



# Appeal Decision

Hearing and site visit held on  
10 June 2010

by **Ahsan U Ghafoor BSc (Hons) MA**  
MRTPI

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

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**Decision date:**  
**10 August 2010**

**Appeal Ref: APP/B2355/C/09/2114631**

**Land to the West of Scotland Lane, Rossendale BL9 6UT**

- 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 I Smith against an enforcement notice issued by Rossendale Borough Council.
- The Council's reference is 59/06.
- The notice was issued on 14 September 2009.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of the building and generator building; the unauthorised engineering operations to create hard standing with structures consisting of portable buildings and sheds; and the unauthorised erection of a wooden fence on the boundary with Scotland Lane.
- The requirements of the notice are: (a) Remove all of the building from the Site (b) Remove from the Site all portable buildings, sheds and similar structures (c) Remove from the Site all generators and lighting posts (d) Remove all materials concerned with the demolition of the above from the Site (e) Remove the hard standing from the Site (f) Re-seed the land to re-instate the Site to its condition prior to the erection of the building.
- The period for compliance with the requirements is for all items 5(a) to (d) – 3 months from the date the notice takes effect. For the items listed at 5(e) to (f) – 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does fall to be considered.

**Summary of Decision: The appeal is dismissed. The enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

## Procedural Matters

1. Although the appeal form did not include a ground (c) appeal, some of the appellant's arguments relate to whether or not there has been a breach of planning control. The Council's case has not been prejudiced and so I will consider them in that context. The appellant confirmed the post code which I have used in my header (above).

## The Enforcement Notice

2. The allegation includes the unauthorised erection of a wooden fence, but the steps required to comply with the enforcement notice (referred to as the 'notice') do not specifically refer to it. The Council stated that the steps should include the removal of the fence, but Schedule 2, Part 2, Class A of the Town and

Country Planning (General Permitted Development) Order 1995 (as amended), referred to as the 'GPDO', permits the erection of a fence provided the criteria in paragraph A.1 are satisfied.

3. The alleged breach of planning control is clearly worded and precise, and the appellant was fully aware of what the notice attacks. The failure to require the removal of the fence did not result in any confusion nor has it prejudiced the appellant's case. To remedy the breach of planning control the fence could either be totally removed or reduced in height. I have the powers under Section 176 of the 1990 Act (as amended) to correct the notice, which I will do because I am satisfied that the correction will not cause injustice to any party. To avoid any doubt, I will also re-word the period for compliance to reflect the correction.

### **The appeal on Ground (c)**

4. For the appeal on ground (c) to succeed the appellant must demonstrate that there has been no breach of planning control. The site is about 9.49 hectares which comprises an agricultural unit used for the breeding of pigs. The main 'L' shaped building is stone built. The generator building, which is set apart from the livestock building, is constructed from block and it has a roof. It is a permanent structure because of its physical attachment to the ground. The shipping-style containers and sheds, which are located around the site, are used for livestock and associated paraphernalia. The timber fence is located along the site's frontage with Scotland Lane. In addition, the hardstandings cover a wide area, which are used in connection with the siting of the containers and for circulation around the site.
5. I have noted all of the arguments raised by the appellant about the temporary nature of the containers. However, the shipping-style containers are large structures with a substantial degree of permanence. They cannot be easily moved around the site without the assistance of plant or machinery. Indeed, there is no evidence that shows the containers have been moved since they were brought onto the land. I consider that the containers are buildings which require planning permission.
6. My attention was drawn to Schedule 2, Part 6, Class A of the GPDO. This relates to agricultural development on units of 5ha or more. Paragraph A(a) permits the erection, extension or alteration of a building or any excavation or engineering operations which are reasonably necessary for the purposes of agriculture within that unit. However, paragraph A.1(h) indicates that development would not be permitted under Class A if it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building. Paragraph D.1 defines a '*protected building*' as any permanent building which is normally occupied by people or would be so occupied.
7. The stone building, and the containers, timber structures and the hardstandings are within around 200m of nearby dwellings. Even if I were to accept the contention that the development was reasonably necessary for the purposes of agriculture, it would not benefit from Part 6 permitted development rights because paragraph A.1(h) is breached. The condition stated in paragraph

A.2(1)(a) does not apply because the circumstances described in paragraph D.3 are not met, due to the holding's size and location. In any event, the appellant erected the buildings without following the prior notification procedure.

8. S336 defines buildings as any structures or erection and would include any above-ground structures. The appellant argued that the fence, which is above 1m in overall height, is not physically adjacent to the public highway. The fence is situated on top of a raised landscaped area, which is demarked by a stone wall along the site's boundary with the Scotland Lane. The fence is clearly visible from the public footpath because of its elevated siting and positioning. Although the fence is set back from the highway, it does not have to physically touch the edge of the highway for it to be adjacent to it. Because of its location, it is close enough to have the perceived function of forming a boundary between the public footpath and site. I find that the fence is situated adjacent to a public highway and so breaches paragraph A.1(a) of Class A to Part 2 of the GPDO because of its height.
9. As a matter of fact and degree, I conclude that there has been a breach of planning control because the matters described in the allegation require planning permission. Had there been an appeal under ground (c), it would have failed.

#### **The appeal on Ground (a) and the deemed planning application (DPA)**

10. The appeal raises three main issues which are;
  - Whether the development is inappropriate development for the purposes of PPG2<sup>1</sup> and development plan policies;
  - The effect of the development on the openness of the Green Belt; and
  - 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.

#### *Whether the development is inappropriate development*

11. Paragraph 3.4 of PPG2 states that the construction of new buildings inside a Green Belt is inappropriate development unless it is for one of its five indents. Policy DS.3 of the Rossendale District Local Plan (1995) follows the same path as PPG2. The appellant told me that the shipping-style containers and other timber structures would be removed. However, the terms of the DPA are directly derived from the allegation.
12. The appellant argued that it is not necessary to prove that a building is essential or required for agricultural purposes, but only whether the building would serve an agricultural purpose. In support of these arguments, my attention was drawn to an appeal decision in relation to Petham Court Farm, Swanley, Kent<sup>2</sup>. Although similar planning policies are raised, from the limited information submitted about the Petham Court Farm case, it seems that appeal was against a refusal of planning permission for the replacement of a wooden barn. In this case, the unauthorised development consists of the erection of a stone building and other structures, hardstandings and the erection of a wooden fence. It

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<sup>1</sup> Planning Policy Guidance Note 2: *Green Belts*.

<sup>2</sup> Appeal ref: APP/G2245/A/09/2100684 allowed on 13 August 2009 (referred to as the 'Petham Court Farm case').

appears to me that the two schemes would not be directly comparable and in any event, I will evaluate this appeal on its individual merits.

13. The agricultural building can only be regarded as not inappropriate if it was genuinely intended for the purposes of agriculture. As part of this test, it is reasonable to consider whether the building is designed, or is capable of use, for the purposes of agriculture in terms of its physical appearance and layout, which is consistent with the decision of the Court of Appeal in the case of *Belmont Farm Ltd v MHLG* [1962] 13 P and CR 417<sup>3</sup>. In the case before me, however, the appellant contends that the main stone building is required for the agricultural enterprise. So, it is necessary and reasonable to evaluate whether the building is genuinely intended for a purpose of agriculture on this holding.
14. The appellant argued that the building is fit for an agricultural use, but it is two-storey's high and has a gable-end pitched roof with a single-storey adjunct. Despite the limited number of openings, the building has a domestic scale because of its built-form and shape. Traditional materials have been used on the outer skin, but from the inside the building has been built with block work. In comparison to the built-form of modern agricultural buildings, the building is more akin to a residential property because of its overall appearance and design. Further consideration of the building's internal layout adds weight to this view.
15. The pigs are separated by timber panels, but the ground floor appears to be tight because of its contrived layout and size. The building is cleaned-out by hand, but access for modern machinery is limited. Hay is stored at first floor level and it was contended by the appellant that such materials need to be kept weather tight. However, the use of the upper level appears awkward because of the building's configuration. Although the storage of hay above animals might be a traditional method, the evidence does not demonstrate that the upper floor is genuinely required, or is essential, to the use of the building for the pig rearing enterprise.
16. Additionally, the appellant's own professional representatives told me that if they had been erecting a purpose-built agricultural building for pig rearing, they would have come up with a building of a different design and layout from what has been built. This is due to the stone building's appearance, height and size. I have taken into account all of the points raised by the appellant about the particular nature and scale of the enterprise. However, on the basis of the evidence before me, it would be difficult to conclude that the buildings, containers and similar structures have been designed and constructed for a purpose of agriculture on the appellant's holding. The development does not fall within any of the categories stated in paragraph 3.4 of PPG2.
17. Turning to the hardstandings. Paragraph 3.12 of PPG2 states that the carrying out of engineering operations are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt. One of the purposes is to assist in safeguarding the countryside from encroachment. The appellant told me that some hardstandings existed for

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<sup>3</sup> In that case, the Lord Chief Justice of the time, Lord Parker concluded: 'I confess that having seen a large scale photograph of this [in that case] building, it does assist me in coming to my own conclusion on the matter. It seems to me that no one looking at the photograph of that building would say: "Oh that is a wonderful farm building." It is much more likely that they would say: "Here is a man who must have his own private aeroplane." In any ordinary sense of the word it seems to me that this building could not be said to be designed for the purposes of agriculture.'

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some time; however, the sum of the evidence suggests that additional areas have been laid. The extent and scale of the hardstandings reduces the openness of the Green Belt because of their siting. The spread of hard-surfaced areas represents encroachment and so the development conflicts with paragraph 3.12.

18. Taking all of the above points together, I conclude that the development constitutes inappropriate development in the Green Belt and conflicts with local and national planning policies.

*Effect on the openness of the Green Belt*

19. PPG2 states that the openness of Green Belts is their most important attribute. Although the external design of the building reflects traditional stone-built rural buildings in the Lancashire area and beyond, its built-form reduces the open aspect of this part of the Green Belt. The appellant argued that any agricultural building would diminish the openness of the Green Belt. Nonetheless, the location of the buildings, containers and the fence harms the openness of the Green Belt because of their physical presence, overall shape, form and proportions of the structures.
20. The appellant argued that the building has been designed to take into account the area's topography and rural character. However, the spread of the development is damaging to the visual amenities of the Green Belt and represents encroachment into the countryside, which conflicts with one of the purposes of designating land in the Green Belt. Consequently, the development is detrimental to the openness of the Green Belt. This is a serious planning objection.

*Other considerations and the overall balancing exercise*

21. Substantial weight is attached to the development's inappropriateness which is, by definition, harmful to the Green Belt. It is for the appellant to show why permission should be granted. Very special circumstances to justify such proposals will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appellant considers that the thrust of Government advice, contained in PPS7<sup>4</sup>, supports agricultural development.
22. The appellant intends to develop the farming enterprise, but the submitted appraisals suggest the stone building is not wholly appropriate for current purposes, and I concur with that view because of its design and layout. Due to the building's internal configuration and limited size, there is no space to house associated feed, equipment, tooling and machinery. Additionally, the reports indicate that a purpose-built structure would be required once the enterprise is fully established to meet the scale and level of the business. However, the evidence does not demonstrate to me that when the building was substantially completed, it was designed for an agricultural purpose and so the scheme conflicts with guidance contained in PPS7, which seeks to protect the countryside from unwarranted development. Consequently, I attach limited weight to the arguments that the building is required for the pig rearing enterprise.

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<sup>4</sup> Planning Policy Statement 7: *Sustainable Development in Rural Areas*.

23. I also note the appellant's view that the stone building has been built in the same position as the building which historically existed, and that there are no alternative livestock buildings nearby but that is not a strong enough reason to permit harmful development. The historic buildings on the site were 'ruins' and substantially demolished. In any event, the stone building is largely new and replaces what previously existed because of its layout, design and size. I attach little weight to these arguments.
24. I have considered imposing conditions but the development would harm the openness of the Green Belt. The removal of the temporary structures and storage containers would visually improve the area, and the appellant told me that the fence was erected to protect horse-riders. Nevertheless, I attach slight weight to these arguments in favour of the scheme because the development is inappropriate in the Green Belt.
25. In the light of my findings on the ground (c) appeal, the evidence does not demonstrate that there is a real prospect of an agricultural building being erected by virtue of Part 6 to the GPDO. This is because the site is in the proximity of protected buildings. So, I attach little weight to the fallback arguments.
26. Turning to the overall balance, the harm by reason of inappropriateness must be added the harm from the effect of the development on the openness of the Green Belt. I find that the other considerations advanced by the appellant, to which I attach very little weight overall, whether considered separately or together, do not clearly outweigh the harm by inappropriateness and the other harm I have found. The very special circumstances necessary to justify the development do not exist in this case.

*Other matters and conclusions on Ground (a)*

27. I have noted that the enterprise is a source of employment for the appellant's wife, who would be directly affected by my decision. I have taken into consideration the European Convention on Human Rights in particular Article 1 of the First Protocol, and Article 8 which states that everyone has a right to respect for his/her private and family life, his/her home and correspondence. However, this must be weighed against the wider public interest. For the reasons given above, I have found that the development is inappropriate in the Green Belt and is harmful to the openness of the Green Belt. I am satisfied that this legitimate aim can only be adequately safeguarded by the refusal of the deemed planning permission under the ground (a) appeal. On balance, I consider that the dismissal of the appeal would not have a disproportionate effect on the appellant or his family.
28. Having considered all other matters raised, including the site's planning history, planning statements and support for the development, I conclude that for the reasons set out above the ground (a) appeal and the DPA should fail.

**The appeal on Ground (f)**

29. The Council confirmed that the purpose of the notice is to remedy the breach of planning control, which is derived from S173(4)(a). I note that before the breach there were rural buildings on the site, but these have been demolished. The appellant's evidence is that prior to the breach there were some stone flags and hardstandings, but these have largely been replaced by the new build,

shipping-style containers, timber sheds and similar structures, and additional hard-surfacing of the site.

30. As I have stated above, the notice's steps should have required the removal of the fence. The appellant's evidence refers to the need for the fence to protect horse-riders using the public footpath; however, in the light of my findings on the ground (c) appeal, the fence is unauthorised because of its overall height. I will amend the notice to require either the removal of the fence, or its reduction in height so that it complies with the terms of Class A to Part 2 of the GPDO. Consequently, I see no reason to relax the corrected requirements of the notice because they are not excessive. The ground (f) appeal fails.

### **Formal Decision**

31. I direct that the enforcement notice be corrected by deleting all of section 5 and inserting the following requirements:
- (a) Remove all of the building from the Site
  - (b) Remove from the Site all portable buildings, sheds and similar structures
  - (c) Remove from the Site all generators and lighting posts
  - (d) Remove the wooden fence on the boundary with Scotland Lane or reduce the height of the wooden fence on the boundary with Scotland Lane to a height not exceeding 1 metre
  - (e) Remove the hard standing from the Site
  - (f) Remove all materials concerned with the demolition of the above from the Site
  - (g) Re-seed the land to re-instate the Site to its condition prior to the erection of the building.
32. I direct that the enforcement notice be varied by deleting all of section 6 and inserting the following time for compliance:
- For requirements (a), (b), (c), (d) and (f) – 3 months from the date the enforcement notice takes effect.
- For requirement (e) and (g) - 6 months from the date the enforcement notice takes effect.
33. Subject to the correction and variations, 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 1990 Act as amended.

*Alisan U Ghafoor*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Harrison	P Wilson & Company
Robert Rawlinson	Acland Bracewell Surveyors Limited
Ian and Debra Smith	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Richard Elliott	Rossendale Borough Council
Brian Taylor	Rossendale Borough Council
Iain N Bower	Lancashire County Council

DOCUMENTS & PLANS HANDED IN AT THE HEARING

1. Letter of notification
2. Pages 2 – 4 Robert Rawlinson's report
3. Ordnance Survey Index Map Plan for the appeal site.