

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD  
PLANNING COMMITTEE**

**MAIDENHEAD DEVELOPMENT CONTROL PANEL**

8 June 2016

Item: 9

<b>Application No.:</b>	16/01289/CPD
<b>Location:</b>	Land Between Lightlands Lane And Strande View Walk And Strande Lane Cookham Maidenhead
<b>Proposal:</b>	Certificate of lawfulness to determine whether a moveable poultry shed is lawful.
<b>Applicant:</b>	Mr Driver
<b>Agent:</b>	Mr Anthony Paul Kernon - Kernon Countryside Consultants Ltd
<b>Parish/Ward:</b>	Cookham Parish

**If you have a question about this report, please contact:** Susan Sharman on 01628 685320 or at [susan.sharman@rbwm.gov.uk](mailto:susan.sharman@rbwm.gov.uk)

**1. SUMMARY**

- 1.1 This is an application for a Certificate of Lawfulness of a Proposed Use or Development relating to a proposed poultry shed on agricultural land. The issue for consideration is whether the poultry shed would be lawful for planning purposes. Lawful development is development which does not require planning permission. Planning permission is not required for works or a use which does not constitute development under section 55 of the Town and Country Planning Act 1990, is otherwise exempt, or benefits from an existing planning permission.
- 1.2 A legal opinion has been sought in this case which forms the basis of this report. As a matter of fact and degree, the erection of the building constitutes development for which express planning permission is required.

**It is recommended the Panel refuses the application for a Certificate Of Lawfulness of a Proposed Development for the following summarised reason (the full reason is identified in Section 8 of this report):**

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| 1. | At the time of the application, the proposal would not be lawful for planning purposes. |
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**2. REASON FOR PANEL DETERMINATION**

- The Borough Planning Manager and Lead Member for Planning consider it appropriate that the Panel determines the application.

**3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 3.1 The application site is an open field of approximately 2.4 hectares, located to the east of Lightlands Lane. There is an existing access off Strande Lane and a public right of way runs along its western boundary.
- 3.2 The field is bounded by Lightlands Lane to the east, along which there are a number of individual, detached residential properties. Open land lies to the north and north-west, while Strande View, with some residential properties, lies adjacent to the south-west boundary of the field. Strande Lane lies adjacent to the south boundary. The field sits at lower level than its surroundings and is largely enclosed by established hedgerows and trees.

#### **4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY**

- 4.1 One chicken shed is proposed which will measure 32m by 8m. The shed will be constructed of bolted-together sections with a suspended floor mounted on field skids. The structure will be clad in polythene. It would be anchored to the ground and moved to a different part of the field at a frequency of not more than 75 weeks.
- 4.2 The planning history of the site is not relevant to the consideration of this application.

#### **5. STRATEGIES AND POLICIES**

- 5.1 National and Local Plan policies and strategies are not relevant to the consideration of this type of application.

#### **6. EXPLANATION OF RECOMMENDATION**

- 6.1 Lawful development is development which does not require any further planning permission (as per section 192 of the *Town and Country Planning Act 1990* ("the Act" hereafter). Planning permission is not required for works or a use which does not constitute development under section 55 of the Act, is otherwise exempt, or benefits from an existing planning permission.
- 6.2 Planning Practice Guidance explains the approach the Government intends, and it asks that authorities answer the following question:

*"If this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"*

- 6.3 The local authority must issue a certificate if they are satisfied (on the balance of probabilities) that the use or operations described in the application would be lawful if instituted or begun on the date of application (as set out in section 192(2) of the 1990 Act).

##### **Assessment**

- 6.4 The report submitted with the application correctly identifies that the poultry sheds are subject to the test set out in *Skerrits of Nottingham v Secretary of State for the Environment, Transport and the Regions [2000] 2 P.L.R. 102* (read in conjunction with *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co.Ltd [1949] 1 KB 385*).
- 6.5 Whether poultry shed constitutes a building, and as such could be considered building operations, is subject to a three-stage test drawing from the following factors:
- Size.
  - Degree of permanence.
  - Physical attachment to the land.

The *Skerrits* test has been scrutinised and refined by subsequent cases.

- 6.6 In 2012, the *Skerrits* test was refined by the case of *R. (on the application of Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)*. In that case a local authority had been asked to consider whether mobile poultry units were "development". They concluded that the units did not fall within the definition of "development" at section 55 of the 1990 Act, as their mobility meant that they were chattels.
- 6.7 The Court concluded that the authority erred in taking too narrow an approach to the meaning of development in section 55. The Council should have considered whether the unit was an "erection" or a "structure" within the meaning of section 336(1) of the Act, particularly in light of the units' substantial size and weight.

6.8 The Court also commented that section 55(1A) was inclusive but was not intended to be an exhaustive definition of “building operations”, and that in any event the construction and installation of the units was capable of coming within section 55(1A)(d) (defined “as other operations normally undertaken by a person carrying on business as a builder”). In addition, the Court considered that the words “other operations in, on, over or under land” in section 55(1) were sufficiently broad to encompass the construction and installation of the poultry units, even if those works did not fall within section 55(1A).

6.9 In order to qualify as ‘building operations’ for the purposes of the Act, operations must relate to a building. The term ‘building’ in section 336(1) of the 1990 Act has a wide meaning, including any structure or erection. The case law is clear in concluding that the definition of ‘building’ should be interpreted to include structures which would not ordinarily be described as buildings. The starting point in assessing a potential building is the three-part test identified in *Cardiff Rating Authority* and refined in *Skerrits*.

### **Size**

6.10 The size of the units is material. The hen houses in this matter are 32m by 8m wide overall. The units in *Save Woolley Valley* were 20m by 6m wide. As a matter of fact and degree, the structure’s dimensions are significant in the planning context.

### **Permanence**

6.11 In *Barvis Ltd v Secretary of State for the Environment [1971] 22 P&CR 710*, a tower crane was held to be a “structure” or “erection” and therefore considered a “building”, even though it was moveable, and was in practice moved around the site. Mobility does not preclude a structure being considered a building.

6.12 The Court in *Save Woolley Valley* refined the existing test by emphasising that permanence must be construed in terms of significance in the planning context. This is in line with the Judgment in *Hall Hunter v First Secretary of State [2007] 2 P&CR 5*. In that matter polytunnels were intended to remain in one location for a three-month period. The Inspector found this to be sufficient to be of consequence in the planning context. This is because the units remained in the field, and there was no limit on their stay there. The ability to move them around that field did not have any impact on the significance of their continued presence in planning terms. Hence the polytunnels were considered to be permanent. Mr Justice Sullivan sums it up as follows:

*“In view of the fact that machines were used to screw the “vast number of ... legs needed” up to one metre into the ground, it is not surprising that the Inspector concluded “the polytunnels have a substantial degree of physical attachment to the ground”. “Permanence’ does not in this context necessarily connote a state of affairs which is to continue forever or indefinitely. It is matter of degree between the temporary and the everlasting” (see per Morritt LJ at page 1036 of Skerrits ). The fact that a large and well constructed structure is capable of being, and is, dismantled and removed annually for a short time is not determinative (see per Pill LJ at page 1035 of Skerrits ).*

*If one asks how long must a structure or erection remain in situ for there to have been a sufficient degree of permanence, the answer is: “for a sufficient length of time to be of significance in the planning context” (see per Schiemann LJ at page 1034 of Skerrits ). The Inspector’s finding that the polytunnels “would remain in one particular location from between three and seven months in any one year” (paragraph 54) is not challenged. His conclusion that “even the shortest of those periods of time would be a sufficient length of time to be of consequence in the planning context and more so in respect of the longer periods” cannot be said to be unreasonable.”*

6.13 Permanence, as can be seen, is a matter of degrees. In this matter the poultry unit may well be moved around the field, but the significance of the unit in planning terms will remain the same or very similar. It is a matter of professional judgment, but it is the view of the Local Planning Authority that the keeping of the units in situ for a 72-75 week period falls clearly within the realm of significant in the planning context. That is roughly a 16-17 month period.

- 6.14 To put this application in perspective, in *Save Woolley Valley* it was intended that the units would be moved every eight weeks. Following Mr Justice Sullivan's Judgment in *Hall Hunter*, three to seven months is clearly significant enough to rely upon in terms of demonstrating significance in the planning context, but in each case it falls to be assessed as a matter of fact and degree. The period applied for in this case greatly exceeds both of those indicative periods, and it is entirely reasonable for the Council to conclude that the structures are, for the purposes of assessing permanence, permanent.
- 6.15 The applicant's supporting Explanation indicates that they have had sight of the *Save Woolley Valley* and *Hall Hunter* decisions. At paragraph 4.5 they assert that 'it would not attain a degree of permanence if it is moved as described every 75 weeks'. This conclusion is directly at odds with the conclusions reached by Mr Justice Sullivan in *Hall Hunter*.

### **Physical attachment**

- 6.16 The structure would only be tethered to the ground temporarily, through the use of tent pegs. This factor weighs in support of the applicant's assertion, but it is not determinative. There is also limited information available in respect of the method of assembly, which is briefly referred to at paragraph 3.6 of the Explanation report. It is not clear whether this is bolted together on site, who would bolt it together, or whether any other works would be needed. It is therefore difficult to assess the specific operations which would form part of the installation process, and more detailed information could better inform this aspect of the assessment.

### **Overall**

- 6.17 The proposed structure is of a size which is significant in planning terms given its dimensions. It would be temporarily affixed to the ground, and capable of movement. However the proposed structure would have a permanent character. The fact that the structure is capable of being moved every 72-75 weeks is not determinative in establishing permanence. The length of time that the structure would remain *in situ* is sufficient to be of consequence in the planning context, and that degree of permanence is a clear indicator that, for the purposes of the 1990 Act, the structure can be described as a building for development control purposes.
- 6.18 Limited information has been supplied about the method of construction. The erection of a new building is not specifically listed in the definitions of 'building operations' at section 55(1A) of the Act, but this list is not exhaustive. The erection of a new building falls within the final clause of the definition as being work normally undertaken by a person carrying on business as a builder. The design and size of the building makes it probable that it would be erected on the site. I consider that the work involved in the erection of the building amounts to a significant building operation, given its size and permanent nature.
- 6.19 As a matter of fact and degree, the erection of the building constitutes development for which express planning permission is required. Planning permission has not been granted for the development, and as such the proposal would amount to a breach of planning control.

## **7. APPENDICES TO THIS REPORT**

- Appendix A - Site location plan

## **8. RECOMMENDED REASON FOR REFUSAL**

1. The proposed structure is of a size which is significant in planning terms given its dimensions. Although it would be temporarily affixed to the ground, and capable of movement, the proposed structure would have a permanent character. The length of time that the structure would remain *in situ* is sufficient to be of consequence in the planning context, and that degree of permanence is a clear indicator that, for the purposes of the 1990 Act, the structure can be described as a building for development control purposes. Limited information has been supplied about the method of construction. However, the design and size of the building makes it probable that it would be erected on the site and it is considered that the work involved in the erection of the

building amounts to a significant building operation, given its size and permanent nature. As a matter of fact and degree, the erection of the building constitutes development for which express planning permission is required.