



Appeal Decisions

Hearing held on 21 March 2017

Site visit made on 20 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 27 April 2017

Appeal A Ref: APP/J1860/C/16/3156800

Land at Allsetts Farm, Broadwas, Worcester WR6 5NS

- 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 Act’].
- The appeal is made by Mr Paul Brooks against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice, numbered E/16/00107/PHY2, was issued on 26 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the partial construction of 2 dwelling houses.
- The requirements of the notice are to:
 - (1) Demolish the 2 partially constructed dwelling houses as approximately hatched green on the plan attached to the notice,
 - (2) Lawfully remove all resulting materials from the land edged red on the attached plan in compliance with (1) and restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and a variation to the period of compliance as set out in the formal decision at paragraph 47 below.

Appeal B Ref: APP/J1860/W/16/3156801

Land at Allsetts Farm, Broadwas, Worcester WR6 5NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr P M Brooks against the decision of Malvern Hills District Council.
- The application ref 15/00933/FUL, dated 1 July 2015, was refused by notice dated 26 July 2016.
- The development proposed is demolition of existing buildings and erection of 4 dwellings.

Summary of Decision: The appeal is dismissed as set out in the formal decision at paragraph 50 below.

Application for costs

1. At the Hearing an application for costs was made by the Council against Mr Brooks and vice-versa. These applications are the subject of separate decisions.
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Matters concerning the issued notice

2. I raised some concerns about the description of the allegation and these matters require consideration prior to the determination of Appeal A with a view to correct the notice using the powers available in s. 176 (1)(a)(b) of the Act. Virtually any correction can be made having regard to the essential test of injustice.
3. The history is set out in the written representations which were extensively explored at the oral event. I will refer to the most pertinent aspect of that history. Allsetts Farm comprises a range of steel-portal frame and traditional farm buildings converted into residential use as well as a detached dwelling-house with a range of outbuildings. Farming had ceased in 2003 and part of the site benefits from a planning permission for the commercial storage, office and light industrial use of former agricultural buildings¹. Mr Brooks applied for demolition of these buildings and the erection of four dwelling-houses in 2015. That application was refused in 2016 and is now the subject of Appeal B [*the 2016 application*']. I understand Mr Brooks' disappointment because a positive outcome was anticipated. Apparently, the outstanding matter was a financial contribution towards affordable housing provision via a planning obligation.
4. Mr Brooks demolished some of the existing commercial units and then started to build two buildings from substructure upwards. The buildings are substantially incomplete and require significant internal and external work to complete. Nonetheless, two solid shells have been constructed because external walls with window and door openings and covered roofs have been built. Given the permanent nature and scale of these structures, they fall within the meaning of the word 'building' for planning purposes². Evidently, operations have been carried out in a single building operation resulting in the partial construction of two buildings by the time the notice was issued. The material facts show that building operations comprise demolition of existing buildings and the erection of two buildings. The scale of the work suggests it has been carried out by someone carrying on trade as a builder. The operations firmly fall within the scope of s. 55(1) and (1A) of the Act. It is undisputed that express planning permission is required for the erection of the two buildings and it does not exist.
5. In describing the allegation as the partial construction of two dwelling-houses, the Council rely heavily on the terms of the 2016 application and Mr Brooks' own intentions. However Mr Grant, quite rightly in my opinion, conceded that the buildings could not reasonably or properly be described as dwelling-houses having regard to *Gravesham*³. I saw that each building does not possess any facility for day-to-day private domestic existence and do not constitute a dwelling-house for development control purposes. I reject the proposition that two dwellings have been partially constructed.
6. Mr Brooks now says he intended to build live-work units. However, there is nothing to indicate the buildings were actually intended or designed as live-work units. The suggested correction would result in an alleged development that is for something completely different from that enforced against and would fundamentally undermine the notice. I reject Mr Mohamed's notion that the allegation should be corrected to

¹ Council ref: 12/00936/FUL.

² S. 336(1) – interpretation - "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

³ See - *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

describe the alleged breach as the partial erection of two live-work units, or commercial or office buildings.

7. Having regard to the material facts and reality on the ground, the description of the allegation is flawed. For greater precision, it should state the following:

Without planning permission, the carrying out of operational development comprising demolition of existing buildings and the partial construction of two buildings.

I do not believe it is beyond correction, however. Mr Brooks clearly understood what the notice attacks. It told him fairly what had gone wrong and what needed to be done to put that wrong right. Its intent has been properly interpreted by the appeal parties. This is clearly evident in the respective arguments. The appeal parties agreed that this correction causes no prejudice. Consistency follows by correcting the requirements to reflect that correction. Having regard to s. 176(1) of the Act, I am satisfied that no injustice is caused to any party and I will correct the notice.

Appeal A - ground (a) and the deemed application

8. The terms of the deemed planning application are directly derived from the corrected allegation – the matters stated in the notice as constituting the breach of planning control. Planning permission may be granted only for those matters as first corrected - demolition of existing buildings and the partial construction of two buildings. Mr Brooks contemplates completing development enforced against by retaining the existing part-completed buildings and former agricultural buildings for live-work purposes. I will briefly describe each option next.
9. Option 1 requires additional work area to be constructed to attain the 60-40 ratio due to the size of unit 1's living area. Option 2 requires no extension to the existing floor areas to achieve the prescribed 60-40 ratio, but does so by creating a separate administration area within unit 1. Option 3 is similar to option 2 except that there is no work provision within the new building. This option is provided to demonstrate that the 'live' element would still be ancillary in this configuration, but with unit 2 at 60%-40% and unit 1 at 54%-46%. Details of these alternative options have been submitted in the bundle of evidence and were the subject of extensive debate. The claim is that each of these potential alternatives would be local and national planning policy compliant. The issue is whether planning permission can be lawfully granted for any of these options as alternatives to total destruction.
10. The deemed application for planning permission under s. 177(5) is linked to the breach of planning control. This is mirrored by the power to grant planning permission under s. 177(1), which is limited to the whole or any part of the matters stated in the enforcement notice as constituting the breach. My powers are therefore circumscribed by the allegation of the breach of planning control in the notice.
11. Despite the wide powers of correction there is still no power to grant planning permission for something completely different from that enforced against. The reality of the breach is the carrying out of operational development without the requisite planning permission resulting in the partial construction of two buildings; not the partial construction of two live-work units. I am afraid Mr Brooks cannot have it both ways; on the one hand arguing that he did not actually intend to construct dwelling-houses yet, on the other, advancing a case seeking planning permission for something that has not actually been enforced against.

12. To my mind, the advanced development would involve considerable building operations and result into something other than what has been alleged. In my assessment, a grant of planning permission for any of the options would result in development which is not, and is not part of, the alleged breach as corrected. While the arguments for Mr Brooks have been elegantly and forcefully put, having reviewed all of the submissions and the relevant case law⁴, in my planning judgement, there is no power to consider a grant planning permission for any of the advanced alternative options.
13. I agree with the Council that fresh application(s) for planning permission would need to be submitted so it can properly examine each alternative option on its individual planning merits. In these circumstances, it would be inappropriate for me to assess the merits of each proposal potentially prejudicing the process. In the context of this ground (a) appeal, planning permission cannot be granted for more than two partially constructed buildings. I will proceed on this basis.

Reasons

14. The main issue arising from the reasons for taking enforcement action and the debate at the Hearing is as follows: the effect of the partially constructed buildings upon the character and appearance of the surrounding area.
15. Allsetts Farm was once a 70 acre dairy farm that ceased operating in 2003. The surrounding area is predominantly rural in character, with a lowland landscape setting, occasional steep sided hills and low escarpments. There is a notable pattern of hedgerows and trees defining field boundaries. Small farmsteads or groups of buildings are a particular feature of this part of the countryside⁵. The site is physically set some distance from any settlement. In the immediate vicinity there are examples of rural buildings as well as a network of highways, public footpaths, hedgerows, trees and infrastructure facilities such as national grid pylons. The site is physically surrounded by lush green and rolling countryside and it is seen against a visual backdrop of vast and mainly undeveloped agricultural land. It has an affinity with its rural setting and it functions as a small cluster of former rural and agricultural buildings. I find that the site is firmly situated beyond any settlement boundary within an area characterised as open countryside where residential development of this kind is strictly controlled.
16. Operational development has resulted in the demolition of existing buildings replaced by two buildings; one is a rectangular shaped structure and the other is an L-shaped building. The commercial buildings are noticeable from various public vantages given the area's topography. Nevertheless, in contrast, the buildings are substantial in height and scale. Even in their unfinished condition they are intrusive in the landscape because of their design, bulk and mass.
17. There is a network of highways and footpaths in this part of the countryside; there is a public path that passes the appeal buildings. Mr Brooks says these are not well-used and at least one seems to be a circular walk; that is not a persuasive enough argument to justify intrusive development in this location. Even with the presence of tall hedgerows obstructing direct sightlines, the buildings are visible from public vantage points. They are noticeable in medium and long views because of their

⁴ See - *Arnold v Secretary of State for Communities and Local Government* [2017] EWCA Civ 231, *Ioannou v SSCLG* [2014] EWCA Civ 1432 and *Mahfooz Ahmed v SSCLG* [2014] EWCA Civ 566.

⁵ See the Landscape Character Assessment Supplementary Guidance (2012) and Worcestershire Farmsteads Character Assessment provided in the Council's bundle of evidence.

height and they detract from the farmstead character. I find that the development has a significant adverse visual effect on the landscape.

18. The buildings already exist in an unfinished state and can be easily completed into live-work units. I appreciate that an application for that scheme is before the Council for determination and, if approved, the shells would be completed as live-work units. Mr Brooks further asserts that it is a waste of resource to demolish them requiring specialist equipment and generating off-site impacts such as lorry movements. Nonetheless, while I make no comment on the merits of the live-work proposal, there is no guarantee planning permission will be granted.
19. Mr Brooks maintains that the site is in part, at least, previously-developed land given the existence of commercial uses⁶. Be that as it may, that status does not justify harmful development. There is limited or no value in granting planning permission for these two partially constructed buildings and a separate application would, in any event, be required to complete them.
20. Mr Brooks makes much of a recent grant of planning permission for solar farm⁷ on a 12.89 hectare site at Allsetts Farm. It would be visible from public vantages and the partially completed buildings are likely to be seen against the visual backdrop of the countryside as well as the solar farm. The panels are likely to be laid out within the existing field pattern as approved. They would be seen as a dark non-reflective expanse reminiscent of a body of water. In contrast, the partially constructed buildings represent encroachment given their built-form.
21. Mr Brooks argues that planning permission should be granted subject to a condition requiring submission of completion scheme. He will attempt to obtain permission for a suitable use from the Council. This is unreasonable because significant amount of building operations are required to complete the buildings. There is concern about the overall height, scale and design of the structures. I do not consider this could be achieved through a conditional grant of planning permission. The alleged development cannot be made development acceptable in planning terms by imposing conditions.
22. I have reviewed all of the voluminous material including appeal decisions in support of the deemed application. Nothing in them persuades me planning permission for two partially constructed buildings should be granted. In any event, I should remind the parties that each proposal needs to be considered on its individual merits.
23. Pulling all of the above threads together, the partially constructed buildings fail to integrate effectively with their surroundings. The development fails to take into account local distinctiveness described in the landscape character assessments. There is conflict with policies SWDP 1, 21 and 25 of the South Worcestershire Development Plan ['SWDP'], adopted February 2016. I shall return to ground (g) later.

Appeal B – s. 78 proposal

Main issues

24. The development proposed is demolition of existing buildings and erection of four dwellings. The main issues arising from the Council's decision to refuse planning

⁶ See Annex 1 to National Planning Policy Framework for definition of previously-developed land.

⁷ Council ref: 15/00386/FUL – Installation of Solar PV panels and associated infrastructure (6.81MW) granted planning permission subject to conditions on 14 August 2015. The appellant was in the process of discharging pre-commencement conditions at the time of the Hearing.

permission are as follows: (1) the effect of the proposal upon the character and appearance of the surrounding area (2) whether or not the development would be in an acceptable location, and (3) the effect of the proposal on the supply and availability of employment land.

Reasons - character and appearance

25. The new dwellings would be grouped together and each one would be substantial in height and size. I consider the resultant development would appear intrusive in the landscape, because of the buildings' bulk and mass. Domestic activity, such as increase in comings and goings associated with residential living, defined curtilages and spread of domestic paraphernalia would further harm the tranquil setting of the landscape. Additionally, the development would be noticeable from various public vantages because of the buildings' built-form, bulk and mass. The scale and kind of development proposed would be out-of-keeping with the character of the surrounding area. For the same reasons given above I am not persuaded that a recent grant of planning permission for solar farm at Allsetts Farm is sufficient justification to allow intrusive development. In comparison the built-form, nature and scale of four dwellings combined with residential use of the site would represent unwarranted encroachment in this part of the countryside. I therefore conclude that the proposed development would have a significant adverse visual effect upon the character and appearance of the surrounding area. Accordingly, the scheme would conflict with SWDP policies 21 and 25.

Location of development

26. SWDP policy 2A sets out the development strategy and the related site allocations according to a series of criteria which, amongst other things, provide for the delivery of sufficient housing to meet objectively assessed needs; safeguarding and (wherever possible) enhancing the open countryside; encouraging the effective use and re-use of accessible, available and environmentally acceptable brownfield land; and focusing most development on the urban areas. Paragraph 4 of the supporting text states the high quality of the open countryside is an important planning attribute of the area. Sites beyond development boundaries generally are less sustainable as access to local services and employment opportunities tends to be poorer and therefore it is appropriate development in the open countryside is restricted to proposals which are supportive of more specific SWDP policies. For example, proposals related to employment in rural areas or exception sites.
27. Mr Brooks argues that the Council makes an undue correlation between the definition of open countryside in SWDP policy 2 and what may be reasonably be inferred from relevant sections of the National Planning Policy Framework ['NPPF']. The argument is that housing which is away from a settlement is not necessarily isolated. In support of that proposition, he selectively quotes from two appeal decisions; Alfrick and Pendock. In a similar vein, the Council say the site is located within the open countryside and selectively quote from recent appeal decisions⁸. It should be borne in mind that Inspector decisions are not case law. Nonetheless the findings and approach to a particular matter may be material. There is a need for consistency in the planning process but I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach.

⁸ Appeal decisions attached at appendix 1, 10 and 11 to Mr Brooks' statement of case and appendix 5 and 6 to the Council's bundle of evidence.

28. The underlying purpose of the spatial strategy is to locate residential development within reasonable distance to local facilities and services. The site is situated within open countryside some 2.8 kilometres from Lower Broadheath, or 4 km by road, and Broadwas is 3.4 km away. These settlements are categorised as villages that provide varying range of local services and facilities. There might be cycling opportunities to and from the site, but it is not situated within a reasonable distance to any settlement with range of amenities. Indeed, the walk to nearby settlements is along unlit rural roads and is likely to be both unsafe and tortuous. Public transport is also very limited. The site's rural location is problematic for the scale and type of residential development proposed.
29. I consider that future residents would be heavily reliant almost entirely upon the motor car for most of their day-to-day travel needs. Car-based commuting is likely as occupiers would be reliant on private transportation for a weekly shop or a trip, routine or otherwise, to the health centre or other facility. This site is not suitably located for this residential scheme as it would not sit comfortably with the Government's objectives of delivering sustainable development in a planned and coordinated manner, minimise and mitigate and adapt to climate change including moving to a low carbon economy.
30. The site already has an existing commercial use and that activity is likely to generate vehicular movements, but these movements would be limited to the lawful commercial use of the land. I also note the argument that reliance upon private mode of transport is not totally uncommon in a mainly rural area such as this and existing residents rely on private transportation to meet their day-to-day needs. This argument, however, could often be repeated in favour of isolated rural sites such as this, and it is not persuasive enough to justify a new residential development in this location away from settlements.
31. This level of reliance on the private car does not necessarily mean the development is unsustainable given the wider approach endorsed in the NPPF; it is not just about transport mode or access to local facilities. There is likely to be limited social benefits arising from this small-scale housing development, and potential economic advantages are likely to be restricted to the extent to which future occupiers would contribute to the local economy.
32. Drawing all of the above threads together, the site is not located within a reasonable distance to local facilities and services and the proposal would result in residential development in a rural location that would have the potential to encourage unsustainable pattern of travel. There are limited social and economic benefits but these are factors to be weighed in the overall balance of considerations. However, as set out above under the first issue, the development would materially harm the character and appearance of the surrounding area. Therefore, the development would not be environmentally acceptable in that respect.
33. For all of the above reasons, I conclude that the development would not be sustainably located accordingly there is conflict with SWDP policies 1, 2 and 4.

Effect upon employment land

34. SWDP policy 12B purpose is to protect existing employment sites in rural areas. The policy's focus is on safeguarding sites that were currently or last used for uses falling within class B1, B2 and B8 Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended. Proposals to change the use of such sites to any non-employment generating purpose will need to demonstrate that the site has been

actively marketed for, amongst other activities, employment for a period of 12 months and that it is no longer viable for an employment uses. Details of what is required are set out in Annex F to the Development Plan.

35. Mr Brooks argues that the absence of any sustained employment-generating activity is a reflection of problems with the existing buildings, though these have not been improved to a commercial standard. Without a new approach, he contends, the site is unlikely to be taken up for business use in the foreseeable future. This is because there is so much alternative property available and most of it more accessible and of a higher standard. Therefore, he considers loss of this employment site would have no effect on the availability and supply of employment-generating sites.
36. Andrew Grant's survey⁹ suggests that there is a diverse range of available commercial property around the area; an over-supply of this type of accommodation. It is contended that the majority has spent a significant amount of time on the market, which questions the validity of providing the market with more commercial property. There is limited market for the type of accommodation currently located at Allsetts Farm, due to its basic specification, which probably suit storage uses and the lack of demand for such property away from the main centres of population.
37. There is no evidence to show that the commercial buildings with class B1 permission have actually been offered for lease or sale for a period of at least 12 months. It is unclear whether any rental or asking price was based on a realistic assessment of market conditions, as no market testing has been carried out. There is insufficient information showing type of marketing material or detail of all advertising relating to the property, or prospective occupiers and/or purchasers and reasons as to why they did not pursue their interest.
38. In certain circumstances it will not be necessary to comply with the requirements in Annex F to the SWDP if market conditions for classes of property, or the individual characteristics of the property, mean that it is unlikely to be re-let for the approved use. Apart from mere assertion, there is no evidence to substantiate the claim that existing commercial buildings, or site, are no longer suitable for employment-generating activity. Nor is there anything to show that the 2012 scheme is unviable.
39. Drawing all of the above points together, I consider that the evidence presented does not substantiate the claim that the loss of this employment site to residential would have no effect upon the supply and availability of employment-generating sites in the area. Accordingly, the proposal is at odds with SWDP policy 12.

Other considerations

40. The development would replace lawful commercial use of site in this rural location, but I attach this fall-back limited weight. Some of the commercial buildings have already been demolished and erection of replacement buildings for Class B1 use would require express planning permission. The existing commercial units, which could be improved and renovated, would be materially different in terms of design compared to four dwellings. Comings and goings associated with residential living would also be different. The size and scale of the proposed dwellings would result in significant visual harm to the appearance of the site and character of the surrounding countryside.

⁹ Andrew Grant is a local property agent and survey details are in appendix 7 to Mr Brooks' statement of case.

41. Mr Brooks has submitted a separate planning application for live-work units for the Council's determination, which is materially and substantially different to the proposal. I also note that two partially constructed buildings already exist and could be completed as dwellings. Planning conditions could be imposed to ensure that the development is carried out in accordance with plans. That said, however, conditions alone would not address my concern about the potential loss of this employment-generating site.

Planning balance

42. The proposed development would have significant adverse visual effect upon the character and appearance of the surrounding area to which I attach significant weight. Additional weight is given to my findings on employment-land issue. There is conflict with local planning policies found in the SWDP cited above.
43. On the other side of the scales, moderate weight is given to my finding that the site is in a location that would encourage unsustainable pattern of vehicular movements and result in a reliance on private mode of transportation to access amenities and services, but I attach limited weight to the perceived social and economic benefits arising from the proposal given the serious environmental impact. Limited weight is given the fall-back and previously-developed land arguments.
44. The case in favour of planning permission for the proposal has been forcefully put. Taking all considerations into account, in my planning judgement, the harm arising from the proposed scheme outweighs other considerations advanced in support. I conclude that the s.78 appeal should not succeed.

Appeal A – ground (g)

45. It is necessary to consider whether the compliance period, three months, is reasonable. The breach of planning control should not be allowed to continue more than absolutely necessary given the identified planning harm. That said, however, the nature of work required by the corrected notice would need some time to arrange and execute. I was unable to grant planning permission for the alternative live-work proposals as all of the advanced options do not fall within the scope of the deemed application. Mr Brooks considers a properly worked-up planning application for any alternative could be submitted for the Council's determination. I think that is a real possibility, given that two partially constructed buildings have been constructed. There is already an application pending consideration though there was some disagreement as to whether or not it had been made valid at the time of the Hearing.
46. If there is an air of co-operation an extended period of compliance might assist in overcoming the planning difficulties at less cost and disruption subject, of course, to a merits assessment by the decision-maker. I therefore consider that an extended period of 10 months from the date of my decision is reasonable on the particular circumstances. Ground (g) succeeds to this extent only.

Formal decisions - Appeal Ref: APP/J1860/C/16/3156800

47. It is directed that the notice be corrected by:

- (1) The deletion of all of the text in section 3, the matters which appear to constitute the breach of planning control, and the substitution therefor by the following text: *Without planning permission, the carrying out of*

operational development comprising demolition of existing buildings and the partial construction of two buildings.

- (2) The deletion of the text in section 5, what you are required to do, subsection 5.1 and 5.2, the substitution therefor by the following text: *Demolish the two partially constructed buildings hatched green on the plan attached to the enforcement notice and remove all resulting materials from the land and restore the land to its condition before the breach took place.*

48. It is directed that the notice be varied by the deletion of all of the text in section 6, time for compliance, and the substitution therefor by the following text: *The time for compliance is 10 (ten) months.*

49. Subject to the these corrections and variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/J1860/W/16/3156801

50. The appeal is dismissed.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Hashi Mohamed	Of Counsel on behalf of Mr Brooks
Andrew Boughton	}
	}
Daniel Stiff	} BB Architects & Planning
Paul Brooks	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant	Of Counsel, on behalf of Malvern Hills District Council
Stuart Castle	Senior Planning Officer
Paul Clements	Enforcement Officer

DOCUMENTS HANDED IN AT THE HEARING

- 1 Letter of notification and those consulted
- 2 Representation by Kenswick and Wichenford Parish Council
- 3 Email dated 8 July 2016 by Paul Brooks
- 4 Written statement by Paul Brooks

PLANS

- A Public Right of Way plan
- B MH 16/00471 solar farm layout.