The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 February 2017

Appeal Ref: APP/F0114/C/16/3153305
The land at parcel 1212, Leigh Lane, St Catherine, Bath BA1 8AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Kate Chubb, for and on behalf of the Trustees of Beeks Mill, against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a Timber Panel Screen in the approximate position marked with a BLUE line A – B on the plan [attached to the notice].
- The requirements of the notice are: Remove the Screen in its entirety and restore the Land to its former condition prior to development.
- The period for compliance with these requirements is 6 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Act.

Formal Decision

1. It is directed that the enforcement notice is corrected by:
    - the deletion of the words "Timber Panel Screen" in paragraph 3 of the notice and their replacement with the words "timber structure";
    - the deletion of the words "[hereafter referred to as "the Screen"]" in paragraph 3 of the notice; and,
    - the deletion of the word "Screen" in paragraph 5 of the notice and its replacement with the words "timber structure".
2. It is directed that the corrected notice is varied by the addition of the words "or reduce the height of the timber structure to no more than 2 metres above ground level at any point along its length" at the end of paragraph 5 of the notice. To be clear the corrected and varied requirement would read: "*Remove the timber structure in its entirety and restore the Land to its former condition prior to development or reduce the height of the timber structure to no more than 2 metres above ground level at any point along its length*".
3. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

4. The Council did not attend the site visit and when I telephoned the Council for a second time[1] I established the Officer was off sick. The Appellant indicated that she was content for me to enter her land unaccompanied and I proceeded on that basis. Following the inspection The Planning Inspectorate [PINS] wrote

[1] The first time I left a message on the Officer's answerphone and so after waiting another 10-15 minutes in case of a response, or in case the Officer was delayed in transit, I then went through the Council's switchboard.

to both main parties to check that they were happy for me to proceed to a decision on this basis. Neither main party has objected to this course of action.

5. During my inspection I took a number of measurements of the structure at various points along its length. The height of the structure does vary, but at a number of points it does exceed 2 m in height from ground level, which is the relevant limitation in the Town and Country Planning (General Permitted Development)(England) Order 2015 [the GPDO]. PINS advised both main parties of this finding of fact and allowed them an opportunity to comment. Both parties did comment and ultimately I had to draw a line on that exchange because I felt that I had a full understanding of the respective arguments[2].

6. I have taken account of the comments made by both main parties in response to that correspondence in reaching my decision. Amongst other things, it is appropriate to record that in a letter dated 27 January 2017 the Appellant says: "*I was surprised that the fence was not 2m because it was supposed to be. The contractor has subsequently told me that as he had not finished "smoothing off the top", he "left a bit of room" to this end. Of course the height can be corrected. V sincere apologies*". I recite this because it appears to effectively concede that the structure is over 2 m in height.

7. An application for an award of costs has been made by Bath and North East Somerset Council against Ms Kate Chubb, for and on behalf of the Trustees of Beeks Mill. This application is the subject of a separate decision.

Ground (c)

8. Under this ground of appeal the Appellant needs to show that: "…*there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. It appears to be common ground that the structure is development as defined in section 55 of the Act[3]. The claim that there has not been a breach of planning control is based on the assertion that the works are permitted development by virtue of the GPDO. Some of the representations that have been made in relation to this appeal have referred to rights under Part 6 of Schedule 2 of the GPDO, but no reliance is placed upon such rights and so no purpose would be served in addressing them. Instead the claim is made that this structure is permitted development by virtue of Article 3 and Class A of Part 2 to Schedule 2 of the GPDO. This is the issue to be addressed under this ground of appeal.

9. Class A permits "*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*". A1 then sets out classes of development that are not permitted. The structure is not adjacent[4] to a highway used by vehicular traffic and does not surround a listed building. Accordingly, if the Class were to apply, the key criterion that is at issue is (b) "*the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*". Having regard to my finding of fact at the site inspection it is clear that this criterion is not met and it must follow that the ground (c) must fail for this reason.

[2] After making a ruling to this effect I understand that correspondence from a Mr Tiley was returned by the office, such that I have neither seen it nor taken it into account.
[3] I say that in the context of the second reason for issuing the notice, as stated in section 4 thereof.
[4] In reaching this view I have noted the claim of David Meade Agricultural but, given that the structure is at right angles to the lane, I disagree. It is not enough that the end post is very close to the highway. My position in this matter is reinforced by the fact that this argument is simply not at issue between the main parties.

10. Notwithstanding the above the issue between the main parties is whether the structure is a fence or other means of enclosure such that it is within the ambit of Part 2 and, in particular, whether the structure functions as an enclosure. Both main parties rely on the same case law. In *Prengate Properties Ltd v SSE* [1973] 25 P&CR 311 Lord Widgery CJ held permitted development rights would not extend to circumstances in which a freestanding wall neither encloses nor plays a part in the enclosure of anything. In *Wycombe DC v SSE* [1994] EGCS 61 the Court held that a means of enclosure must provide some way of closing in an area so that it became enclosed, but that the enclosure need not be a complete surround of an area. It would be a matter of fact and degree as to whether any gaps took it outside of the essential character of an enclosure.

11. My site inspection confirmed that in broad terms the structure runs along the western boundary of the land edged red on the plan attached to the notice. At point 'B' on the second plan attached to the notice, the structure forms a boundary with the existing fence that fronts onto the highway. However it does not extend as far as point 'A' on the second plan attached to the notice, which appears to be in the vicinity of what I shall describe as the waterfall. The structure terminates at its northern-most point in the vicinity of the telegraph pole[5]. From this point down to the waterfall there is no wooden fence, but that is not to say that there is no means of enclosure.

12. My site inspection revealed that there is a fence running up from the waterfall, which comprises 2 strands of barbed wire affixed to wooden poles, of a type that is commonplace around fields across the country. However this fence does not run right up to the structure, the subject of this notice, but only the first part of the steep slope running up from the waterfall. The gap between the wire fence and the structure is to all intent and purposes impenetrable due to existing planting, including some hedging and extensive bramble. My inspection indicated there is a low wall/bank along this part of the boundary. Taken together with the wire fence and the structure this provides an effective means of enclosure around the field. Just as I found it impossible to get through the gap between the wire fence and the structure so, I anticipate, stock kept in the field would find it impossible to get through at that point too.

13. In the light of my inspection I am in no doubt that the structure does function as an enclosure. The Council claims that the development is: "…*a fixed, linear, free-standing structure which is effectively open ended – a form which would take it outside the essential character of an enclosure*", but I disagree. The structure plainly plays a part in the enclosure of the field. In my view it matters not that there might be a small gap between the wire fence and the structure because the vegetation in the intervening area fills that gap and forms part of the manner in which the western edge of the field is enclosed. The existence of the low wall/bank, on which some of the vegetation is planted, only serves to confirm that there is a continuous boundary along the west side of the field.

14. An appropriate analogy might be to a barbed wire fence around a field attached to a tree trunk with a gap to a different tree beyond which the fence continued. If the gap between the 2 trees was so narrow that neither man nor beast could get through it then no reasonable person would claim that the field was not enclosed. If the gap was wider but there was a substantial difference in ground

[5] Mr Earle refers to it as a telegraph pole in his letter and I have adopted his description. His letter confirms what I saw during my site inspection, namely that the structure does not extend north of the telegraph pole.

levels then the practical effect would be the same. Here there is a gap but, in practical terms, it would be impossible to get through it. As a matter of fact and degree, exercising my professional judgement, I conclude that the gap does not take the structure outside of the essential character of an enclosure.

15. In reaching this view I have taken account of the appeal decision to which I am referred [Ref APP/F0114/C/12/2182330], but paragraph 6 thereof says that the structure at issue in that case: "…*links to a wall at one end but it is open at the other*" [*my emphasis*]. That can be distinguished from the facts of this appeal because it is not open at the northern end of the structure as the gap is filled by dense vegetation, part of which is growing out of a low wall/bank.

16. I also acknowledge that the structure runs parallel to the east facing walls of Papermill Cottage, the Lodge and the existing connecting stone wall. However that does not mean that the structure does not have an enclosing function. There is nothing in Class A of Part 2 that says one cannot have more than one means of enclosure next to each other if they enclose different areas. In an urban area it is not uncommon for 2 means of enclosure to stand next to each other, demarcating respective rear gardens for example. This is no different.

17. I have also had regard to the reasons given by St Catherine Parish Meeting as to why the structure is not a means of enclosure. However the fact that it does not conform to the British Standard for agricultural livestock fencing is not in my view determinative of this issue. Although I have had regard to the Appellant's email of 21 June 2015 this too is not determinative of the matter.

18. Accordingly, whilst the ground (c) must fail because the structure exceeds the height limitation at certain points along its length, I conclude that the structure does contribute towards enclosing the field. In that context I have considered whether it would be appropriate to correct the allegation and/or the plan. In my view there would be no injustice to either party if I were to correct the allegation to refer to the erection of a timber "*structure*", which is a neutral term that is known to the Act[6]. This would need to be corrected in paragraphs 3 and 5 of the notice, but not paragraph 4, which is spent after appeal stage. However I am not convinced that the plan annotated A-B needs to be corrected because the allegation does say "*approximate position*" and that is not wrong.

Ground (a): Planning merits of the development

Preliminary observations

19. My finding under the ground (c) appeal has implications for the remaining grounds of appeal, notably grounds (a) and (f). Since planning permission is deemed to be granted for a 2 m high means of enclosure along this boundary this represents a legitimate fallback position in relation to ground (a). It means that I approach ground (a) on the basis of its retention at its present height. In saying this I appreciate the Appellant's letter dated 19 January 2017 suggests that an appropriate option would be to grant planning permission for a 2 m high structure subject to a condition to require details to be agreed with the Council and, thereafter, for the agreed works to be undertaken within a further 3 months. However where planning permission is deemed to be granted by a Development Order there is no need for an express grant. Moreover that scenario necessarily means that the enforcement notice would be quashed and

[6] See definition of building in section 336(1) of the Act.

it is conceivable the planning permission might not be implemented or that the condition is not complied with such that further enforcement action is required.

20. Accordingly the simpler option is to uphold the notice in which the requirement is varied to require the means of enclosure to be reduced to no more than 2 m in height from natural ground level as an alternative to its complete removal. Although the outcome is the same, this avoids the bureaucracy of discharging a condition and gives certainty for all parties as to what is required by when. In the event of non-compliance the remedy is much more straight-forward. Unfortunately, in order to get to that obvious outcome, I am charged with determining the deemed application but, in that context, it is material that I am basically concerned with a maximum difference of approximately 0.15 m.

Main issues

21. I consider that there are 4 main issues in this appeal. The first is whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework [the Framework] and any relevant Development Plan [DP] policies, and the effect of the development on the openness of the Green Belt. The second is the effect of the development on the character and appearance of the area, which lies within the Cotswold Area of Outstanding Natural Beauty [AONB]. The third is the implications of the development for the living conditions of the occupiers of Papermill Cottage with particular reference to outlook and light. The fourth is, if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Planning policy

22. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 says an enforcement notice issued under section 172 of the Planning Act shall specify … (b) all policies … in the development plan which are relevant to the decision to issue an enforcement notice [my emphasis]. Since it is mandatory the Council should not introduce new policies, colloquially, via the back door. That is however precisely what it seeks to do. Whereas the face of the notice cites just 3 policies from the Bath and North East Somerset Local Plan [LP], which was adopted in October 2007, the Council's appeal statement refers to 6 Development Plan [DP] policies, one of which, NE.1, was not even identified on, or provided with, the questionnaire.

23. Despite what I regard to be bad practice, having regard to the duty in section 38(6), I have identified all of the DP policies that the Council has referred to. The Core Strategy [CS] post-dates the Framework, but the LP does not and so relevant LP Policies GB.2, D.2, D.4, NE.1 and NE.2 fall to be assessed against paragraph 215 of the Framework. In this case neither main party has given me reason to reduce the weight to be attached to any of these policies, but I have reservations about the extent to which, in particular, LP Policies GB.2 and NE.2 are consistent with the Framework. The focus in the former on visual impact appears to reflect the old advice in what was paragraph 3.15 of PPG2[7]. The latter expressly refers to PPS7 which footnote 1 and Annex 3 of the

[7] It said: "*The visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design*".

Framework confirms has been revoked and replaced by the Framework, although the basic policy test appears to be consistent with the Framework. For these reasons I attach very limited weight to LP Policy GB.2, moderate weight to LP Policy NE.2, but significant weight to other relevant LP Policies.

24. The Council has referred to its draft "*Placemaking Plan*", which I am told was approved for consultation and development management purposes in 2015. However I have no information to enable me to assess the policies referred to against paragraph 216 of the Framework. In the circumstances it is appropriate to attach those policies very limited weight unless or until any objections have been resolved and they have been found to be consistent with the Framework.

25. The Council's statement refers to 2 Supplementary Planning Documents [SPD], but these were not referred to on the face of the notice and were not submitted with the Council's questionnaire[8]. If the Council want me to take account of such material considerations the very least they could do is to provide copies. Notwithstanding the above the Cotswolds Conservation Board has quoted from The Cotswolds AONB Management Plan 2013-18 [MP] and so I am able to take account of the quotes provided. I attach them considerable weight and, given their source, I have no reason to doubt their provenance or accuracy.

26. The Appellant has referred me to, and provided excerpts from, the Landscape Character Assessment [LCA] and the Cotswolds AONB Landscape Strategy and Guidelines [LS&G]. Whilst the relationship between these documents and the DP is not that clear from the limited information before me it is nevertheless appropriate to attach these publications considerable weight.

Reasons:

(i) Inappropriateness

27. The structure[9] falls to be assessed against paragraph 89 of the Framework, which states that the construction of new buildings is inappropriate unless it is for one of six specified exceptions, set out in a closed list of bullet-points. The Council has failed to even consider the structure against the list in paragraph 89 and, instead, says it does not fall within the list at paragraph 90. There is no reason to dispute that claim, but that does not explain why the structure should not be assessed against the list in paragraph 89 of the Framework.

28. The Appellant says it is plainly a building, which I accept, and that it was erected on an established farm holding for an agricultural purpose, namely for animal welfare. This position has been confirmed in a letter dated 23 August 2016 from the National Farmers Union [NFU]. Amongst other things the author of the letter says he is aware that cattle regularly graze in the field and shelter from the prevailing weather alongside the property on the boundary line. Whilst some of the representations have suggested that cattle have not been grazed on the field during certain periods there is no sound basis to doubt that claim.

29. The NFU letter continues by saying it is the responsibility of the livestock keeper to ensure that there is a stock-proof fence, which should be high enough and strong enough to prevent animals from putting their heads over it. The NFU letter says: "…*we share your concerns that livestock may be injured*

[8] Questions 22.c and 22.d, relating to SPG and SPD, respectively, have not been ticked and no copies were given.
[9] Again having regard to the definition of building in section 336(1) of the Act.

if the windows were damaged". On this basis I accept that the structure is a reasonable response to a hazardous situation that has been created by installation of the windows and an oil pipe outside of the fabric of the building. Whilst not a conventional building for agriculture, on the basis of this evidence and having regard to the relevant appeal [Ref APP/G5180/W/15/3002766], I consider it falls within the first bullet-point of paragraph 89 of the Framework.

30. In reaching this view I have taken account of the written representations that have been made in relation to this matter. In particular the letter from Davis Meade Agricultural, dated 31 August 2016, is focussed almost entirely on the provisions of Part 6 of Schedule 2 of the GPDO which, I have already noted, are not relied upon by the Appellant. The letter does not address the question as to whether the structure is a building for agriculture under the first bullet-point of paragraph 89 of the Framework. The issue is not whether it was designed for agricultural purposes, but simply whether it is for agriculture.

31. For these reasons the structure is not inappropriate in the Green Belt because it falls within the first exception in paragraph 89 of the Framework. Case law has held that where development is found to be not inappropriate, applying paragraph 89 of the Framework, it should not be regarded as harmful to the openness of the Green Belt. On a contextual reading of the policies in section 9 of the Framework, development that is not inappropriate is regarded to be not inimical to the "*fundamental aim*" of Green Belt policy "*to prevent urban sprawl by keeping land permanently open*", or to "*the essential characteristics of Green Belts*", namely "*their openness and their permanence*"[10].

32. On the first main issue, I conclude that the structure is not inappropriate development and, as such, is not harmful to the openness of the Green Belt. LP Policy GB2 does not assist in answering the issues raised under the first main issue because its narrow remit is where development is "*visually detrimental to the Green Belt by reason of its siting, design or materials used for its construction*". It is simply not relevant to the question raised by the first main issue in terms of inappropriateness and openness. CS Policy CP.8 is the relevant Green Belt policy, but no conflict was alleged with it on the face of the notice. In any event it applies the test of inappropriateness "*in accordance with national planning policy*". That is what I have focussed on under this head and I have given reasons why the structure is not inappropriate and is not harmful to openness. It must follow that there is no conflict with CS Policy CP.8.

(ii) Character and appearance

33. The LCA identifies the vicinity of the appeal site to be within Character Area 4C, which it fairly describes as a complex indented valley landform. St Catherine's Brook flows east within a steep sided valley described as remote and secluded. Land use within the valley is predominantly pastoral in irregularly shaped fields small to medium in size. The LCA says: "*Enclosing the fields are hedgerows that are both overgrown and gappy … Where hedgerows are particularly gappy … post and wire fences can be found reinforcing the boundary. Post and wire fences also occur as boundary features adjacent to roadsides*". In that context the LS&G identifies potential landscape implications of forces for change to

[10] All quotes in this paragraph are taken from paragraph 79 of the Framework.

include the loss of hedgerows and increased use of post and wire fencing. It identifies a landscape strategy and guideline to be the restoration of hedges.

34. Plainly the structure, the subject of this appeal, is not addressed in the LCA and LS&G. However the fact that the latter identifies a force for change to be the increased use of, generically, fencing, with the remedy identified to be the restoration of hedges is indicative of fencing being seen as a negative change. In such an intimate and relatively unchanged landscape that is not surprising.

35. The MP appears to define tranquillity to include an absence of development[11] and a feeling of being away from it all. MP Policy DTP.1 requires development to be designed to respect local building styles and materials. The Cotswolds is renowned for its distinctive dry stone walls and the use of the subtle, gentle coloured stone in particularly domestic buildings. So, taken together with the LS&G, this policy framework gives a clear steer towards hedgerows and stone walls, not fences, and particularly not what the Cotswold Conservation Board call: "*a very domestic style panel fence*", which it says is not in keeping with traditional means of enclosure around a field. Yorkshire boarding is used on agricultural buildings, but I agree that it is out of keeping here.

36. I have noted the boarding on buildings at Henly Tyning Farm and, in terms of tone, I accept that it might be envisaged that the structure might be expected to weather in a similar manner. That does not lead me to conclude that the structure is an appropriate form of development in the AONB. In case the claim is being advanced on this basis, the boarding on agricultural buildings at an established farm can be clearly distinguished from the structure, the subject of this appeal, which defines the boundary of a field in a remote rural location.

37. Contrary to LP Policy NE.1 the structure is a development which does not either conserve or enhance the character and local distinctiveness of the landscape. The structure fails to comply with LP Policy D.4 a) because it fails to respond to the local context in terms of its appearance and materials, and does not complement the attractive qualities of local distinctiveness. It is also a form of development which adversely affects the natural beauty of the landscape of the designated AONB, which LP Policy NE.2 says will not be permitted.

38. Paragraph 115 of the Framework requires the decision maker to give great weight to conserving landscape and scenic beauty in AONB. In my view, for all of the reasons set out above, the structure plainly fails to, at a minimum, conserve the scenically attractive landscape of the AONB in the vicinity of the appeal site. The structure is visible from a number of public vantage-points, including the lane and the permissive path. In these vistas Papermill Cottage is seen in close association with the structure but, because it is so close and the structure obviously cuts across architectural features such as the windows, its proximity only serves to emphasise the inappropriateness of the structure[12]. Although the Appellant has offered to accept a condition to require hard and soft landscaping, such as a woven hazel or bark facing to give it a more rustic appearance and an indigenous hedgerow planted parallel to the permissive path, this would not address my concerns or achieve policy compliance.

[11] From the limited excerpt provided I have assumed that this sentence refers to development, as opposed to inappropriate development which, in any event, is used here in layman's terms rather than in Green Belt terms.
[12] See for example the photographs at Appendix 1 to the submission of Davis Meade Agricultural.

39. On the second main issue, I conclude that the structure harms the character and appearance of the area, fails to conserve the landscape and scenic beauty of the AONB and conflicts with the LP Policies D.4, NE.1 and NE.2, the MP and the quoted advice in the Framework.

(iii) Neighbour's living conditions

40. This dispute appears to have escalated from the insertion of windows in the east elevation. Nevertheless those windows are now lawful and I must assess the effect of the development on the occupiers of the dwelling regardless of whether it is used as a holiday let or as a permanent home.

41. Representations on behalf of the owners of Papermill Cottage refer to loss of ventilation, natural light and outlook. It has not been shown that the structure has resulted in a material loss of ventilation. I was not given access to the property but, assuming that the windows are capable of being opened[13], there is scope to do so as the structure is marginally set back from those windows. There would appear to be scope to permit a flow of air by opening windows on both sides of the property. I therefore reject the claim in terms of ventilation.

42. However, whilst photographs 5 and 6 attached to the submission on behalf of the owners[14] are relatively small, they appear to show that light levels in the interior of a kitchen and living room, respectively, are materially diminished. Photograph 7, taken from the conservatory, appears to show that it is less affected in terms of light levels because of its glass roof. It would appear that the conservatory has been attached to a north facing wall and hence it is likely to be in shadow from the house itself for a large part of the day. Accordingly, whilst I am unconvinced with regard to the conservatory, I am concerned about the effect of the development on, in particular, the living room because it is a main habitable room, whereas a kitchen might not normally be so described.

43. Turning to outlook, I consider that all 3 photographs demonstrate some loss of outlook. However again it appears to be the kitchen and living room windows that are most affected because the occupiers of the conservatory would still enjoy a relatively open outlook to the north-west. In contrast photographs 5 and 6 plainly show that the structure stands above the top of those windows and, effectively, prevents any outlook at close quarters. This is reinforced by the much larger photographs at exhibit NL3 to the Council's statement.

44. Representations on behalf of the owners of Papermill Cottage assert that the structure has had a "*severe impact upon their residential amenity*", which has "*created an oppressive impact that directly affects living conditions and* [the] *wellbeing of the occupants*". Whilst I regard it as unfortunate that I was not given access in order to better assess the effect for myself, the photographs being a poor substitute for that purpose, the fourth core planning principle of the Framework is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Moreover LP Policy D.2 says development will only be permitted if: f) it will not cause significant harm to the amenities of existing or proposed occupiers of, or visitors to, residential or other sensitive premises by reason of loss of light or "*other disturbance*". Even if outlook cannot be so

[13] Plainly if that is not the case then the structure would have no effect on ventilation whatsoever. However some of the photographs show an open window and so it is reasonable to assume that they are still opening windows.
[14] Similar photographs are also found at Appendix 2 to the submission of Davis Meade Agricultural.

categorised, which is a moot point, I find a conflict with the policy in terms of loss of light and with the Framework in terms of loss of light and outlook.

45. I appreciate that some of the rooms, such as the living room, might be served by other windows, but that does not alter my assessment against the fourth core planning principle. It does not show that a good standard of amenity would be achieved. Moreover placing a structure in front of windows of a house cannot be said to represent good design, which paragraph 56 of the Framework says is indivisible from good planning; it requires development to contribute positively to making places better for people. Paragraph 64 of the Framework is clear that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. I acknowledge that this overlaps with my consideration of the second main issue to a material extent, but plainly such a form of development is the antithesis of good design.

46. I have no reason to doubt that the Appellant's motivation was to safeguard the tenant's cattle. I also appreciate that the Appellant's ability to respond to this aspect of the concerns that have been raised has been compromised by a lack of access and not being certain of the internal layout. Nevertheless I have approached this matter in good faith, based on the assertions made by a professional Agent that one of the windows does indeed serve a living room.

47. On the third main issue, notwithstanding my finding in respect of ventilation, I conclude that the structure harms the living conditions of the occupiers of Papermill Cottage by reason of loss of outlook and daylight. As such I find a conflict with LP Policy D.2 f) and the quoted advice in the Framework.

(iv) Other considerations

48. It must follow from my finding on the first issue that the fourth main issue does not fall to be considered because the development is not inappropriate.

Balancing exercise and overall conclusion on the deemed application

49. Despite my positive finding on the first main issue, such that the fourth issue does not even fall to be considered, my findings on the second and third issues lead me to conclude overall that the structure is unacceptable on its merits. In reaching this view I am very conscious of the 'fallback', namely that a 2 m high means of enclosure along this boundary is permitted development. For the avoidance of doubt, even if I were wrong in my assessment under ground (c), there can be no doubt that a means of enclosure can be erected up to 2 m high along this boundary. If it were erected even closer to the windows, assuming that were possible, the effect could be even worse. This very real fallback does not however outweigh the harm and conflict with DP policies. Even with the marginal gain of imposing a landscaping condition I consider this would not be an appropriate outcome because the material considerations do not indicate that the determination should be made otherwise than in accordance with the DP. In these circumstances, for the reasons given and having regard to all other matters raised in the representations, I conclude overall that the ground (a) appeal, the deemed planning application, should fail.

Ground (f)

50. Section 173(3) of the Act says a notice shall specify the steps required to be taken in order to achieve any of the purposes set out in, amongst others,

section 173(4)(a) of the Act. Those purposes include remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted or restoring the land to its condition before the breach took place. The requirement of the notice as issued is clearly pursuant to the latter objective and so its retention is appropriate. However there is clearly a deemed planning permission for the erection of a means of enclosure along this boundary, which is granted by Article 3 and Class A of Part 2 to Schedule 2 of the GPDO. To the extent that there is an issue between the Council and I in this regard, it appears to be whether the structure is a means of enclosure, rather than whether planning permission is deemed to be granted for a means of enclosure along this line[15].

51. To illustrate the point the Council has not suggested that the barbed wire fence that was erected in Spring 2012 was a breach of planning control. The structure that has been erected is simply a permanent replacement of that temporary measure. For this reason it is clearly appropriate to put the requirement in the alternative, reflecting the provisions of the Act. Rather than do so by reference to any means of enclosure, which is a potential option that is open to me, I shall vary the notice to require the height of this means of enclosure to be reduced, which reflects my finding under the ground (c).

52. In the circumstances I conclude that this ground of appeal must succeed and that the requirement needs to reflect the deemed planning permission that is granted by Article 3 and Class A of Part 2 to Schedule 2 of the GPDO, albeit as an alternative to the existing requirement. In the circumstances I see no point in looking at the miscellaneous alternative scenarios offered by the Appellant.

Ground (g)

53. The Appellant seeks 6 months but this is essentially on the assumption that the fence needs to be dismantled in substance and a replacement structure of some sorts erected in its place. Plainly, given my earlier reasoning, and for this purpose adopting the balance of probability, I anticipate that the Appellant will merely seek to engage her contractor to finish, in her words: "*smoothing off the top*". Plainly, if for some other reason the Appellant elects to remove it and replace it with something else then the Council has a reserve power under section 173A of the Act to extend the period for compliance. However, for this reason, the ground (g) fails as I consider 6 weeks is adequate to do the minor works that I anticipate are required in order to comply with the varied notice.

Conclusion

54. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the corrected and varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR

[15] See for example the final sentence of paragraph 3.15 of the Appellant's statement and the Appellant's letter dated 27 January 2017.