



Appeal Decision

Inquiry held on 18-20 and 24 July 2006

Site visit made on 18 July 2006

by **Roger Priestley** BA(Hons) DipTP MRTPI FRGS

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

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Date
6 September 2006

Appeal Ref: APP/B1740/C/05/2003645

Flambards, Silver Street, Hordle, Hants. SO41 0FN

- 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 D Robinson against an enforcement notice issued by New Forest District Council.
- The Council's reference is 144/428/2005.
- The notice was issued on 22 July 2005.
- The breach of planning control as alleged in the notice is the material change of use of the land and buildings affected from agriculture to residential, comprising the use of buildings A, B, C and D shown hatched black on the enforcement notice plan as follows:
 - (a) Building A as a self contained unit of residential accommodation;
 - (b) Building B for domestic purposes ancillary to the residential use of building A;
 - (c) Building C for domestic storage ancillary to the residential use of the land; and
 - (d) Building D for domestic storage ancillary to the residential use of the land.
- The requirements of the notice are:
 - (1) Cease the residential use of the land and buildings affected;
 - (2) Remove all domestic fixtures, fittings and domestic appliances from buildings A and B shown hatched black on the enforcement notice plan and from the land affected;
 - (3) Remove all resultant debris from the land affected resulting from compliance with step (2) above; and,
 - (4) Remove all domestic items including all cars stored in buildings C and D from the land affected.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended.
- The evidence was heard under oath.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

The appeal site

1. The site, with a depth around 125 metres and a width of about 25m lies within a ribbon of mostly residential development on the south side of Silver Street, which links Hordle and New Milton to Lymington. The site is screened across its entire frontage, at a depth of around 16m from Silver Street, by the gables of two single storey buildings (identified on the notice plan as buildings C and D) and infill fences and gates. The intervening frontage section of the site comprises a hardstanding.
2. The principal buildings on the site are two poultry sheds (buildings D and E). Building C is a nissen hut and buildings A and B are smaller buildings of concrete block construction. Building A is divided into three sections – the part nearest the entrance comprises a sleeping

area and a sitting area and has cooking facilities; the second section is used for domestic storage and the third contains a shower/WC and hand-basin. Building B contains a washing machine, fridge, freezer and other domestic items. The principal buildings apart, the others have an aggregate area of around 90 sq m. Also on site, to the rear of the nissen hut, is a small caravan.

3. Immediately to the east is the dwelling Primrose Cottage and to the west, between the site and the dwelling Rosebery, is a paddock. To the north of Silver Street, which forms the boundary with the New Forest National Park, is open countryside. The site falls within the Green Belt.

The proposed enterprise

4. The appellant and his partner Ms Adams purchased the property in April 2005. It was in a state of neglect but for many years had been operated by Faccenda as an intensive rearing farm for table poultry. The current owners, who had previously lived and worked in the north of England, propose to run a specialist egg and laying-bird enterprise, developing premium markets. It is intended that the enterprise would comprise five laying flocks totalling some 1,200 hens, all being rare-breed or specialist egg breeds including White Star, Marans and Cotswold Legbars. Secondly, day old to month old chicks would be brought in and reared for sale as point-of-lay hens at around 17 weeks. This rearing enterprise is proposed in the Business Plan to be commenced in Year 2, with 2000 point of lays per year in 4 batches. Thirdly there would be a hatching enterprise, with batches of eggs set weekly and with the chicks to be reared for sale at 8-10 weeks. This component which is proposed to be introduced in Year 3 is intended to produce 2,000 chicks per year. It is also proposed that 3 polytunnels be erected at the southern end of the site for the production of tomatoes, under-planted with peppers.
5. An application for the temporary siting of a mobile home to provide accommodation for an agricultural worker for a three year period was refused in April.

The ground (b) appeal

6. Although initially of the view that the primary use remained agricultural with ancillary residential occupation, the contention for the appellant at the inquiry was that there was a mixed agricultural / residential use. At the date of the notice improvement works to the long established poultry buildings were in hand and I am satisfied as a matter of fact and degree that the agricultural use of the land was continuing. I agree that there was at this time a mixed agricultural / residential use and propose to correct the notice accordingly. The parties acknowledge that the notice could be so corrected without injustice and the appellant accepts that in this event the ground (b) appeal falls away. I proceed therefore to the appeal on planning merit.

The ground (a) appeal and the deemed application

Planning Policy

7. The relevant components of the Development Plan are the Hampshire County Structure Plan Review (SP) and the New Forest District Local Plan (LP). SP Policy G4 indicates that a Green Belt will be maintained in South West Hampshire and states that proposals within it will be subject to policies to check the unrestricted sprawl of large built-up areas, prevent

neighbouring towns from merging into one another and assist in safeguarding the countryside from encroachment. LP Policy DW-E30 refers to the presumption against inappropriate development in the Green Belt, and indicates that decisions on appropriateness or inappropriateness will be made in accordance with paragraphs 3.4 to 3.12 of PPG2.

8. Policy CO-E1 seeks to strictly control development in the countryside outside the New Forest and CO-H1 only permits new residential development in the countryside in certain specified circumstances, including conversions under CO-RB1 and agricultural justification under CO-H5. Amongst other things, the latter states that the labour needs require a full-time worker to be on hand day and night. A further requirement is that it can be demonstrated in the case of a proposed enterprise that it has been planned on a sound financial basis and the intentions are genuine. Where practical and appropriate, first consideration should be given to the conversion of an existing building under CO-RB1. The policy adds that where evidence of the financial soundness and future sustainability of the enterprise appears inconclusive, consideration may be given to permitting a caravan or other temporary accommodation for a limited period of time.
9. Related policy nationally is set out principally in PPG2 – Green Belts, and PPS7 – Sustainable Development in Rural Areas. PPS7 Annex A addresses agricultural, forestry and other occupational dwellings.

Main issue

10. The main issue in the appeal is whether, having regard to the agricultural justification, this is appropriate development in the Green Belt bearing in mind prevailing planning policies.

Reasons

11. Although the accommodation has been provided within existing buildings, buildings A and B are very small and the appeal is advanced on the basis that this comprises just temporary accommodation. The appellant, rightly in my view, does not plead a case on the basis of conversions Policy CO-RB1; no case is made either that the development would be appropriate as a re-use under PPG2 paragraph 3.8. Appropriateness rather turns on agricultural need.
12. The Council's view at the opening of the inquiry was that the appellant failed on criteria (i) to (iv) of Annex A paragraph 12. In the light, however, of the evidence given both by and on behalf of the appellant, the matters of dispute narrowed so as to focus on functional need and whether that need could be fulfilled by other existing accommodation which is suitable and available for occupation.
13. I turn to this below; suffice to say at this stage that the appellant has undertaken substantial works of improvement / reconstruction to the south barn (building E) and significant works also in relation to drainage provision around this barn. The works are evident in a number of the photographs provided. Although not experienced in poultry farming Mr Robinson has consulted widely with people in the industry and his business plan has been favourably received by, amongst others, the Group Secretary of the NFU and a Senior Poultry Inspector for DEFRA. There is an offer of a loan from the appellant's bank, which, by reason of its date, and notwithstanding the pre-application consultation on behalf of the appellant with its emphasis on organic vegetables, supports the contention that Mr Robinson

from the outset has had in mind the establishment of a poultry unit. There is clear evidence of a firm intention and ability to develop the enterprise and clear evidence also that it has been planned on a sound financial basis. The tests at Annex paragraph 12 (i) and (iii) are met.

14. Paragraph 12(ii) requires the functional test to be met and refers in turn to paragraph 4 which states that the test is necessary to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times. The Council accepts there is a requirement for someone to be readily available at most times but contends that provided the appellant lives sufficiently close to be able to respond to emergencies that might occur he does not need to reside at Flambards. The risks, rather, amount to a functional need requiring someone living no more than 20 to 30 minutes away.
15. The risks relate fundamentally to the poultry. There would be around 1200 laying hens, 1000 chicks being reared to at least 8 weeks or to point of lay at any time and around 200 eggs in incubation. For the appellant it is argued that due to the mix of flocks, the numbers of young chicks under heat and the need to attend to any problems with incubators at very short notice there is a functional need to be resident on site or within a few minutes of the farm. The laying hens during the daytime would be in outside runs enclosed by wire fences and would be susceptible to sudden bursts of panic caused by stormy weather, foxes prowling, low flying aircraft, hot air balloons, birds of prey and so on. Despite the wire compounds there would also be likely to be predator attacks by foxes and badgers. Heater failure is identified as the main concern in relation to the young chicks; the incubator and hatchery is regarded especially sensitive to emergencies.
16. The functional test described in Annex A paragraph 4 is necessary to establish whether it is essential for the proper functioning of an enterprise for one or more workers to be readily available at most times. The example of the need to deal quickly with emergencies that could otherwise cause serious loss of crops or products by the failure of automatic systems is of particular note in this instance. The concerns focus largely on the risk of failing heatlamps for the young chicks and the problems that might arise in relation to the incubator / hatchery.
17. With a range of breeds being reared I accept that the chicks would be likely to be supplied on the basis of some 12 to 15 different batches through the year such that the period of risk from heatlamp failure would be virtually all year round. As to the incubators, it would seem that a system failure extending beyond 30 minutes would start affecting the chicks. I can appreciate, moreover, that it would not just be the time taken to reach the unit in the event of an alarm that would be important but the time taken also to get the incubator operating again. Although the equipment would be new and should not fail total reliability, as the Inspector in the Bonner's Paddock case indicated, could not be guaranteed. I am aware also of the emphasis placed by Mr Mallett, Chairman of the Kent Poultry Club, on 24 hour responsibility, particularly when incubating and rearing young stock. The need to deal with emergencies in respect of the heaters and incubator are matters to which I accord considerable weight.
18. The concerns as to predators, notably foxes, are not so persuasive, but nonetheless add to the case for the appellant. The evidence indicates that losses arising from foxes can occur despite the presence of electric fencing. That said, I do not assign any significant weight to the matter of fright from aircraft or other noise events as this is not supported by substantive

evidence. The agricultural witness for the Council who operates his own poultry business gave a clear indication that his hens were untroubled either by low flying military aircraft in the locality where he lives or by severe weather conditions which have been experienced. With a ribbon of housing extending along this section of Silver Street this is not a remote site and whilst noting the support from the Police the security concerns do not amount to a cogent reason for on-site accommodation. Even so, and having regard to the proposed enterprise as a whole, I believe it to be essential for its proper functioning for someone to be readily available at most times.

19. Criterion (iv) of paragraph 12 to Annex A is that the need cannot be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation. As to the appropriate “area”, Mr Williams for the Council referred to a driving time of 20 to 30 minutes from the site and Mr Kernon, in cross examination, 15 to 20 minutes. Whatever the precise area, there are a number of properties on the market within around 5 minutes of the site, including Green Oak, Silver Holme and Four Winds on Silver Street. The asking price for Green Oak is over £500,000, Silver Holme is offered at almost £350,000 and Four Winds at £415,000. Less expensive, at around £190,000 are some dwellings in nearby New Milton.
20. Details, however, of the circumstances of the appellant and his partner were made known during the course of inquiry. Around £150,000 has been spent on purchasing the site and on the refurbishment to date, and it is estimated, and not in dispute, that a further £65,000 is required to get the business up and running. Although Mr Robinson retains some land in Yorkshire this would need to be sold in order to establish the poultry operation. A mortgage would be required to purchase a dwelling and it is very likely that the resultant repayments would reduce the income from the enterprise to less than the minimum agricultural wage. It was indeed conceded for the Council that the purchase of a house would break the back of the business. It must follow that the functional need cannot be fulfilled by other accommodation in the area which is suitable and available for occupation. In the circumstances, and since no point is taken on criterion (v), the PPS7 tests for temporary agricultural dwellings are met.
21. LP Policy CO-H5 states amongst other things that the labour needs of the enterprise require a full-time worker to be on hand day and night. There is some dispute as to whether or not this applies to temporary dwellings. Nonetheless, it is acknowledged for the Council that the “primarily employed” test in PPS7, which only applies to permanent dwellings, would be met and with this in mind I do not regard the concerns as to the scale of the enterprise as determinative. The text to CO-H5, moreover, at E2.10 states in terms that this Policy reflects government advice given in PPS7. In all the circumstances I find on the basis of the temporary approval that is sought that this amounts to appropriate development in the Green Belt. I regard the appeal development to be in accordance with the development plan.
22. The Council’s planning witness questioned whether the need by the appellant or any future occupier would continue. There are plainly concerns also on the matter of precedent. The text to CO-H5 at E2.12 indicates, however, that following a temporary permission the enterprise would need to be reassessed. This is echoed in PPS7. This site, moreover, was previously used for poultry and the appeal concerns the re-use of existing, albeit small, buildings and I find no material effect on openness or conflict with the main purposes of the Green Belt. Although situated in the countryside Flambards is closely related to a

significant ribbon of residential development, and the appellant has established a firmness of intention and invested substantially in both time and cost over some 18 months. It is most unlikely that these circumstances would be replicated elsewhere and I do not therefore consider the fear of precedent to be a substantive factor militating against temporary approval. For the same reason the various appeal decisions relied upon by the parties in support of their respective positions do not amount to an overriding factor in this case.

Conclusion

23. For the reasons given above and having regard to all other matters raised I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The ground (g) appeal does not therefore need to be considered. I shall impose an occupancy/temporary condition on the lines suggested. Bearing in mind the temporary nature of the consent and the extent to which the site is screened by timber fencing, buildings and hedges, I see no need for any further conditions.

Formal Decision

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24. I direct that the enforcement notice be corrected by the deletion of lines 1 to 3 of the allegation set out in section (3) and the substitution of “the material change of use of the land and buildings affected from agriculture to a mixed use for agriculture and residential, the latter comprising the use of buildings A, B, C and D shown hatched black on the enforcement notice plan as follows”.
25. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the land and buildings at Flambards, Silver Street, Hordle, as shown on the plan attached to the notice, from agriculture to a mixed use of agriculture and residential, the latter comprising the use of buildings A, B, C and D shown hatched black on the enforcement notice plan as follows: building A as a self contained unit of residential accommodation; building B for domestic purposes ancillary to the residential use of building A; building C for domestic storage ancillary to the residential use of the land; and building D for domestic storage ancillary to the residential use of the land, subject to the following condition:
- (i) the residential occupation of the buildings shall be limited to persons solely or mainly working in agriculture on the holding known as Flambards, and to any resident dependants, for a period of no more than 3 years from the date of this decision, after which they shall revert to their previous use.

Roger Priestley

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr S Head	of Counsel, instructed by Mr D Robinson, Flambards, Silver Street, Hordle.
He called	
Mr R Tear BSc DipArch MRIBA	Principal, Richard Tear Architects Ltd., Heathercroft, Lyndhurst Road, Landford, Wilts. SP5 2AS
Mr D Robinson	The appellant.
Mr T Kernon BSc(Hons) MRAC MRICS FBIAC	Kernon Countryside Consultants, Brook Cottage, Purton Stoke, Swindon, Wilts. SN5 4JE
Ms W Adams	Flambards, Silver Street, Hordle. The appellant's partner.

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Burton	of Counsel, instructed by the Solicitor, New Forest DC.
He called	
Mr R Bryer BA(Hons) MRTPI	Planning Consultant acting for New Forest DC
Mr P J Williams BScAgric(Hons) OND MBIAC	Director, Reading Agricultural Consultants Ltd, Races Farm, Aston Street, Aston Tirrold, Oxon. OX11 9DJ

DOCUMENTS

Document 1	The Council's letter of notification and list of persons notified.
Document 2	Statement of Common Ground.
Document 3	Letter from Mr D Perry, Rosebery, Silver Street, Hordle.
Document 4	Houses for sale at Silver Street, the "diary" compiled by Ms Adams, and details of AXT-Electronic doors. Handed in by NFDC.
Document 5	Bundle of appeal decisions re. Little Hawkwell Farm, Tomlins Orchard, Pinewood Farm and Bonner's Paddock, handed in for the appellant.
Document 6	Expenses incurred by the appellant up until May 2006 and estimate of future costs to equip the building and legal fees.
Document 7	Letter to NFDC from Reading Agr. Consultants re. Lakeside, Ossemsley, dated 30 March 2006.
Document 8	Letter to the appellant dated 21 July 2006 from M E Reed, Manor Road Nursery Ltd, together with his response to questions on tomato growing and base crops.
Document 9	Small Farm Training Group information.
Document 10	Plan / details of polytunnel production related to Mr Kernon's supplementary 2 – tomato production calculations.
Document 11	Notes of case – Keen v. SSE and Aylesbury Vale DC [1995].

PLANS

Plan A	The plan attached to the enforcement notice.
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