



Appeal Decision

Hearing held on 16 April 2013

Site visit made on 16 April 2013

by Mr Keri Williams BA MA MRTPI

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

Decision date: 24 May 2013

Appeal Ref: APP/F2605/C/12/2188563

Land known as land near Breckles Heath, Stow Bedon, Norfolk ("the Land")

- 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 Traditional Norfolk Poultry against an enforcement notice issued by Breckland District Council.
- The Council's reference is ENF/2012/0362/CAS.
- The notice was issued on 19 October 2012.
- The breach of planning control as alleged in the notice is the erection of poultry units (being polytunnels and temporary structures) and associated feed hoppers on the Land and construction of a roadway on the Land.
- The requirements of the notice are to:
 - i) Permanently remove the poultry units (being the polytunnels and the temporary structures) from the Land.
 - ii) Permanently remove the feed hoppers from the Land.
 - iii) Permanently remove the roadway from the Land.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed. The enforcement notice is corrected and upheld.

Background

1. The appeal site extends to more than 10 hectares and is in the countryside, remote from any settlement. It is part of an area characterised by blocks of woodland and agricultural land. There are 3 large polytunnels on the site. When I visited there were 5 smaller polytunnels. As part of the appellant's agricultural use of the land, the polytunnels are used to house free range poultry. There are 4 feed hoppers close to the large polytunnels. The smaller polytunnels have feed hoppers attached to them.

The Enforcement Notice

2. Although the notice alleges operational development, it says in paragraph 4 that "*It appears to the Council that the above breach of planning control has occurred within the last 10 years.*" With regard to operational development s171(B)(1) provides that the relevant period for immunity from enforcement action is 4 years from the date on which the operations were substantially completed. In that context, the notice should refer to 4 rather than 10 years.

This matter was drawn to the appellant's attention before the Hearing and I am satisfied that I can address it by correcting the notice without causing injustice.

The Appeal on Ground (c)

3. An appeal on this ground is that there has been no breach of planning control. Planning merits are not relevant. The burden of proof is on the appellant and the appropriate test of evidence is the balance of probabilities. The appellant accepts that the erection of the larger polytunnels is development requiring planning permission. The ground (c) appeal is therefore limited to the smaller polytunnels, the feed hoppers and roadway.

The legal framework and relevant considerations arising from caselaw

4. To address ground (c), consideration is required both of whether what is alleged amounts to development and, if so, whether it is permitted development having regard to Part 6 of the Town and Country Planning (General Permitted Development) Order, 1995 (GPDO), which deals with agricultural buildings and operations. S55(1) of the Act as amended defines development as "*the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land.*" S336(1) also provides relevant definitions. A building "*includes any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*" Building operations are defined as having the meaning given by s55.
5. With regard to the appropriate tests for considering what amounts to a building, the appellant refers to *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Company Ltd, CoA [1948]*. Arising from that judgement, the primary factors to be considered are size, permanence and attachment to the ground. *Guest Keen Baldwin* also refers to the extent of construction on site as opposed to something which is brought to the site ready made. Similar considerations are referred to in later cases, for example *Skerrits of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council, [2000]*. Prior to the Hearing I drew the attention of the main parties to *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)*. It addresses aspects of the application of these tests which are relevant here. In that judgement Mrs J Lang DBE observed that "*the term building in s336(1) TCPA 1990 has a wide definition which includes any structure or erection. This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings.*"

Assessment

The smaller polytunnels

6. Taking into account the dimensions of each polytunnel, of about 19 metres by 6.8 metres, with a curved roof of a maximum height of about 3.5 metres, the polytunnels appear as substantial objects. They are of sufficient size to amount to a structure falling within the s336(1) definition of a building. The appellant's case rests, in part, on a lack of fixing to the ground. The polytunnels comprise a metal framework which is covered with sheeting. They do not have floors and they rest on the ground on metal skids which extend along the sides of each polytunnel. The skids allow each polytunnel to be moved around the site by towing with a tractor or other vehicle. The skids extend to the rear, where they

- support the attached feed hoppers. Water is supplied to the polytunnels by hosepipe.
7. The absence of fixing to the ground by spikes or other physical means weighs to some extent in the appellant's favour. However, the weight I give to this matter is limited by other considerations. The polytunnels are of similar dimensions to those in *Woolley Valley*. Information on the weight of each smaller polytunnel is not submitted. Having regard to their construction and the absence of floors, it may well be that each polytunnel weighs less than the approximately 2 tonnes of the poultry units in the *Woolley Valley* case. Nevertheless, the polytunnels are of some significant bulk and weight. While they can be moved, their weight, of itself, lends a degree of attachment to the ground. Moreover, referring to another judgement, in *R v Swansea City Council ex p Elitstone [1993] 66, P&CR.422*, Mrs J Lang DBE observes in *Woolley Valley* that "*an object may be a building in planning law without being incorporated into the land, as part of the realty.*"
 8. With regard to permanence, the appellant says that the number of smaller polytunnels on the land has varied. When the notice was served there were 6 present but at times there are said to have been more or considerably less. The appellant has a number of different holdings. Demand for poultry fluctuates and the number of polytunnels on a particular holding changes depending on operational requirements, although no systematic evidence is submitted on how many polytunnels have been present on this site at different times. When I visited there were similar polytunnels on neighbouring land, outside the enforcement notice area. The appellants also say that each polytunnel is moved around within the appeal site every few weeks to a fresh area of grass.
 9. While *Guest Keen Baldwin* and subsequent judgements establish that permanence is a significant criterion, the *Woolley Valley* judgement provides more recent guidance on the approach to it. It suggests that permanence should be considered in the planning context. In the circumstances of that case Mrs J Lang DBE remarks that "*the units were permanently in their field and there was no limit on the length of time they would remain there - they could be there for years. The ability to move them around the field did not remove the significance of their presence in planning terms. The visual and landscape impact of the units was not affected to any material extent by periodic changes to their position in the field.*" The situation is similar in this case. While the number of polytunnels may have fluctuated, when the notice was issued there was a significant number present. The number is not subject to any control, other than commercial and operational considerations. As in *Woolley Valley*, the polytunnels could be on the land for years. The movement of the polytunnels within the appeal site would have no significant effect on their presence on the land in planning terms, for example with regard to their visual and landscape effect. In that context, they have a degree of permanence consistent with a structure falling within the s336(1) definition of a building.
 10. Each polytunnel is brought to the site in parts. No foundations are required and the appellant's evidence is that a polytunnel can be assembled by two people, requiring about one day's work without the need for skilled labour. This is not, therefore, in the terms of s55(1A)(d), an "*other operation normally undertaken by a person carrying on business as a builder*". However, as Mrs J Lang DBE observes in *Woolley Valley*, s55(1A) is inclusive rather than being an exhaustive definition of building operations. The means of assembly would not

prevent these polytunnels being considered as structures and their erection falling within the definition of development for planning purposes.

11. I appreciate that the Council considers the smaller polytunnels to be temporary structures. Nevertheless, as a matter of fact and degree and having regard in particular to their size, degree of permanence and the other considerations set out above, I find that they are structures, the erection of which falls within the scope of development as set out in the definition in s55(1). The site is agricultural land within an agricultural unit of more than 5 hectares, where Part 6, Class A of the GPDO provides that works for the erection, extension or alteration of a building which is reasonably necessary for the purposes of agriculture within that unit is permitted development. However, paragraph A2 sets out relevant conditions. Paragraph A2(2) provides that such development is subject to a requirement to apply to the Local Planning Authority for determination of whether prior approval of siting, design and external appearance will be required. No such application was made in this case so that the erection of the small polytunnels was not permitted development and amounts to a breach of planning control.

The feed hoppers

12. The feed hoppers for the smaller polytunnels are attached to and form part of the structures of the polytunnels. Those related to the large polytunnels are freestanding structures of a significant size. Drawing TNP001/0250/2/4 shows the smaller ones as 3 metres wide and 6 metres high. The larger one is 3 metres wide and 8.7 metres in height. The hoppers stand on bases and are fixed to the ground, giving them a permanent character. They are likely to remain on the site while the large polytunnels, which they service, are present. Having regard to their size, degree of permanence and fixing to the ground they are structures falling within the s55(1) definition of development. The prior approval application requirements, which I set out above, were not met with regard to the feed hoppers and they are a breach of planning control.

The roadway

13. The roadway runs from the entrance and into the centre of the site. It is typically about 4.3 metres wide but it is wider near the site entrance. The surface is of crushed concrete. The appellant says that the roadway was constructed to service the polytunnels.
14. The appellant does not dispute that the construction of the roadway amounted to development but contends that it was permitted development. Amongst other things, Part 6, Class A of the GPDO provides that permitted development includes the carrying out of engineering operations on agricultural land comprised in an agricultural unit of 5 hectares or more, provided that they are reasonably necessary for the purposes of agriculture in that unit. However, paragraph A2 sets out relevant conditions. Paragraph A2(2) provides that the formation or alteration of a private way is subject to a requirement to apply to the Local Planning Authority for determination of whether prior approval of the siting and means of construction of the private way will be required. No such application was made in this case so that the construction of the roadway amounts to a breach of planning control.

Conclusions on ground (c)

15. I conclude that the erection of the polytunnels and feed hoppers and the construction of the roadway are breaches of planning control. The appeal should not succeed on ground (c).

The Appeal on Ground (g)

16. Under this ground the appellant contends that the 3 calendar month period for compliance with the notice's requirements is unreasonably short given the growing cycle of the free range organic birds on the site. The polytunnels facilitate a growing standard for free range chickens and turkeys based on creating conditions as close as possible to the birds' natural habitat. The site is said to be particularly suitable, the birds being able to roam free in the open and wooded areas. Some birds reared at the site do not reach slaughter weight until around 16 weeks, compared to 5-6 weeks in standard systems. There is said to be no alternative accommodation if birds are moved mid-way through a growth cycle. A 6 month period is sought to allow for the completion of growth cycles before the polytunnels are removed.
17. I appreciate that 3 months is significantly less than the maximum 16 week cycle. It is uncertain what stage birds on the site will have reached when the 3 month period expires. Nevertheless, I do not discount the possibility of some adverse commercial and animal welfare impact of a 3 month compliance period. However, I also take into account that extension of the compliance period, as suggested by the appellant, would prolong any harm arising from the development. Paragraph 4 of the notice sets out the reasons for its issue. They include the proximity to the Breckland SPA and SAC, the Breckland Farmland and Forest SSSI and the Stanford Training SSSI. Relevant policies require assessment of the effects of development on these protected areas. Reference is also made to visual harm and harm to the track which provides access to the site and is also used as a long distance footpath.
18. The appeal is not made on ground (a) and comprehensive evidence on these matters is not before me. While I understand the appellant's concerns, having regard also to the reasons given for the issue of the notice I have decided not to extend the period for compliance. It would be open to the Council to extend that period if, for example, there was evidence prior to the requirements taking effect of a serious and overriding risk to animal welfare.

Overall Conclusion

19. Having regard to the above and all other matters raised the appeal should fail. Subject to the correction to which I refer above, the notice should be upheld.

Formal Decision

20. I direct that the enforcement notice be corrected at paragraph 4 by the replacement of "10 years" with "4 years". I dismiss the appeal and uphold the enforcement notice subject to the above correction.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Atkinson

Lanpro Planning Consultants.

Mr M Gorton

Company Director, Traditional Norfolk Poultry.
(Mr Gorton attended only for the site visit).

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Raine

Capita Symonds on behalf of Breckland District Council.

INTERESTED PERSONS:

Mr R Morpeth

Wretham Parish Council.

DOCUMENTS SUBMITTED AT THE HEARING:

1. Drawings TNP001/0250/3/1 to TNP001/0250/3/4.
2. Set of photographs of the site and its surroundings.

DOCUMENTS SUBMITTED AFTER THE HEARING:

3. Drawings TNP001/0250/2/3 and TNP001/0250/2/4.