The Planning Inspectorate

# Appeal Decision

Site Inspection on 24 July 2019


**by Graham Self MA MSc FRTPI**

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



Decision date: 07 August 2019


**Appeal Reference: APP/P0119/C/18/3218053**
**Site at: Land South of Down Road, Winterbourne Down, Bristol BS36 1AU**

- The appeal is made by Mr Michael Seward under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by South Gloucestershire Council.
- The council's reference is COM/18/0778/OD/2.
- The notice is dated 13 November 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, erection of a large building/warehouse on agricultural land".
- The requirements of the notice are:
  "(i) Demolish and the remove *[sic]* from the land the building (shown in the approximate position outlined in black on the attached plan marked with an X and shown on photographic sheet marked KP1) together with the foundation materials (other than the pre-existing concrete slab which exists under part of the building).
  (ii) Restore the land to its condition before the breach took place."
- The period for compliance is three months.
- The appeal was made on grounds (a) and (g) as set out in Section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the Act.


**Summary of Decision: The appeal fails, although the period for compliance with the notice is increased to four months.**


## Site Inspection

1. No representative of the planning authority appeared at the time arranged for the site inspection, or for some time afterwards. After a wait, I inspected the site accompanied by the appellant and his agent.

## Ground (a)

2. Under this ground of appeal planning permission is sought for the development enforced against. The site is located in an area designated as green belt. A key issue of dispute is the effect of the development on the appearance and character of the area, having regard to local and national planning policies applying in the green belt. In considering this issue it is necessary to assess whether the building is "inappropriate development" in the green belt, whether the building conflicts with or harms the aims of green belt policy (particularly with regard to openness), and whether other considerations outweigh any such harm.

3. The area has a semi-rural character - some of the land in the vicinity is undeveloped but there are houses near the site and commercial premises north of Down Road. The disputed building is positioned in a part of the appeal site which is slightly below the level of the surrounding land, and vegetation provides some screening around the site boundary. Nevertheless the building is quite prominent from some local viewpoints, including along the busy A432 Badminton Road and from Ruffet Road near its junction with Badminton Road. The building takes away some of the area's remaining rural character and openness.

4. Under national and local planning policies, "inappropriate development" is by definition harmful to the green belt and should only be approved in very special circumstances. The National Planning Policy Framework states that local planning authorities should regard the construction of new buildings as inappropriate in the green belt unless specified exceptions apply. One of the exceptions is buildings for agriculture (which includes horticulture).

5. The appellant and the council disagree about the application of green belt policy, basically because the council do not accept the appellant's contention that the building was built for and is used for horticulture. Much of the site is used for growing Christmas trees, and that has evidently been so for several years. Planning permission was granted in 2010 for a building on the appeal site. This permission was subject to a condition restricting any retail sales within the building or its curtilage to those ancillary to the primary agricultural use of the site. The term "ancillary" was defined in Condition 2 of the permission as goods produced on the agricultural holding. The council say that this permission was not implemented and expired in 2013; the appellant says the permission was implemented (a matter I return to later below).

6. Various other aspects of the evidence are also disputed, including what was said or implied during a telephone conversation between a council officer and Mr Seward in approximately early September 2018. The council has issued two planning contravention notices (abbreviated below to "PCN"), the first in 2013, the second in 2018. Both sides refer to them in their submissions. The answer to a question in the 2013 PCN indicated that about 80% of the trees sold from the site were imported to the site from elsewhere. One of the questions asked by the council in the 2018 PCN was: "How many (approximately) of the trees you hope/intend to sell from the land are growing or have been grown on the land?". The answer given was: "200+".

7. The 80% figure just mentioned is one of the factors behind the council's view that the site and the building are (and were at the relevant time when the enforcement notice was issued) in mixed use including use for retail sales, and that the agricultural or horticultural justification for making an exception to normal green belt policy does not apply. The appellant argues that circumstances have changed since 2013, and also that other assumptions made by the council, for example on the prices which could be charged for trees, are incorrect.

8. From what I have seen and read about the number of trees on the site and the normal time for various species to reach selling maturity, I judge that the figure of "circa 200+" trees stated in December 2018 in answer to the PCN question is at or above the upper end of what is likely.[1] But even taking the figure of "200+", and even taking the appellant's higher figures for prices rather than the council's figures, and making allowances for costs and overheads, it is clear that

[1] The same figure (circa 200+) was stated in response to other questions, including: "…How many tress growing on the land will be mature enough for sale in 2019?".

this is not anywhere near a self-sufficient horticultural site, in the sense of producing a net income at or above the minimum agricultural wage.

9. That does not mean that planning permission should be refused, but it leads me to look forensically at the evidence about horticultural use of the building. After all, if merely using a field for agriculture or horticulture were to be regarded as justifying the erection of a quite substantial building for equipment storage or other related purposes, such buildings could soon be scattered throughout the green belt.

10. As has been pointed put for the appellant, the council has no direct or clear evidence about the source of trees. The appellant and the council have both opted for this appeal to be decided by the written procedure, so I cannot probe the evidence by oral questioning. However, on the balance of probability I judge that the sale of imported trees is likely to be more than merely incidental or ancillary, even assuming a proportion considerably less than 80%.

11. There are about six main reasons why I have made that judgment. First, in his recent appeal statement[2] the appellant states that the circumstances of his horticultural enterprise are "broadly similar to those which existed in 2010", the only change being that more of the site is now used for horticultural purposes than was so then. This evidence suggests to me that although there may be more trees growing on the site than in 2010 (including trees planted by a contractor in March 2018), the operation at the site still includes the sale of imported trees, at a proportion "broadly similar" to the situation in 2010. No details of annual figures or trends have been supplied in evidence, which leaves me having to make some assumptions and guesses, but in 2010 the proportion of trees sold from the site which were grown on the site must have been very small, allowing for the time needed for trees to grow and the fact that the first crop was only planted in 2009 after Mr Seward had bought the site.

12. Second, taking the main sale period as 3 to 4 weeks from late November (as stated in one of the PCN responses) the sale of around 200 trees would amount to an average of about 55-60 a week or 8 per day, then nothing or very little for the rest of the year. I do not find it credible that this fairly substantial building would have been erected merely for purposes such as storing equipment relating to the horticultural use of the site and for the ancillary or incidental sale of trees grown on the site. Although there might be horticultural justification for a building of some sort, the scale of the building appears out of proportion with the use of the site for growing Christmas trees, especially bearing in mind that the tree planting is evidently carried out by a contractor, not by the appellant.

13. Third, I note that the appellant's business operation at the site includes the sale of items such as tree stands, netting and machines, evidently to wholesale customers. Selling to wholesale customers suggests shifting a fairly significant quantity of stock, involving the use of the building for storage, packing and dispatch purposes.

14. Fourth, other evidence submitted for the appellant is also conflicting. For example, his appeal statement (paragraph 3.11) claims that he has not used the building for any purpose other than purposes incidental to the horticultural activities at the appeal site. In the same paragraph, reference is made to an appendix which among other things sets out the goals and objectives of the appellant's business. One of the goals and objectives is to become less reliant on

[2] The statement was submitted by an agent on the appellant's behalf, so is treated as the appellant's statement.

outsourced trees (apparently meaning trees not grown on the site). The appendix is undated, but is put forward as part of the evidence submitted in June 2019, and refers at one point to what is intended to happen during 2019, so it is reasonable to assume it reflects a fairly up-to-date situation (other parts of the appendix suggest perhaps 2018). If becoming less reliant on outsourced trees is still only a goal (or was only a goal in 2018), the implication is that the enterprise operated at the site is reliant to a significant degree on outsourced trees. It is difficult to reconcile this evidence with the assertions about the use of the building being no more than incidental to horticulture on the site.

15. Fifth, the appellant's appendix contains the statement that: "The primary services offered by the company is retail of Christmas trees. The business grows trees in the field, and pot grown trees in a nursery". I would have thought that if horticulture were the primary use of the site, with tree sales as ancillary or incidental, the primary service of the company would have been described as horticulture, or tree-growing. One of the strengths of the company operated by the appellant is also stated to be "a network of contacts via….other growers". This implies that other growers supply the appellant's company.

16. Sixth, the layout of the site indicates to me something more than growing trees with some small-scale incidental sales. There is a large shingle-surfaced area between the site entrance and the building. The formation of this area with its surfacing seems an over-provision if it is only to accommodate access and parking for three or four weeks of the year associated with incidental sales of trees grown on the site (plus perhaps some use by equipment used for horticultural purposes, and occasional access by a planting contractor). There is no dispute that trees are grown on the open part of the site. But the building is part of a planning unit including the whole site, and the planning unit appears to be in mixed use.

17. Other points which I have weighed in the balance include the way Question 10 on the 2018 PCN was answered. The question was: "You are advertising the sale of Christmas Trees from the land. From where are you sourcing those trees?". The answer was: "Trees are grown on site". The statement "trees are grown on site" was merely confirming the obvious, and in my view did not properly answer the council's question - whether this was accidental or deliberate I cannot tell.

18. The planning officer's report on the 2010 application referred to the unauthorised sale of fireworks from the site as well as imported Christmas trees, and mentions the applicant's stated intention "to continue undertaking these uses in the future". A large sign standing within the site next to the A432 advertises not only Christmas trees, but also a website linked to the sale of fireworks. Neither side has made any submissions or comment on the advertising sign, or about firework sales, and the evidential references to fireworks have not influenced my decision; but the past record of the appellant's intention to import Christmas trees adds to my doubt about the credibility of recent contrary claims by him or on his behalf.

19. Taking all the above considerations into account, I find that the disputed building was erected not only for horticulture, but for dual or multi-use purposes, including horticulture, the storage and sale of Christmas trees not grown on the site, and probably including some other purposes such as the wholesale sale (and related stocking) of horticultural equipment. Therefore the exception to normal green belt policy relating to agricultural or horticultural buildings does not apply to this development.

20. Part of the appellant's case concerns what might be called a "fall-back argument", to the effect that if retrospective permission for the existing building is not

obtained, an alternative would be to erect the building permitted in 2010, which would be similar but higher. This argument depends on the claim that the 2010 permission was implemented when the access off Down Road was formed.

21. There would be little sense in requiring the disputed building to be removed if there were to be a reasonable prospect of a broadly similar, slightly higher building being erected in the same place by implementing an extant planning permission. I have to make a decision on the evidence put before me, and since the 2010 permission was subject to a number of pre-conditions I cannot be sure whether the permission was lawfully implemented. No application has been made for a certificate of lawfulness. It also seems doubtful that the access layout would have been installed with the intention of implementing the 2010 permission - evidence about timing and intention is lacking, but more probably it was a first stage in implementing the development resulting in the building which now stands on the site. Even if the building permitted in 2010 could still be erected under that permission, it and its curtilage would be subject to the restrictive condition limiting any retail sales to "goods produced on the agricultural holding". In all these circumstances the prospect of the 2010 permission still being implemented appears to be more theoretical than real.

22. In summary: the construction of the building was inappropriate development in the green belt; it harms the openness of the green belt; and there are no very special circumstances or other reasons why an exception should be made to normal green belt policy. I conclude that planning permission should not be granted, so ground (a) of the appeal does not succeed.

**Ground (g)**

23. This ground of appeal is a claim that the period for compliance with the enforcement notice is too short. The appellant seeks a period of at least six months, taking into account the effect of a refusal of permission on his horticultural enterprise and to allow time to obtain planning permission for a replacement building. The compliance period will now run from the date of this decision.

24. Much of the appellant's case on ground (g) relates to his contention that some form of building is justified at the appeal site to support the horticultural enterprise, and that the council have gone from approving (in 2010) a larger building to opposing the existing one. In support of his case on ground (g), the appellant also refers to the prospect of implementing the 2010 permission. I have already commented above on this point, as it seems to me that it relates as much to ground (a) as to ground (g).

25. The purpose of a period for compliance with an enforcement notice is to allow a reasonable time for the requirements of the notice to be carried out. The uncertainty resulting from the enforcement action and appeal has already affected Mr Seward's enterprise at the site and will inevitably have further effects, though not preventing Christmas trees being grown on the site. There is no good reason to extend the compliance period to allow time for a planning application to be made for a different building, especially since an extension on that basis could cause problems if a decision on an application were to lead to a future appeal (either against a refusal or against a conditional permission). As the council have pointed out, the planning authority can allow additional time to comply if an application with a prospect of success were to be submitted, although that would be a matter for the council, who describe such a prospect as limited.

26. For the reasons I have explained above, the argument that the appellant needs time to "revert back to erecting the building which still benefits from planning consent" is unconvincing, since the planning status and realistic feasibility of such a scheme is doubtful. No evidence has been put forward showing that the compliance period would cause any practical difficulties such as the availability of a suitable contractor. Nevertheless I judge that three months is quite a tight time period for tasks such as obtaining quotations from contractors, finding alternative storage facilities, and carrying out the requirements of the notice. With those points in mind I have decided to extend the compliance period to four months. The appeal on ground (g) succeeds to that limited extent.

**Formal Decision**

27. I direct that the enforcement notice be varied by deleting "Three (3) months" from the text of the notice after the words "Time for Compliance" and substituting: "Four months". Subject to that variation, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

*G F Self*

Inspector