



PLANNING STATEMENT

CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT

Land West of Dunwood Farm, Dunwood Lane, Stoke-on-Trent, ST9
9QW

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CONTENTS

1. INTRODUCTION

2. SITE AND EXISTING LAWFUL USE

3. THE PROPOSAL

4. THE LEGAL FRAMEWORK

5. ASSESSMENT

6. CONCLUSION

1. INTRODUCTION

This Statement is submitted in support of an application made under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness of Proposed Use or Development. The application seeks formal confirmation that the proposed siting of a fully mobile free range egg unit on land edged red on the accompanying site plan (drawing ref. WP010726) would be lawful, because it would not constitute "development" within the meaning of Section 55 of the 1990 Act and therefore does not require planning permission.

An application under Section 192 is determined solely on the legal question of whether the proposal would be lawful. The planning merits of the proposal including its visual impact, amenity considerations, or any other material planning considerations are irrelevant to the determination. This is confirmed by the Planning Practice Guidance on Lawful Development Certificates, which makes clear that a certificate application is not a planning application and the test is one of law and evidence, not planning judgement on the merits.

The onus of proof rests with the applicant, and the relevant standard is the civil standard: the balance of probability (see *F W Gabbittas v Secretary of State for the Environment* [1985] JPL 630). The Guidance confirms that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, the certificate should be granted. This Statement, together with the site plan and the manufacturer's specification, provides a precise and unambiguous description of the proposal sufficient to enable the Council to determine the application.

For the reasons set out below, the siting and periodic relocation of the mobile unit within the red line area involves neither operational development nor a material change of use of the land. It follows that the proposal is not "development" as defined by Section 55 of the 1990 Act, that planning permission is not required, and that a certificate should be issued.

This report has been prepared by Jack Thompson of Harrison Pick Ltd. Jack holds an undergraduate degree in Planning and has two years of experience in professional practice. He is currently working towards his Master's degree and progressing towards membership of the Royal Town Planning Institute (MRTPI).

2. SITE AND EXISTING LAWFUL USE

The application site comprises an agricultural field lying to the west of Dunwood Farm, Dunwood Lane, Stoke-on-Trent, ST9 9QW, within the administrative area of Staffordshire Moorlands District Council. The extent of the site is shown edged red on the submitted site plan (ref. WP010726).

The site is, and has long been, in agricultural use as part of an established agricultural holding. It comprises open pasture bounded by established field boundaries and is accessed from the existing farm access. The lawful use of the land is agriculture.

The proposal forms part of the diversification of the existing agricultural business into free range egg production, a mainstream and growing agricultural enterprise. The laying hens will range over the pasture within the red line area, and the mobile unit will provide their housing, in the manner described below.

3. PROPOSAL

The proposal is the siting, and regular relocation, of a fully mobile free range egg unit within the field edged red. The unit to be used is the "STARTER-L" mobile hen house manufactured by farmermobil GmbH, housing up to 660 free range laying hens.

The key specifications of the unit, taken from the manufacturer's published technical data, are as follows:

Specification	Detail
Manufacturer / model	farmermobil GmbH – STARTER-L
Capacity	665 laying hens (free range)
Overall length	17.80 m (body length 16.40 m)
Overall width	3.00 m
Overall height	3.56 m
Chassis	Fixed wheeled chassis – tridem (triple) axle, one braked axle; four corner crank-operated steady legs for levelling only
Water supply	Self-contained internal 875-litre water tank
Feed	Self-contained internal 1 m ³ feed silo
Power	24 V battery operation (230 V charging connection; optional photovoltaic panels for off-grid operation)
Egg collection	Internal electric egg belt and egg elevator
Manure management	Two electrically driven internal manure belts discharging to a trailer for spreading on the holding
Ventilation	Automatic temperature-controlled fans and natural ventilation via windows and pop-holes

Full mobility is inherent to the unit's design and to the proposed system of husbandry. The unit is factory-built, delivered to site complete on its own wheels, and is designed to be towed by an ordinary farm tractor. It is not assembled, erected or constructed on site in any way.

The unit will be rotated around the field within the red line area by the applicant as an integral part of the free range system. Regular relocation to fresh pasture is standard and necessary poultry husbandry: it prevents poaching and capping of the ground around the pop-holes, avoids the build-up of parasites and disease on the range and maintains quality and ground cover.

The following physical characteristics of the proposal are of particular importance to the legal analysis that follows:

No ground works: no foundations, footings, hardstanding, concrete pad or excavation of any kind is proposed. The unit rests on its own wheels; the corner steady legs are wound down onto the ground surface purely to level and stabilise the unit at each position.

No attachment to the land: the unit is not fixed, bolted, tied or otherwise physically attached to the ground at any point.

No service connections: the unit is wholly self-contained. Water is carried in the internal 875-litre tank, feed in the internal silo, and power is provided by onboard 24 V batteries (with optional solar panels).

Genuine, regular mobility: the unit retains its wheels and road-going chassis at all times and is moved intact, by tractor, as a single operation taking a matter of minutes.

4. RELEVANT LEGISLATION

Section 192 of the 1990 Act enables a person to apply to the local planning authority to ascertain whether a proposed use of, or operation on, land would be lawful. If the authority is provided with information satisfying it that the use or operation described would be lawful at the time of the application, it must issue a certificate to that effect.

A use or operation is lawful if no planning permission is required for it. The decisive question is therefore whether the proposal amounts to “development” as defined in section 55(1) of the 1990 Act, which provides that development means:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

As such there are two limbs to consider. One is whether the proposal involves operational development and two is whether it involves a material change of use. It is not considered that the proposal engages either.

5. ASSESSMENT

Whether the proposal is operational development

The first limb of Section 55(1) is the carrying out of "building, engineering, mining or other operations". Section 336(1) defines "building" as including "any structure or erection, and any part of a building, as so defined", and Section 55(1A) defines building operations as including demolition, rebuilding, structural alterations or additions, and "other operations normally undertaken by a person carrying on business as a builder".

In *Cheshire County Council v Woodward* [1962] 2 QB 126, the Divisional Court held that there is no single test for what constitutes a building operation; the question is whether the physical character of the land has been changed by operations in, on, over or under it. The Act "is referring to any structure or erection which may be said to form part of the realty and to change the physical character of the land".

In *Barvis Ltd v Secretary of State for the Environment* (1971) 22 P&CR 710, the court identified three principal factors to be weighed: (i) size; (ii) permanence; and (iii) the degree of physical attachment to the land. In that case a substantial tower crane 89 feet high, erected on site and running on rails set on foundations, was held to be a structure.

In *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No. 2)* [2000] 2 PLR 84, the Court of Appeal confirmed the three-fold test and held that "permanence" is to be assessed in a broad, common-sense way. In that case a substantial marquee, erected on site over several days and remaining in place for eight months of every year, was held capable of being a building.

The distinction between a chattel and part of the realty was considered by the House of Lords in *Elitestone Ltd v Morris* [1997] 1 WLR 687: the answer depends on the degree and purpose of annexation to the land. An object which rests on the land by its own weight, retains its mobility, and can be removed intact without demolition, remains a chattel.

Applying the three-fold test to the STARTER-L unit:

Size. The unit is 17.80 m long, 3.00 m wide and 3.56 m high — the dimensions of a large agricultural trailer or livestock transporter, and materially smaller in footprint than many items of agricultural machinery routinely kept and moved on farmland (for example a combine harvester with header, or a tractor and silage trailer combination). It is delivered to site complete on its own wheels as a single manufactured vehicle. Size alone is never determinative, and in this case the unit's dimensions are consistent with, and constrained by, its function as a genuinely towable mobile vehicle.

Permanence. The unit has no permanence in any location whatsoever. It will be relocated to fresh pasture within the red line area on a regular cycle as an intrinsic part of the free range system of husbandry. It will not remain in any single position for any significant period. Its mobility is not theoretical or incidental. In this respect the unit is indistinguishable in planning terms from any other item of wheeled agricultural plant that is stationed on, and moved around, farmland in the course of agriculture.

Physical attachment. The unit rests on its own wheels; the four corner crank legs merely steady and level it. There are no foundations, no ground works, no bolts or ties, and

no service connections of any kind. The unit is entirely self-contained as to water, feed and power. It can be, and regularly will be, moved intact, by an ordinary farm tractor, in a matter of minutes, without any demolition, dismantling or disturbance of the land.

On any application of the *Woodward/Barvis/Skerritts* criteria, the unit is a **chattel** and not a building, structure or erection. Its stationing on the land involves no operations "in, on, over or under land" and does not change the physical character of the land. The siting of the unit therefore does not constitute operational development.

The difference to the Woolley Valley case

The applicant is aware of *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin), in which Lang J held that a local planning authority had erred in law by treating mobile poultry units as chattels without properly applying the three-fold test, and it is anticipated that the Council will wish to consider that judgment. It is important to be clear about what the case did and did not decide.

Woolley Valley did not decide that mobile poultry units are buildings, nor that their siting is development. It decided only that the question must be answered by applying the correct legal test — the three-fold *Skerritts* assessment of size, permanence and attachment as a matter of fact and degree — rather than by treating theoretical moveability as conclusive of chattel status. The units in that case were substantial structures which, on the evidence, were intended to remain stationed in the field for the long term; the units' nominal capability of being dragged did not, without more, answer the statutory question.

The present proposal is materially different on its facts, in precisely the respects that mattered in *Woolley Valley*:

- The STARTER-L is a factory-built vehicle on a permanent wheeled tridem-axle chassis (with a braked axle), not a shed on skids. It arrives, remains and leaves as a vehicle.
- Its mobility is actual and regular and not a theoretical issue. The unit will be rotated around the red line field on a documented husbandry cycle, and this rotation forms part of the description of the proposal for which the certificate is sought.
- It is wholly self-contained, with no service connections, whereas fixed supplies and connections are a classic indicator of permanence.
- No works of any kind, no pads, tracks, or aprons form part of the proposal.

Whether the proposal is a material change of use

Since the siting of the unit is not operational development, the only remaining question is whether the proposal would involve a material change in the use of the land. It plainly would not, for the following reasons.

The existing use of the land is agriculture: The field is part of an established agricultural holding and its lawful use is agricultural.

The proposed use of the land is agriculture: The keeping of laying hens for egg production falls within the definition of "agriculture" in Section 336(1) of the 1990 Act, as "the breeding and keeping of livestock (including any creature kept for the production of food...)". Free range egg production, with hens ranging over pasture and housed in a mobile unit rotated around that pasture, is agriculture in its ordinary and statutory sense. There is therefore no change of use at all: the land is in agricultural use and will remain in agricultural use.

In any event, Section 55(2)(e) puts the matter beyond doubt: the use of land for the purposes of agriculture shall not be taken to involve development of the land. Parliament has expressly excluded agricultural use from the definition of development. The presence

of hens on the range, the movement of the mobile unit around the field, and the day-to-day activities of egg production (collection of eggs, replenishment of feed and water, removal of manure for spreading on the holding) are all uses of the land for the purposes of agriculture and are accordingly excluded from development by statute.

6. CONCLUSION

The proposal is the stationing and regular rotation of a genuinely mobile, self-contained, wheeled poultry unit on agricultural land, in connection with the agricultural use of that land for free range egg production. It involves no building, engineering or other operations and no material change of use. It is not development under Section 55 of the Town and Country Planning Act 1990, and planning permission is not required.

The applicant is accordingly entitled to a Certificate of Lawfulness of Proposed Use or Development under section 192 of the 1990 Act, and the Authority is respectfully requested to issue the certificate applied for.

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