



Appeal Decision

By **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 10/07/2025

Appeal reference: CAS-03471-R5M2D1

Site address: Land at Castle Farm, Bishton, Newport, NP18 2DZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) by Martin Webber and Susan Patricia Webber against an enforcement notice issued by Newport City Council.
 - The enforcement notice, numbered E22/0042 (1456), was issued on 31 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building for the purpose of housing vending machines for the sale of milk and milkshakes.
 - The requirement of the notice is:
 - i) The unauthorised building shall be locked and secured to prevent customer access to the vending machines outside the times identified below:
Monday to Saturday 0830 to 1830 hours.
Sundays and Bank Holidays 0900 to 1230 hours.
 - The period for compliance with the requirement is: Within 14 days of the day this Notice takes effect.
 - The appeal is proceeding on ground (a), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended [the Act].
 - A site visit was made by the Inspector on 10 June 2024.
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Decision

1. The appeal on ground (c) is dismissed. The appeal on ground (a) is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the above development subject to the conditions set out in the annex.

Background and Procedural Matters

2. The enforcement notice (EN) identifies the land comprised within Castle Farm in the ownership of the appellants. The farmhouse, yard and buildings are close to the northern edge of the village of Bishton. The milk vending machines are within a small building similar to a shed. A shipping container and some benches are sited nearby. There are 4 dwellings close to the development contained within former barns.
3. There was a farm shop in one of the smaller barns as well as the milk vending machine building on the site. The LPA purported to take action against both these activities as notices were issued in respect of the change of use of a farm building to a shop on 17 November 2022 [Ref: E20/0141(1439)] and against the installation of a milk vending machine on 4 August 2023 [Ref: E20/0141(1432)]. Appeals on grounds (a), (c) and (f) were made against both notices. The notices were found to be defective because of errors in identifying the correct planning unit and the correct breach in respect of the milk

vending machine. The identified errors were not capable of correction and both notices were quashed in a decision dated July 2023. The farm shop has ceased trading and is not before me.

4. An application for a Lawful Development Certificate (LDC) for the existing use of a milk vending machine and farm shop ancillary to the main agricultural use of the planning unit as a farm was refused in November 2023.

The appeal on ground (c)

5. The wording of the breach of planning control as alleged in the enforcement notice (EN) appears to relate to operational development (erection of a building) but also refers to a change of use (for the purposes of housing vending machines). The Local Planning Authority (LPA) considers that the building is not lawful because it was erected less than 4 years before the EN was served. Furthermore, the Council claims that it is not permitted development because it is or was not reasonably necessary for the purposes of agriculture and that prior approval for its siting design external appearance, etc. should have been obtained before it was constructed. This latter point is correct. To claim that a development is permitted development under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] it must have complied with the conditions and limitations to permitted development, particularly any requirement to seek prior approval before beginning the development. I conclude that there has been a breach of planning control in respect of the erection of the building.
6. The LPA has sought to under-enforce in respect of the building and the use as the requirements of the EN do not include removal of the building or to cease the use. The requirements solely relate to controls on the hours of operation of the use. In these circumstances s.173 (11) of the Act provides that planning permission would be treated as having been granted by virtue of section 73A in respect the building and use. However, these provisions do not mean that the breach has not occurred, and I note that in their evidence the appellants have accepted that the erection of the building is a breach of planning control.
7. The appellants have referred to the principle established by caselaw and quoted in appeal decisions that the retailing of goods produced on a farm does not require planning permission. This principle also allows for a small amount of material or goods being imported from outside the land. This caselaw is reflected in Technical Advice Note 6: Planning for Sustainable Rural Communities [at paragraph 3.8.1]. The appellants devote considerable argument to this point. I note the precedents cited indicate that the retail of milk produced on a farm from that farm may not require planning permission subject to consideration of the impact on the retailing on the character of the main use. The point made in the LDC report that the dairy herd was brought to the farm to provide milk to the vending machine rather than there being an established herd on the farm is largely irrelevant, as the milk is now produced on the farm. The evidence is that the milkshakes are 95% milk, the other 5% being syrups imported to the site. The LPA has not attempted to explain why this does not constitute a small amount of imported product. The Council's evidence focuses on the development being out of character with a farm due to traffic to the site and use by large numbers of patrons when the use first began. However, the erection of the building is what is before me. That development would have required planning permission and does not have any; and so as a matter of fact the appeal on ground (c) must fail.

The appeal on ground (a)

8. I agree that the small shed-like building is in character with the farm use and does not result in any harm. And as it is being used for ancillary retail of milk produced on the farm, it would not be contrary to national and local policies for agricultural development in the countryside. I am reinforced in these conclusions by the fact that the LPA did not enforce against either the building or use itself, obviously considering them to be acceptable subject to hours of operation being imposed.
9. The Local Planning Authority has framed the requirement of the notice as restricted opening hours for the vending machines. The appellants are currently complying with these opening hours. There are a number of former barns converted to dwellings within close to the development. The residents have suffered detrimental impacts on their living conditions by virtue of noise and disturbance from traffic to the site using the nearby farm access lane (including issues with late night traffic and headlights when the use started), from customers congregating outside the building, the closing of car doors, etc. Several of the residents have objected to any alteration of opening hours as a result of this appeal. They consider that the current opening hours are fair to all parties.
10. Such detrimental impacts would be contrary to Policies SP5 and GP2 criteria (i) & (ii) of the Newport Local Development Plan. In the light of these concerns, restrictions on opening hours are necessary. I consider that this can be better secured by a planning condition and I will therefore allow the appeal on ground (a). The appellants seek longer opening hours as follows:
7:00 – 20:00 Monday to Saturday; and
9:00 – 17:00 on Sunday and bank holidays
11. In support of this proposed extension the appellants refer to actions they have taken to limit disturbance to nearby residents. The vending machine has been sited to the west of the former farm shop, which provides screening. Downlights have been introduced around the site to limit light pollution from the site and CCTV has been installed to act as a deterrent to bad behaviour. Signage requesting that all customers park with their headlights facing in a westerly direction has also been erected. The appellants argue that the restricted opening hours have had an adverse impact on sales. This could have been due to the fact that there would have been a “honeymoon” period when the facility was first installed and would have been busier.
12. I consider that the appellants efforts to reduce the impact of the development would not address the noise and disturbance concerns. These and the other arguments made would not justify the increased hours. However, I judge that a small extension to Monday to Saturday hours and an allowance to 16:00 on Sunday and bank holidays would be acceptable. The latter would align with Sunday trading hours.
08:00 – 18:30 Monday to Saturday; and
9:00 – 16:00 on Sunday and bank holidays
13. Although not suggested by the LPA, I also consider that a condition specifying that only milk produced on the farm is retailed from the development would be necessary in order to control the development as ancillary to the main agricultural use. This is also the basis of the acceptability of the development as argued by the appellants. Future Wales Policy 9 requires that all developments must enhance biodiversity, and I attach a condition to ensure that a scheme is submitted for approval within 2 months of this decision. This should be commensurate with the small scale of the approved development.

14. Subject to these conditions the appeal on ground (a) will be allowed and the EN quashed. In these circumstances, I do not need to consider the appeal on ground (f).

Other Matters

15. As the appeal succeeds, I shall only comment on one of the comparators raised by the appellants. The milk vending machine in Marshfield is within a settlement some distance away from the appeal site. It is located at a community facility with existing parking facilities. I note that the LPA considered the location and potential adverse impacts prior to approving that proposal. I do not consider that the circumstances of that case are comparable to this development.

Conclusion

16. For the above reasons and having regard to all other matters raised, I conclude that the appeal on ground (c) fails. I conclude that the appeal on ground (a) succeeds and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the above development subject to the conditions set out in the annex
17. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives

A L McCooey

INSPECTOR

ANNEX

Conditions

1. The use shall not be carried out outside the hours of 08:00 – 18:30 Mondays to Saturdays; and 9:00 – 16:00 on Sundays and bank holidays. Outside these hours the building shall be locked to prevent customer access.

Reason: In the interests of the living conditions of residents, in accordance with Policies SP5 and GP2 of the Newport Local Development Plan

2. Only milk produced on Castle Farm shall be retailed from the development hereby approved.

Reason: To ensure that the development is ancillary to the main agricultural use of the farm in accordance with Planning Policy Wales and Technical Advice Note 6: Planning for Sustainable Rural Communities.

3. A scheme for biodiversity enhancement (including implementation) shall be submitted for approval to the local planning authority within 2 months of the date of this decision. The scheme shall be implemented in accordance with the approved details.

Reason: In the interests of maintaining and enhancing biodiversity, in accordance with Future Wales Policy 9.