



Appeal Decision

Site visit made on 11 May 2011

by **Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

Decision date: 19 May 2011

Appeal Ref: APP/J1915/C/10/2142691

Land at Foxholes Farm, London Road, Hertford SG13 7NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Windowman and Sons against an enforcement notice issued by East Hertfordshire District Council.
 - The Council's reference is E/10/0364/B.
 - The notice was issued on 12 November 2010.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a portacabin in connection with the business of "Windowman & Sons".
 - The requirements of the notice are remove the unauthorised development from the land and reinstate the land to its former condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174 (2) (a), (c) and (d) of the Act.
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Formal Decision

1. I direct that the enforcement notice be varied by the deletion of the words "unauthorised development" in paragraph 5 of the notice and their replacement with the word "portacabin". Subject to this variation I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Procedural Matters

2. The enforcement notice does not attempt to define the term "unauthorised development" that is introduced for the first time in paragraph 5 of the notice. In the circumstances I consider that it would be open to me to insert words in paragraph 3 of the notice such as "*hereinafter the unauthorised development*" after the word portacabin to define the term. By reference to paragraph 3.17 of the Council's appeal statement I am in no doubt that what the enforcement notice requires is that the portacabin should be removed. However in these circumstances I consider it would be easiest to use the term "portacabin" in paragraph 5 in preference to the words "unauthorised development".
3. Section 176 of the Act enables me to vary the terms of a notice subject to being satisfied that the variation would not cause injustice to the main parties. This test is met because the variation would have no impact on the substance of the notice in terms of what the Appellant is required to do and in view of its appeal statement the Council would not be in a materially different position.
4. Comments in E (c) and E (d) of the grounds of appeal do not in my view support grounds (c) or (d) but relate to the requirements of the enforcement notice, which should properly have been raised under ground (f). The Council

has commented on the substance of the matter in its statement and so there would be no prejudice if I were to consider this to be a hidden ground (f) and so I propose to do so. My view that this would be appropriate is reinforced by the landowner's comments in section 7 of his submission dated January 2011.

Ground (c)

5. Under this ground of appeal the onus of proof falls on the Appellant to show that there has not been a breach of planning control. The reference to erection in the allegation and 4-years in the reasons for issue of the enforcement notice confirm that the Council regard the stationing of the portacabin in the court yard to have involved a building operation within section 55 of the Act; I agree.
6. In my experience the stationing of a portacabin on land, which is connected to services and in use for the purpose for which it was designed, would normally involve a building operation that gives rise to a building: portacabins are, by design, buildings (*my emphasis*). The Council has provided 2 appeal decisions [Ref T/APP/C/91/W5780/607320 and APP/P0119/C/01/1066564] which show The Planning Inspectorate has been consistent in its approach to portacabins over many years. I have been given no reason to take the opposite view in 2011 from those that have been expressed in 1991 and 2001, respectively.
7. In any event, in the particular circumstances of this appeal, I have been given virtually no information as to how the portacabin was stationed on the land or who did the works. What is clear is that works have been undertaken to the portacabin: the grounds of appeal at E (a) say: "*The portacabin has been clad in dark wood*". The contrast between the front and rear of the photographs dated 15-2-10 at the Council's Appendix IV show the extent to which cladding has been added. The Appellant's final comments record that this was done "*...to match the painted wood in the court yard*" and so the strong inference is that the cladding was added as part of stationing the portacabin in the yard. This is reinforced by the landowner's comments [at the top of his page 3].
8. The Appellant's final comments continue by saying "*...we have sympathetically clad and inserted windows/doors to fit in with the buildings*" (*my emphasis*). The insertion of windows and doors again leads me to the view that building operations have been undertaken to the portacabin as part of its stationing in the court yard. Conversely, the onus of proof that falls upon the Appellant by virtue of advice in Annex 8 to Circular 10/97 '*Enforcing planning control: legislative provisions and procedural requirements*', has not been discharged to show that these works are immaterial to the identified breach of control.
9. It seems to me that, by design, the addition of the cladding and the insertion of windows and doors have materially affected the external appearance of the building. I acknowledge that it might legitimately be said that these additional works have improved the external appearance of the portacabin but that is a question to be considered under ground (a), where the merits of the building are to be assessed. It does not assist the Appellant under ground (c).
10. In terms of size, the landowner has indicated that the portacabin is 12 m long, 3.8 m wide and 2.8 m high. At the site inspection both main parties accepted these measurements. I note that this portacabin is larger than the one at issue in the most recent appeal relied on by the Council. In that case the Inspector said [paragraph 5]: "*Its size is such that it cannot be regarded as insignificant and development has evidently occurred*". These sentiments also apply here.

11. Although the Appellant says the portacabin is not permanent, it is admitted that it has been in place for 3-years and I have no doubt that were it not for the Council's enforcement action that it would stay there for many years to come. Indeed at final comments stage the Appellant admits that "*We have had no reason to move the portacabin until now...*". The portacabin is attached to services, such as telephone and electricity, which in my view formed part of the building operations, and this means that it cannot readily be moved around the farm. For these reasons it has a permanent rather than temporary character.
12. I acknowledge that the portacabin does not appear to have foundations, such as those that might be found with a brick building, but this was the position in both of the appeals quoted by the Council. My site inspection confirmed that this portacabin is similar in that it is largely kept in position by virtue of its own weight. Thus whilst I have no reason to doubt that the hard standing upon which it stands dates from 1967, that is irrelevant to the issue that I must determine under the ground (c). The fact that one end of the portacabin rests on a wooden block to ensure the structure is level does not alter my view.
13. In its appeal statement the Council give reasons why the portacabin would not be permitted development but the Appellant does not make this claim in his grounds of appeal and hence the onus of proof has not been discharged. Thus whilst it is claimed at final comments stage that there is still ample parking, that is not the point. Development is not permitted by Article 3 and Class A of Part 8 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 if it would lead to a reduction in the space available for parking or turning of vehicles. In the circumstances, since the burden of proof has not been discharged, it is not a point I need to examine further.
14. I appreciate the telephone and electricity connections could be disconnected but the very fact that they "*...were all installed by the appropriate qualified tradesmen*" does not assist ground (c). I note the claims that the portacabin compliments its surroundings, complies in height and design with adjoining buildings and makes use of an otherwise unusable piece of ground adding to the diversity and prosperity of the farm. However all of these points are completely irrelevant to the ground (c) appeal. In the circumstances it is clear that the onus of proof has not been discharged and the ground (c) must fail.

Ground (d)

15. The enforcement notice subject of this appeal was issued on 12 November 2010. This means the Appellant must demonstrate on the balance of probability that the breach of planning control alleged in the notice was substantially completed 4-years before the date of issue of the notice, i.e. prior to 12 November 2006 (hereinafter referred to as "*the material date*").
16. In paragraph E (d) of the grounds of appeal the Appellant unambiguously says: "*The portacabin has now been in place 3 years*". It is reasonable to equate the word "now" in this sentence with the date upon which the appeal was lodged, which was 7 December 2010. When I go back 3-years from this date I get to 7 December 2007, which is plainly after the material date as defined above.
17. In my view this evidence alone is sufficient to dismiss this ground of appeal. On the Appellant's own best case it is acknowledged that the portacabin was not placed there until 3-years ago. Any doubt that I have in the matter is dispelled by the letter from the landowner dated 21 January 2011, which

confirms [at paragraph 3.1] that the Appellant has only operated from the farm "...for about 3 and a half years". Given the date on which that statement was made this takes me back to approximately July 2007, after the material date.

18. For the above reasons I conclude that at the time the enforcement notice was issued it was not too late to take enforcement action against the matters stated in the notice. The Appellant has in my view failed to discharge the onus of proof in order to show that the alleged breach was substantially completed prior to the material date. In reaching my view that the ground (d) appeal must fail I have taken account of all other relevant evidence before me.

Ground (a): Main issues

19. I consider there are 4 main issues in the ground (a) appeal. The first is whether the development is inappropriate for the purposes of Development Plan (DP) policy and Planning Policy Guidance (PPG) 2 *Green Belts*. The second is the effect of the development on the openness and purposes of including land in the Green Belt. The third is the effect of the development on the character and appearance of the area. The fourth is, if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Is the portacabin inappropriate development?

20. The DP includes the East Herts Local Plan Second Review (LP), adopted in April 2007. Policy GBC1 says the construction of new buildings within the Green Belt will be inappropriate unless it falls with specified categories (a) to (i) as set out in the policy. It is clear that use as an office and showroom is not so specified and hence I must conclude that the portacabin is inappropriate development. In addition to the identified conflict with DP policy, the use as an office and showroom is outside the list of purposes set out in paragraph 3.4 of PPG 2 and this confirms the portacabin must be seen to be inappropriate development.
21. On the first main issue I conclude the portacabin is inappropriate development. As such I find a conflict with LP Policy GBC1 and advice in PPG 2, which says that such development is, by definition, harmful to the Green Belt.

Openness and purposes of Green Belt

22. The portacabin is sited on an area of hard standing that would otherwise be open in the sense of being unencumbered by built forms. The stationing of the portacabin on the hard standing would compromise this open character and detract from the openness of the Green Belt. Where there was formerly an open area of hardstanding there is now a building and this conflicts with the fundamental aim of Green Belt policy, as identified in paragraph 1.4 of PPG 2.
23. In reaching this view I acknowledge that views of the portacabin from public vantage-points are limited to: (i) a narrow vista from the footpath through the entrance to the courtyard; and (ii) a view mainly of the roof of the portacabin from the public car park that serves the farm shop. However the concept of openness is not dependent on the extent to which a building can be seen: that is something that I shall address in the third issue, below. There would still be a loss of openness even if there were no public views of the portacabin.
24. Moreover the portacabin would be a form of encroachment into the countryside and conflicts with this purpose of including land in the Green Belt, as identified

in paragraph 1.5 of PPG 2. Although I accept that the courtyard is largely surrounded by buildings on 3 sides it does not follow that to erect a building on the fourth side would not constitute an encroachment which, by definition, includes a gradual advance. On the second issue I conclude the development harms the openness of the Green Belt and conflicts with a purpose of its designation as set out in PPG 2, and I attach significant weight to this finding.

Character and appearance

25. I deal initially with character. LP Policy GBC8 is a permissive policy that encourages farm diversification where 3 criteria are met. The first (a) is that the use would *support the continuation of the farm enterprise as a whole*, but I have little in the way of evidence on this point. The landowner considers this to be *an acceptable and appropriate form of farm diversification* but I consider the policy test requires something more than this very general assertion.
26. However the Appellant's unchallenged claim is that the office and showroom brings in a high volume of customers to the farm who are encouraged to visit the farm shop and that this helps to maintain and increase the farm shop sales and income. Despite the absence of accounts or other evidence to support this rationale I am prepared to accept that this would, at a minimum, meet the first policy test in LP Policy GBC8 criterion (a). Criterion (a) also requires that the use would not result in the inappropriate and unsustainable subdivision of the farm unit. In view of the fact that the Appellant stores supplies in an adjacent unit in the courtyard and that this part of the farm has been granted planning permission for B1C and B8 uses, I consider this limb of criterion (a) is also met.
27. Criterion (b) requires that where possible the scheme re-uses existing farm buildings. I accept that the storage unit rented by the Appellant is unlikely to be suitable as an office and showroom by virtue of its inherent characteristics. I have no reason to dispute the claim that it is not suitable because it contains asbestos. Moreover the permission is specifically B1C, which is use for a light industrial process, distinct from use as an office within B1 (a). On the limited information before me I am unclear why that distinction was made but the bottom line is that it might not be possible to use the storage unit as an office and showroom without planning permission. It would not be appropriate for me to assume that such permission for the storage unit might be forthcoming.
28. Nevertheless paragraph 4.10.4 of the supporting text says that applications should be accompanied by a farm management plan indicating the use of other buildings on the holding. In this deemed application neither the Appellant nor the landowner has supplied such information. It was clear from my site visit that there was a lot of activity at the farm and it is also apparent from the extensive planning history that the Council has permitted diversification on the holding. This includes planning permission 3/10/1100/FP for the change of use of other buildings at the farm. It is unclear whether all of these are occupied.
29. In these circumstances I simply have no information before me in order to make the assessment as to whether there are existing buildings elsewhere on the farm holding that might be suitable and available to be used as an office and showroom. It is also material that there are permitted development rights that allow a change of use from B8 or B2 to B1. I note that these were not removed by planning condition on permission 3/02/0680/FP, which authorised the change of use of the former dairy buildings. For these reasons I am not

satisfied that the Appellant has shown that there is no existing building that is available to accommodate the office and showroom on the holding.

30. In this context, turning to criterion (c), I am not persuaded that it has been shown that a new building is required, particularly in the light of my earlier findings when assessed against Green Belt policy. Turning to LP Policy GBC7, I consider the main criterion at issue in this case is (c), which requires the building to be sympathetic to its surroundings in terms of scale, materials, colour and architectural details. As a single storey building I consider it is in scale with its surroundings. Although the colour of the cladding is different to the red bricks of most of the courtyard buildings I think it would be difficult to say that it is inappropriate. It is an improvement on the original blue colour of the portacabin, which is evident from the Council's photograph of the rear.
31. Despite these positive findings I am far from persuaded that the UPVC cladding is an appropriate material in the context of a courtyard of Victorian brick built former agricultural buildings. This contrast is exacerbated by the form of the portacabin, with its flat roof, which in my view unacceptably contrasts with the pitched roofs of the original buildings. The UPVC French doors and windows contrast with the architectural detailing of the original buildings. In summary I find the form, design, materials and architectural detailing is not acceptable.
32. I appreciate that there are only limited public views of the portacabin from the public footpath and the farm shop car park, but this material consideration does not, in my view, outweigh the identified conflict with adopted LP policies.
33. On the third main issue, I conclude that the development conflicts with criteria (b) and (c) of LP Policy GBC8 and in making this finding I have found a conflict with criterion (c) of LP Policy GBC7. Nevertheless I attach only moderate weight to this negative finding because I accept that the use would support the continuation of the farm enterprise and would not result in the inappropriate and unsustainable subdivision of the farm unit.

Other considerations

34. Paragraph 3.2 of PPG 2 says if development is inappropriate the onus is upon the Applicant, or in this case the Appellant, to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, together with the additional harm that I have identified in my consideration of the second and third main issues, is clearly outweighed by other considerations.
35. The first is the claim that the farm shop, and hence the farm, would suffer if the office and showroom was forced to vacate. However I have already given reasons why, on the evidence before me, I cannot be certain that there is no existing building on the holding that is suitable and available for this use. In those circumstances I cannot rule out the possibility that what I shall describe as the multiplier effect might be sustained by using an existing building on the holding. For this reason I attach very limited weight to this consideration.
36. The second is extensive reference to advice in PPG 2, but in the context of my earlier finding of a conflict with the most pertinent elements of this advice, I see little to be gained by dealing with each paragraph that has been referred to. An example is with reference to advice in paragraph 2.9 of PPG 2, which is under a title '*Defining boundaries*' and hence this is first and foremost advice to

Local Planning Authorities about drawing up Green Belt boundaries. Conversely it is not appropriate to apply it to the specifics of this particular site and in any event I cannot agree that the portacabin does improve the land. A second example is infilling, which applies principally to new housing in villages in the Green Belt. This is not a village, but a farm and hence the advice in paragraph 2.11 of PPG 2 is not relevant. A third example is advice in paragraph 3.8 (d), which relates to re-use of existing buildings. However the deemed application relates not to re-use but to the stationing of a portacabin building. A fourth example is C3, which relates to major developed sites in the Green Belt, but this farm is not so designated in the LP and so the advice does not apply. For these reasons I attach very limited weight to this consideration because, far from being a positive factor, I have found a conflict with advice in PPG 2.

37. The third factor is the claim that the appeal site is a piece of "waste" land that is "useless" and, without being used by the Appellant for the stationing of the portacabin, would "become a dumping ground". I simply do not accept the premise of this whole argument. It is not waste land but an area of hard standing that forms part of a courtyard that the Council has granted planning permission to re-use for business purposes. In these circumstances it might be used for car parking by those who use the units. As part of that permission a planning condition was imposed [No 2], which precludes external storage. On this basis I can be satisfied that if the portacabin was removed and the land was used as a dumping ground the Council could take action to clear it. In the circumstances I cannot agree this is a positive factor that the Appellant can rely on and, as such, I again attach very limited weight to this consideration.
38. The fourth factor is employment and the allied point that the Appellant is a small family business. Although not explicitly referred to, this brings into play a number of factors, including: (i) advice in Planning Policy Statement (PPS) 4 'Planning for Sustainable Economic Growth'; and (ii) the Ministerial Statement "Planning for Growth" made by the Minister of State for Decentralisation on 23 March 2011. The latter indicates, amongst other things, that the decision maker should deal favourably with applications that comply with up-to-date plans and national planning policies. However in this case I have given reasons why I have found a conflict with LP policies and pertinent national advice in PPG 2. Although it requires significant weight to be given to the need to secure economic growth and employment, there is no direct link between dismissal of this appeal and loss of employment. As I have noted, on the evidence before me I cannot rule out the possibility that there is an existing building available for re-use elsewhere on the holding. Nevertheless I do not doubt that the loss of the office and showroom would have a significant short term impact on a small family business and for this reason, despite my scepticism that there would be a loss of employment, I attach moderate weight to this consideration.
39. The fifth is advanced by the landowner but is expressly described to be a "very special circumstance" and so I shall consider it under this heading. It is said that the use is low key, with no impact on the courtyard and minimal traffic and parking generation. There is clearly a tension between these claims and those of the Appellant, summarised in paragraph 26 above, but in any event I consider there is nothing special, let alone very special, about these factors. It seems to me that many businesses could make similar claims and if this were sufficient to justify new buildings in the Green Belt then cumulatively this

might undermine the very purpose of designation of land as part of the Green Belt. For these reasons I attach very limited weight to this consideration.

Balancing exercise and overall conclusion on merits

40. Despite my finding on the fourth consideration, to which I attach moderate weight, I conclude that no considerations of sufficient weight are advanced that amount, either individually or cumulatively, to the very special circumstances that are necessary to outweigh the harm by reason of inappropriateness, to which the Secretary of State attaches substantial weight (see paragraph 3.2 of PPG 2), and the other identified harm. For these reasons, having regard to all other matters raised, I conclude that there are no considerations sufficient to clearly outweigh the policy harm and the identified conflict with DP policy.

Hidden ground (f)

41. It is clear from the requirements that the purpose of the steps derives from section 173 (4) (a) of the Act and not (b). It seeks to remedy the breach by restoring the land to its condition before the breach took place. That is the Council's choice over which the Appellant has no control. Put simply this ground of appeal can be expressed to be: *do the steps exceed what is necessary to restore the land to its condition before the breach took place?*
42. The breach of planning control comprised the building operations involved in stationing the portacabin on the land, which appears to have been undertaken approximately 3-years ago. Thus the requirement to "*reinstate the land to its former condition*" refers to the condition of the land on the date upon which the identified breach of planning control took place. There is no dispute that the hardstanding existed at that stage [circa 2007/08]. Paragraph 3.17 of the Council's statement confirms that it regards the hardstanding to be lawful and explains that the notice merely requires removal of the portacabin and reinstatement of the land to its former condition as an area of hardstanding. That is entirely consistent with the provisions of section 173 (4) (a) of the Act.
43. In the circumstances I conclude that no reason is advanced as to why the varied requirement of the notice exceeds what is necessary to restore the land to its condition before the breach took place which, for the reasons explained above, is the limited scope of the ground (f). As such, this hidden ground fails.

Conclusion

44. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR