicitor as well as an experienced farmer. He lives in Town End Farm. He divides his time between his legal work and work on the farm and intends to work full-time on the farm when he ceases to practice as a solicitor. He said the local tradition on Derbyshire livestock farms was to locate the farmhouse in the midst of the farm buildings – here there is effectively a new farm complex without a dwelling.
30. Mrs Hall is an experienced shepherdess and also keeps the farm records. She has lived in the mobile home since June 2008, apart from a period of about 6 months when she was looking after an elderly relation. During this period the mobile home was occupied by Jennifer O'Neil who usually lives in a room at Town End Farm. Before Mrs Hall moved into the mobile in June 2008 Mr Brook had tended to the animals in the yard himself while based at his home in Town End Farm. He had installed CCTV but this had not been effective as it could not "pick up" lambing ewes, although it was more effective with calving cattle. Since Mrs Hall had arrived there had been a reduction in the number of lost lambs and calves as being "on the spot" she was able to provide immediate attention when needed.
31. Mr C S Parker, a veterinary surgeon and senior partner with the Scarsdale Veterinary Group submitted a statement in support of the appellant's case dated June 2010 and a further supporting letter dated 29 April 2011 was handed in at the Inquiry. The Council did not challenge any of his written evidence and I have taken full account of it.
32. Mr Parker highlights the need for close supervision of sheep particularly during the lambing season, when frequent inspection is needed. CCTV is quite commonly used in calving and foaling premises but is not suitable in lambing sheds. As most sheep still have a full fleece at lambing time, potential birth problems cannot be diagnosed from a distance and certainly not without being able to view the area from several angles. With most large sheep flocks he would expect supervision to be almost continuous at lambing time with inspections every 20 to 30 minutes and certainly not less than hourly. Multiple births are common and these lead to a higher incidence of birth problems and associated neo-natal deaths. At busy times lambs need to be "matched" with the right mother to avoid subsequent feeding problems. Other problems include

⁴ There is a stricter test for a permanent agricultural dwelling. Paragraph 3 of the Annex requires among other things (iii) the unit and the agricultural activity concerned have been established for at least 3 years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so.

the need to warm new born lambs in warming boxes which need to be checked every 10 to 15 minutes.

33. Mr Parker confirms that Mrs Hall has attended several courses on lambing techniques and care of neo-natal lambs and has the appropriate knowledge and professional competence.
34. The Council's witness, Mr Malkin, accepted that there was a functional need for an agricultural worker to live "very close to" the site of their work, but he contended that there was already other residential accommodation on the holding sufficiently close to the lambing and calving sheds to be suitable. The appellant argued that only some form of residential accommodation immediately next to the lambing and calving buildings would be suitable in view of the need for a worker to be available night and day during the lambing season (which is concentrated between December and May) and when calves were being born, which can occur at any time of year.

Is there any alternative and suitable residential accommodation on the holding ?

35. Town End Farm (House 1) belongs to Mr Brook and is about 0.2 miles by from the top yard. Mr Brook lives there himself and another bedroom is occupied by Jennifer O'Neil who is employed on the farm and a third by Rebecca Cammish, who is employed as a groom. There are no tenancy agreements.
36. Town End Barn (House 2) is about 0.1 miles from the top yard along a track. A Lawful Development Certificate for use as a dwelling was granted on 27 May 2011. This house belongs to Mr Brook's sister, and an estate agent has recently been instructed to arrange for its sale. She lives elsewhere, and at the time of the Inquiry it was occupied by two people employed by Mr Brook as grooms. Again, there are no tenancy agreements.
37. The Barn (House 3) is next to House 2 and is currently derelict. The barn was granted planning permission to be converted into a live/work unit on 7 March 2011. It appears to be jointly owned by Mr Brook and his sister.

Are they close enough to the lambing and calving sheds ?

38. The direct route between House 1 and the lambing sheds is about 0.2 miles, along the driveway from the house to the road and then via a rough and steep track to the bottom yard and then on to the top yard⁵. House 2 and House 3 are about 0.1 miles away. They are next to the road and only the track up to the yards has to be used. All three are within walking distance of the lambing and calving sheds.
39. Mr Malkin argued that all these dwellings were near enough to provide suitable housing accommodation for the farm worker, but he accepted that at busy times during the lambing season in particular, someone would need to be on hand day and night closer to the sheds. He suggested that some form of "mess room" next to the sheds might well be necessary but in his view there was no need for sleeping accommodation there. He envisaged a shelter and storage facility (possibly within an existing building) with heating, a hot water supply, simple cooking facilities, a shower and WC. He estimated that this need only be about one quarter of the size of the present mobile home, and if it was used for

⁵ The route between House 1 and the top yard is made longer partly as a result of the long curving driveway which follows an indirect route to Piccadilly Lane.

purposes wholly ancillary to the agricultural use, planning permission might not be required.

40. I have carefully considered the evidence and my conclusion is that the functional need could be met by a suitable worker living in either House 1 or House 2, (or possibly in the longer term in House 3). Some form of "mess room" next to the lambing and calving sheds on the lines described by Mr Malkin could meet the need to be on hand at particularly busy periods. I see no reason why this arrangement would not work satisfactorily.

But is the alternative accommodation actually available ?

41. House 1. Despite Mr Brook's reluctance to entertain the idea, Mrs Hall or another suitable employee could occupy either of the rooms currently used by the two other employees. Neither of them have any form of tenancy agreement and Mr Brook could make the accommodation available to someone else at fairly short notice. It is a matter for him.
42. House 2. Despite being recently placed on the market, at the time of the Inquiry this was still owned by Mr Brook's sister and is therefore "in the family". Paragraph 5 of Annex A to PPS7 states that "In cases where the LPA is particularly concerned about possible abuse, it should investigate the history of the holding to establish the recent pattern of use of land and buildings and whether, for example, any dwellings, or buildings suitable for conversion to dwellings, have recently been sold separately from the farmland concerned. Such a sale could constitute evidence of a lack of agricultural need." The Council did not argue that there was any "abuse of the system" but questioned the timing of the sale in relation to the time of the Inquiry.
43. House 3. Mr Brook's sister intends to sell House 2 to raise money to convert the derelict barn into a house and art studio in which to work. Mr Brook said that the whole holding was originally purchased jointly by him and his sister and subsequently divided up. It would have been prudent when organising the division of the property to ensure that sufficient accommodation for future employees was retained under his control.
44. Accommodation for a suitably qualified farm worker (not necessarily Mrs Hall) could fairly quickly be made available in House 1 by relocation one of the current occupants. There is also potentially space available in House 2, and in the longer term, possibly in House 3 also. This may not be in line with Mr Brook's wishes, but I have to consider the needs of the holding and not the personal preferences or circumstances of any of the individuals involved. I therefore intend to refuse planning permission for the retention of the mobile home in the top yard.

Other matters

45. The Council also referred to Structure Plan Policy NC1 (*Protection of the Countryside : General Considerations*) and the visual harm caused by the unauthorised development. The domestic appearance of the large mobile home seems rather incongruous in the context of the surrounding agricultural buildings. However, it is not visible outside the confines of the top yard and the visual harm adds only limited weight to my decision to refuse planning permission.

46. In reaching this decision I have considered whether the imposition of planning conditions might have rendered the development acceptable. It would, of course, have been necessary to restrict occupation to an agricultural worker. I have also considered whether occupation could reasonably be limited to a (broadly defined) lambing season, but neither party was happy with this. The Council envisaged difficulties with enforcement and the appellant drew attention to problems that would arise from the need for the employee to have two different homes according to the season. I agree that a "seasonal occupation" condition would not make the development acceptable.

47. The appeal on ground (a) fails and planning permission will be refused.

The appeal on ground (f)

Are the steps required to comply with the notice excessive and could lesser steps overcome the objections ?

48. The correction of the allegation means that the requirements need to be varied for consistency to; (1) Permanently cease the residential occupation of the twin-unit mobile home and attached porch. (2) Remove the twin-unit mobile home from the land, demolish the brick plinth and porch and remove all arising materials from the land. The arguments put forward by the appellant relate to the varied requirements as well as the original ones.

49. The appellant did not originally put forward any alternative requirements under ground (f), but under ground (a) suggested that if permission is refused for residential use, the mobile home could be retained and used as a farm office/store/canteen with toilet facilities for employees. Such a use would be part and parcel of the agricultural use and would not amount to development. I have considered this argument and whether the second requirement should be deleted on this basis. However, these functions could be carried out in a much smaller building, caravan or other portable structure. In my view the harm caused by the presence of this large and incongruous domestic structure can only be overcome by its removal.

50. The variation to the requirements that I have made did not arise from the arguments put forward by the appellant and the appeal on ground (f) fails.

The appeal on ground (g)

51. The period for compliance with the requirement to cease the residential occupation is 30 days, and 60 days are allowed for removal of the structure. The appellant requested an increase in the period of occupation to six months (with a further month for removal), to allow sufficient time for alternative accommodation to be found for Mrs Hall. The Council argued that as the lambing season was drawing to a close at the time of the Inquiry there was no need to extend the period. Alternative accommodation could be quickly provided elsewhere on the farm.

52. Although none of the other farm employees currently living in Town End Farm and Town End Barn have any form of tenancy agreement, I believe a reasonable time should be allowed for any reorganisation of the housing of the current labour force as a consequence of the twin-unit mobile home no longer being available. A period of six months should be sufficient to allow for alternative arrangements to be made and I will extend the compliance period

accordingly. I will also allow a further month for the removal of the plinth, porch and mobile home. The appeal on ground therefore (g) succeeds.

Formal Decision

53. The enforcement notice is corrected by deleting "Operational Development" from the heading and substituting "Material Change of Use", and by deleting the allegation from paragraph 3 and substituting "The stationing of a twin-unit mobile home used for residential purposes and the erection of a brick-built plinth and porch". The notice is varied by deleting the requirements in paragraph 5 and substituting "(1) Permanently cease the residential occupation of the twin-unit mobile home and attached porch. (2) Remove the twin-unit mobile home from the land, demolish the brick plinth and porch and remove all arising materials from the land", and by deleting the time for compliance in paragraph 6 and substituting "(1) Within 6 months of the date of this decision and (2) Within 7 months of the date of this decision". Subject to these corrections and 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.

David Harrison

Inspector

APPEARANCES

FOR THE APPELLANT:

Andrew Prestwich	of Counsel
He called :	
Paul Brook	The appellant
Rosemary Hall	

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth	of Counsel
He called :	
Jim Malkin Dip SP	Planner Enforcement (Planning Delivery) East Staffordshire Borough Council

DOCUMENTS

- 1 Skeleton Argument of Appellant
- 2 Letter from ESBC to the appellant dated 19 January 2011 relating to Council Tax
- 3 Letter from C S Parker of the Scarsdale Veterinary Group dated 29 April 2011
- 4 Fax message from Scargill Mann & Co relating to the proposed sale of Town End Barn
- 5 Copy of LDC Ref: P/2011/00362/JPM dated 27 May 2011 confirming occupation of a stone barn as a dwellinghouse at The Barn, Town End Farm
- 6 Copy of planning permission Ref: P/2010/01495/JPM for conversion of barn to live/work unit at Town End Farm
- 7 Bundle of Land Registry documents and plans relating to Town End Farm

PHOTOGRAPHS

- 1 Photos of the twin-unit mobile home (missing from Appendix PWGB 1 to Mr Brook's Statement submitted on 9 November 2010)
- 2 Aerial photo (undated) showing position of 3 mobile homes at Town End Farm, submitted by Mr Malkin
- 3 Bundle of photographs taken by Mr Malkin during the site visit on 13 June 2011