



## Appeal Decisions

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by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date of decisions: 03/07/2023

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### **APPEAL A – Ref: CAS-02151-T3G7Y8**

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.
  - The appeal is made by Susan Patricia Webber against an enforcement notice issued by Newport City Council.
  - The enforcement notice, Ref: E20/0141(1432), was issued on 4 August 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the installation of a milk vending machine.
  - The requirements of the notice are: i) The milk vending machine unit shall be locked and secured to prevent customer access outside the times identified below: Monday to Saturday 0830 to 1830 hours; and Sundays and Bank Holidays 0900 to 1230 hours; ii) No customers of the milk vending machine shall be permitted to remain on the land after 7pm Monday to Saturday and after 1pm on Sunday.
  - The period for compliance with the requirements is one day after the day 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.
  - A site visit was made on 20 March 2023.
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### **APPEAL B – Ref: CAS-02431-K1H6D7**

Site address: Land at Castle Farm, Bishton Road, 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.
- The appeal is made by Susan Patricia Webber against an enforcement notice issued by Newport City Council.
- The enforcement notice, Ref: E20/0141(1439) , was issued on 17 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a farm building to a shop (A1 use class).

- The requirements of the notice are to cease the use of the building as a shop and remove all paraphernalia associated with the retail use.
  - The period for compliance with the requirements is four calendar 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.
  - A site visit was made on 20 March 2023.
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## Decisions

### ***Appeal A – Ref: CAS-02151-T3G7Y8***

1. The Enforcement Notice is quashed.

### ***Appeal B – Ref: CAS-02431-K1H6D7***

2. The Enforcement Notice is quashed.

## Procedural Matters

3. As set out above, there are two appeals at the site. Whilst I shall consider each case on its own particular merits, to avoid duplication, I shall deal with the two cases together in this single document, albeit with separate formal decisions.

## Reasons

4. The appeal relates to land at Castle Farm which is located along Bishton Road, to the north of Bishton in Newport. The farmstead comprises a farmhouse, large animal barns and a smaller barn which has recently been used as the farm shop subject of Appeal B. In that case, the breach of planning control alleged is: *“Without planning permission, the material change of use of a farm building to a shop (A1 use class)”*. A building with an appearance of a shed that accommodates a milk vending machine has also been constructed as part of the enterprise’s wider diversification endeavours. That milk vending machine is the subject of the Enforcement Notice under Appeal A. The alleged breach of planning control in that case is: *“Without planning permission, the installation of a milk vending machine”*.
5. Both Appeal A and Appeal B have been lodged under the grounds set out under Section 174(2)(a), (c) and (f) of the Act. The Council is seeking to under-enforce in the case of Appeal A which relates to the milk vending machine. Indeed, the requirements of the Notice seek only to restrict its operating hours. The Notice subject of Appeal B however, requires the cessation of the use of the farm building as a shop and the removal of all paraphernalia associated with the retail use. Much of the appellant’s arguments in respect of the appeals under ground (c) and ground (a) of both Appeal A and Appeal B relate to the proportion of goods produced on Castle Farm. Indeed, the general thrust of such arguments is that the level of imported produce is either de minimis, and that the retail functions do not therefore constitute a material change of use, or that it is otherwise acceptable and/ or capable of being controlled in planning terms.
6. Within this context, I wrote out to the main parties shortly following my site inspection to outline a number of concerns with the Enforcement Notices. Firstly, in an email dated 15 May 2023, I raised concerns about the Council’s identification of the planning unit. Specifically, I explained to the parties that, having had regard to the written submissions, and the observations made at the time of my site inspection, it was my view that the

separate parcels of land subject of the Enforcement Notices appear to function within a single yet mixed use planning unit. In coming to this conclusion, I noted the fact that both Notices relate to the retail function of Castle Farm and raised concern that the subdivision of the retail activity appeared to be artificial.

7. In addition, secondary concerns were raised in respect of the fact that the alleged breach of planning control subject of Appeal A attacks the "*Installation of a milk vending machine*", which is located within a building not referenced in the alleged breach, rather than the material change of use of the land. This is despite the fact that the Council's supporting evidence focuses on the frequency and nature of the visits to the retail offering, before appearing to ultimately conclude that the physical and functional alterations have materially altered the character of the site. Given the clear implications of the overall concerns, I advised that it was unlikely that I would be able to make the necessary corrections to the Notices under the powers attributed by Section 176(1) of the Act, not least because the necessary corrections would result in a materially different situation to that which formed the basis of the appeal.
8. I note the responses provided by the Local Planning Authority (LPA). However, whilst the background to the enforcement proceedings was useful, it did not satisfy the foregoing concerns. The Council queried the significance of the planning unit. However, the planning unit is a well-established concept of enforcement and it is essential for LPAs to correctly define the planning unit in any case that involves a material change of use. Indeed, an accurate allegation and associated red line boundary can only stem from the correct identification of the planning unit. It is my view, that this has not happened in this case and this prevents the implications and merits of the retail functions at Castle Farm from being considered in an integrated and comprehensive manner under each of the respective grounds of appeal.
9. In coming to these conclusions, I have been particularly mindful that the respective retail functions at Castle Farm operate within metres of each other, are managed and operated by the same business and share the same access and parking facilities. They are also not separated by any boundary or physical feature. I recognise the fact that the building that houses the automated vending machine is located outside of the shop. However, given the circumstances described above, I do not consider that such functions represent different breaches of planning control in this instance. Indeed, despite having considered the LPA's arguments, I concur with the appellant's position that the vending machine and the shop together comprise the retail function at Castle Farm and that they therefore operate from a single mixed use planning unit. This has clear implications under the various grounds of appeal, not least because it can artificially distort an assessment of the proportion of goods imported to the site.
10. Arguments in respect of the allegation in Appeal A also remain confused, with some elements of the Council's evidence referring to permitted development rights for operational development, under Part 6, Class A of the Town and Country Planning (General Permitted Development Order) 1995 as amended, and other elements concluding on the use of the land. Moreover, the overall concerns are exacerbated by the red line boundaries. Indeed, whilst the boundary of the vending machine subject of Appeal A incorporates a relatively wide area that includes other buildings and uses, it appears to omit areas of parking and does not include the access onto Bishton Road. There are also concerns in respect of Appeal B, with the red line boundary of the shop being delineated in a tight manner around the converted building, excluding the wider areas of land used for parking or access purposes.
11. Therefore, on the basis of the foregoing analysis, I find that the Enforcement Notices subject of both Appeal A and Appeal B are defective on their face. I am aware of the wide

powers of correction under the provisions of Section 176(1) of the Act and have given full consideration to the Council's assertions that the concerns identified could be corrected, although the precise terms of such correction remain unclear. It is, however, clear that the necessary corrections to the alleged breaches of planning control, the site boundary and the associated requirements would fundamentally alter the Notices. This would have significant implications for the case that the appellant would need to provide to defend the appeals. In these circumstances I am not therefore satisfied that the Notices could be corrected without causing significant injustice. For this reason, and having considered all matters raised, I conclude that the Enforcement Notices subject of both Appeal A and Appeal B are invalid and that they should therefore be quashed. As a consequence of this finding, the respective appeals under the grounds set out in Section 174(2)(a), (c) and (f) do not fall to be considered.

*Richard E. Jenkins*

INSPECTOR