TW/451

9th November 2023

waller planning

town and country planning consultants

Mr Ganesh Gnanamoorthy
Development Management Service Manager
Welwyn Hatfield Borough Council
The Campus
Welwyn Garden City
AL8 6AE

Dear Mr Gnanamoorthy,

Postern Gate Farm, Newgate Street Village – Application for Retention of Two Animal Shelters, and Construction of Two Further Animal Shelters

I am writing in support of an application which has been made today by Argento Design Studio, for the retention of two animal shelters, and the addition of two additional agricultural buildings at Postern Gate Farm in Newgate Street Village. The proposed buildings would be for the keeping of goats and sheep, which would graze on the adjacent land.

This is a resubmission of application 6/2023/1421/FULL. I have advised the Applicant, Mr Dogucan Unuvar, to resubmit the application, as I consider the Council made an error in law in refusing it; as this was not a matter of policy interpretation, or planning balance, the matter needs to be reconsidered afresh. I saw the resubmission of the application as the simplest way of remedying the matter, rather than going to appeal, given the lengthy delays to which most appeals are currently subject, and also with regard to the Planning Inspectorate's guidance, which encouraged appellants and local planning authorities to resolve matters without recourse to appeal, wherever possible.

The Previous Reason for Refusal

The Council's single reason for refusing the previous application was as follows:

> *"The existing and proposed animal shelters represent inappropriate development in the Green Belt. There would also be a material loss of Green Belt openness. No very special circumstances exist to clearly outweigh the harm to the Green Belt, and any other harm. Consequently, the proposed development would conflict with Policy RA3 of the Welwyn Hatfield District Plan; Policy SADM34 of the Draft Local Plan; and the National Planning Policy Framework."*

Green Belt Policy

Whilst paragraphs 147 and 148 of the NPPF outline that inappropriate development in the Green Belt is by definition harmful, and should only be allowed in very special circumstances, paragraph 149 sets out exceptions to this. Part (a) allows for *"buildings for agriculture or forestry"*. The newly adopted Local Plan defers to national policy with regard to the forms of development which are

Suite A
19–25 Salisbury Square
Old Hatfield
Herts, AL9 5BT

01707 538037
info@wallerplanning.com
wallerplanning.com

Tim Waller BA(Hons) MSc PgDip MRTPI, *Director*

Registered in England & Wales (No. 9462061) at
4 Old Bedford Road, Potton, Bedfordshire, SG19 2QL

VAT No: 234 4124 40

appropriate within the Green Belt. As such, should the buildings be for agriculture or forestry use, there would be no need either to consider whether the proposals were justified by very special circumstances, or to consider the effect the buildings would have on the purposes or openness of the Green Belt.

An Agricultural Use

The Council's delegated report for the previous application noted that section 336 of the Town and Country Planning Act 1990 provides the following definition of agriculture:

> *""agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly".*

The delegated report went on to note that the site previously operated as a pig farm, and that use ceased in around 1996. There was no suggestion within the report that this established agricultural use had been superseded. The Appellant contends that the land still benefits from an agricultural use, and having previously visited the site, this appears entirely accurate to me.

The report made reference to an appeal decision, where it had been proposed that livestock would be kept and bred on site, for sale to third parties. In that case, no evidence had been provided to the Inspector that the third parties would be purchasing the livestock for agricultural purposes, and it was speculated that it may be for hobby purposes. In light of this, the Inspector decided that the use would not be an agricultural one. Reflecting on this, the delegated report noted the following:

> *"The keeping of goats and sheep at this application site appears to be for hobby purposes. Although the use of the land for keeping/grazing goats and sheep may appear to meet the Section 336 definition of agriculture, there is no evidence submitted to demonstrate that the proposed development would facilitate the keeping of goats and sheep for production purposes s defined in planning and related law."*

The Council were however incorrect to conclude that the use of the land to graze livestock would not constitute an agricultural use if the livestock were only kept *"for hobby purposes"*. The appeal decision referred to within the delegated report related to the sale of livestock, but that is not the Applicant's intentions, and so the appeal is not directly applicable in this instance.

The Council's previous conclusions were based on a misunderstanding of the definition of agriculture, as provided by s336, which does not refer to there being a need for a business element, and it also does not preclude the idea of hobby farming. The Council have in fact read something into this definition which simply isn't there. This matter is specifically discussed by Martin Goodall, in his book *"The Essential Guide to The Use of Land and Buildings Under the Planning Acts"* (Bath Publishing, 2017). I have appended scanned copies of the relevant pages below for your reference. You will note that Mr Goodall first discusses permitted development rights relating to agricultural

land, and then goes on to discuss the agricultural use of land. I will let you read the full text below, but I note that he draws the following conclusions:

> *"...section 336 of the 190 Act... contains no reference to the land being used for purposes of a trade or business."*
>
> *"When considering the use of land (and of any existing buildings on that land) for the purposes of section 55(2)(e), it is therefore irrelevant whether the person using the land for purposes coming within the general definition of agriculture set out in section 336 is, in doing so, using the land for the purposes of a trade or business. Nor is it relevant to enquire as to whether such a person derives the majority of their income, or any income, from the agricultural use of the land. 'Hobby farming' is not, therefore, excluded from the general definition of "agriculture" under section 336 when considering its application solely to section 55(2)(e)."*

Conclusion

The Council's delegated report concluded that the land has an established agricultural use, and that it is proposed to keep goats and sheep within the buildings, and graze them on the land. With Mr Goodall's commentary in mind, it is clear that this would be an agricultural use of the land, and that it would accord with the definition under s336 of the Act. This means that the Council's conclusion was incorrect, and the proposed buildings *would* be an appropriate form of development within the Green Belt, in accordance with paragraph 149(a) of the NPPF. As this was the Council's only reason for refusing the previous application, I anticipate that this resubmitted application can now be approved.

Yours sincerely,

[redacted]

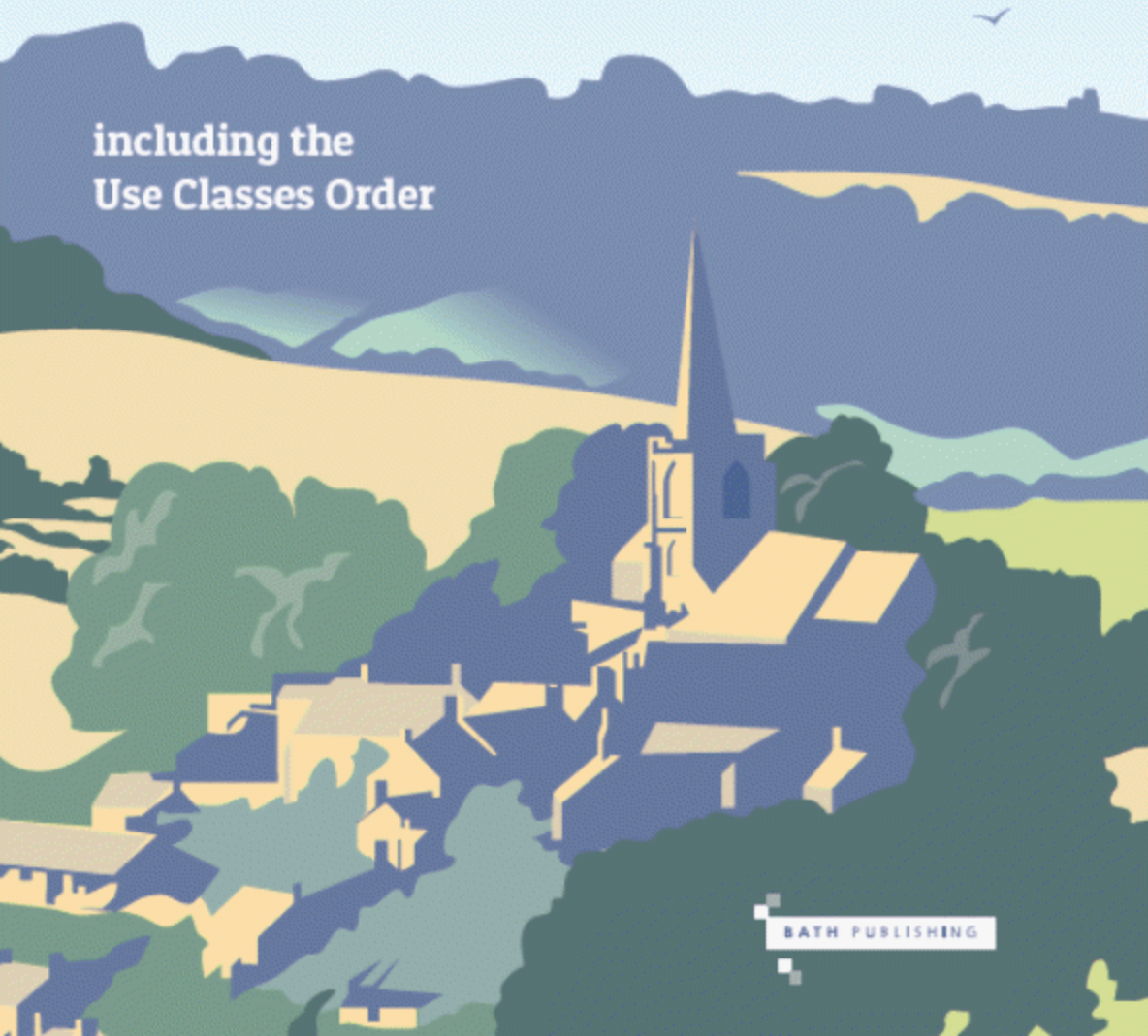
Tim Waller MRTPI
Director

[redacted]

MARTIN H. GOODALL

The Essential Guide to
THE USE OF LAND AND BUILDINGS
under the Planning Acts

including the
Use Classes Order



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The Use Classes Order

MARTIN H GOODALL ***LARTPI***
Solicitor

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CHAPTER 17

AGRICULTURE, HORTICULTURE AND FORESTRY

17.1 Definition of "agriculture", "horticulture" and "forestry"

As noted in *paragraph* 5.2.2 of *Chapter 5*, section 55(2)(e) of the 1990 Act provides that the use of any land for the purposes of agriculture or forestry, and the use for this purpose of any building occupied together with the land, is not to be taken for the purposes of the Act to involve development of the land.

The reference in section 55(2)(e) to "any building occupied together with the land" applies only to any *existing* building. The subsection does not confer any right to erect a building. Planning permission is required for any such operational development, although it is granted in many cases by Part 6 of the Second Schedule to the GPDO (subject to compliance with the limitations and conditions set out there).

Unsurprisingly, there has been much dispute over the years as to what constitutes "agriculture" for the purposes of section 55(2)(e). Section 336(1) of the 1990 Act provides that, in this Act, "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" is to be construed accordingly.

For the purposes of Part 3 (only) of the Second Schedule to the GPDO (permitted changes of use), "agricultural building" means a building (excluding a dwellinghouse) used for agriculture and *which is so used for the purposes of a trade or business*; and "agricultural use" refers to such uses. It is, however, to be noted that this requirement relates only to permitted changes of use under Part 3, and does not affect the general definition of "agriculture" in section 336 of the 1990 Act.

Classes A and B in Part 6 of the Second Schedule to the GPDO permit certain operational development on agricultural land in an "agricultural unit" (which, in the case of Class A, must be an "established agricultural unit"). Class C also refers to an "agricultural unit". For the purposes of Classes A, B and C only, paragraph D.1 defines "agricultural land" as land which, before the development permitted by Part 6 is carried out, is land in use for agriculture and *which is so used for the purposes of a trade or business* (and excludes any dwellinghouse or garden). It defines "agricultural unit" as agricultural land which is occupied as a unit for the purposes of agriculture, including any dwelling or other building on that land occupied for the purpose of farming

the land by the person who occupies the unit, or any dwelling on that land occupied by a farmworker. There is no contradiction here, because the permitted development in Part 6 of the Second Schedule to the GPDO relates to the carrying out of development on "agricultural land" (i.e. excluding a dwelling or its garden) in an "agricultural unit" (which, taken as a whole, may include one or more agricultural dwellings). [The practical effect of these definitions in relation to the planning unit is discussed in *paragraph 2.1.4* of *Chapter 2*.] As in the case of Part 3, these definitions relate only to operational development permitted under Part 6, and do not affect the general definition of "agriculture" in section 336 of the 1990 Act.

It follows from the foregoing that the condition in Parts 3 and 6 of the Second Schedule to the GPDO that the exercise of the PD rights under those provisions is dependent on the agricultural land being used for the purposes of a trade or business does not in any way affect the general definition of agriculture in section 336 of the 1990 Act, which contains no reference to the land being used for the purposes of a trade or business. Furthermore, the requirement in an agricultural occupancy condition that the occupation of the dwelling is to be limited to a person solely or mainly working, or last working, in the locality in agriculture (etc.), so that the majority of that person's income must be derived from agriculture, has no application in relation to the definition of "agriculture" for the purposes of section 55(2)(e) of the 1990 Act.

When considering the use of land (and of any existing buildings on that land) for the purposes of section 55(2)(e), it is therefore irrelevant whether the person using the land for purposes coming within the general definition of agriculture set out in section 336 is, in doing so, using the land for the purposes of a trade or business. Nor is it relevant to enquire as to whether such a person derives the majority of their income, or any income, from the agricultural use of the land. 'Hobby farming' is not, therefore, excluded from the general definition of "agriculture" under section 336 when considering its application solely to section 55(2)(e).

It is possible for agricultural land not to be actively used at all, and yet still to be used for agriculture within the scope of section 55(2)(e). The essential question is whether this land is in practice being put to some use other than agriculture, so that a material change of use has taken place, for example by using it for various forms of leisure activity, or using it for various domestic purposes (if, for instance, it is being used in that way in connection with the use of any adjoining or nearby residential property).

"Horticulture" is not separately defined by section 336, but may be taken to be subsumed within the wide-ranging definition of "agriculture" in that section. Nor is "forestry" defined by section 336. Forestry is in fact specifically excluded from the definition of agriculture in section 336, by the inclusion of the use of land for woodlands *only where that use is ancillary to the farming*

of land for other agricultural purposes. The practical effect of this is that where operational development for the purposes of forestry may be permitted development under Part 6 of the Second Schedule to the GPDO, it is allowed only under the terms of Class E, rather than under Classes A, B or C.

The author is not aware of any statutory or judicial definition of "forestry", and so resort may have to be had to the dictionary definition, which is simply: "the science or practice of planting, managing and caring for forests". The dictionary definition of "forest" is: "a large area covered chiefly with trees and undergrowth", but it may reasonably be assumed that for the purposes of planning law, the practice of planting, managing and caring for woodland generally (other, perhaps, than purely ornamental or recreational woodland) would also be accepted as being within any reasonable definition of "forestry" for this purpose.

The reference to "afforestation", which is included in the uses of land exempted by section 55(2)(e) from constituting 'development' under the Act would reasonably extend to the planting and establishment of woodland, even though the commercial production of timber has not yet commenced.

17.2 Limits to the scope of "agriculture"

It is important for the purpose of determining whether a particular use comes within the statutory definition of "agriculture" to understand the limitations of what qualifies as agriculture within the terms of section 336. Two issues may arise – first, whether or not certain activities constitute "the breeding and keeping of livestock" and, secondly, whether (and if so to what extent) the storage and packaging or processing of food is genuinely ancillary to an agricultural use (or whether it is in fact an industrial or storage use).

17.2.1 Keeping or breeding of horses

The reference in section 336(1) to the breeding of livestock does not include the breeding of horses except for use in farming (*Belmont Farm Ltd v MHLG* (1962) 13 P. & C.R. 417). So far as the keeping of livestock and/or the use of land as grazing land is concerned, the presence of horses on the land will only qualify as an agricultural use of the land if they are kept there as working horses actually used for farming the land (e.g. as plough horses, or as draught animals, etc.) or if they are there solely for the purpose of grazing that land, as distinct from their being kept there (*Sykes v SSE* [1981] J.P.L. 285).

The distinction may appear to be a fine one, but it is the underlying purpose that must be considered. Are the horses there simply to allow them to eat the grass (and for no other purpose)? If so, this is an agricultural use of the land. In the alternative, is the land being used primarily to provide accommodation for the horses? If they are present on the land primarily for their accommodation or for recreational use (even though they might graze the grass while they are present on the land), then this will not constitute an agricultural use of the land.