
Appeal Decisions

Site visit made on 23 September 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal A Ref: APP/W1850/C/19/3228564

Land lying to the south-west of College Farm, Craswall, Herefordshire HR2 0PN

- 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 appeal is made by Mr Christopher Brooks of CD Brooks and Partners against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice was issued on 8 April 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission unauthorised operational development by erection of an agricultural building.
 - The requirements of the notice are:
 - (1) *Remove the unauthorised agricultural building from the approximate location marked "x" on the plan attached to the notice from the Land, and*
 - (2) *Remove from the Land all associated materials, including services connections that facilitate the unauthorised agricultural building arising from compliance with requirement (1) above and restore the Land to its condition before the breach took place by levelling the ground and reseeding with grass.*
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/W1850/W/19/3232009

Proberts Farm, Hill Lane, Craswall, Herefordshire HR2 0PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
The appeal is made by Mr Christopher Brooks of CD Brooks and Partners against the decision of Herefordshire Council.
 - The application Ref 183609, dated 27 September 2019, was refused by notice dated 15 February 2109.
 - The development proposed is described as "Proposed retention of Barn as built and proposed construction of woodburning stove chimney to enclosed shelter area".
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by deleting steps 1 and 2 of the requirements and substituting the words "Alter the building so as to comply with the deemed planning permission granted under Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (including all conditions and limitations) together with the conditions and plans of the prior approval application made for the siting, design and external appearance of the building decided by the Council on 24 July 2015 under

reference 151925". It is also directed that the 6 months period of compliance be substituted with the words "Nine months". Subject to these variations 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

2. The appeal is dismissed.

Procedural matters

3. Although the site addresses in the two appeals differ, they nevertheless relate to the same land and the same building on it.
4. In respect of Appeal B, I have set out, in the heading above, the amended description of development as agreed between the Council and the appellant. However, retention is not an act of development, and therefore I have treated the proposal as a retrospective one in respect of the erection of a barn, and a prospective one for the construction of the woodburning stove chimney to the enclosed shelter area.
5. An agent acting for a number of local residents argues that the allegation is incorrect in that it refers to "the erection of an agricultural building" because the building is not an "agricultural building". The appellant says that it is designed and intended to be used for the storage of fodder straw and implements with an area for lambing and secure storage. There is no livestock currently present on the site, and the appellant says that plans to stock the unit were delayed pending the resolution of the planning position. In the meantime, the land has been leased to a local farmer who uses it for grazing cattle. From what I saw on my visit, I am satisfied that the building is typical of many agricultural buildings, and whilst there are features which might be unusual for an agricultural building, such as the foam insulation of all the walls, and a timber internal staircase leading to a platform, I consider that these are insufficient to conclude that the building is not an agricultural building. The Council's description is not so patently incorrect that it requires correction.

Ground (a) – that planning permission should be granted and the S.78 appeal (Appeal B)

Main Issue

6. The effect of the development on the character and appearance of the surrounding countryside.

Reasons

7. The building in question is nearly completed, and comprises three different elements, an open sided element, with wooden slats on the upper side elevations, and a wholly enclosed element, clad in black painted profiled steel with an earth floor, accessed by tall roller shutter doors from the open area, and from an ordinary door in the side elevation. The third element is also wholly enclosed, accessed from an internal door from the second part of the building and is split into two levels, with a wooden platform extending over about half of the floorspace of this part of the building. It is lit by large

translucent panels in the south-east facing elevation, in the wall opposite the upper platform.

8. From what I could see, all the steel-clad walls are insulated with about 140mm of expanded insulating foam. Work to the interior of what I have described as the third section has not been completed. A diesel tank is located nearby to the west.
9. The site of the building is remote; it is at an elevation of about 450m or so above sea level, on the slope below Black Mountain. It is some 350m away (as the crow flies) from the nearest metalled road. I was told on behalf of the appellant that it is not accessible by four-wheel drive vehicles and can only be reached by quad bikes. It is a walk of 30 minutes or so to the site from the nearest public road. The hillside is steep, and there are no farm tracks serving the site. It is located a short distance from common land on the slope, beyond which is Offa's Dyke footpath, part of a well-used, strategic long-distance network of paths.
10. The Council's Landscape Character Assessment Supplementary Planning Guidance includes the site in an "Ancient Border farmlands" landscape type, characterised as a remote, small scale, pastoral landscape with a dramatically rolling topography. The site is close to an adjacent landscape type, "High Hills and Slopes", described as having an invigorating open and exposed spatial character, with large scale views, a dramatic, wild topography and an absence of human habitation. It goes on to say that it is an unsettled landscape in which any built development would be inappropriate. I consider that because of its elevated position, the appeal site shares a number of traits in common with this typology.
11. Offa's Dyke marks the boundary between England and Wales, and the Welsh side of the border lies within the Brecon Beacons National Park, where statutory landscape protection applies. Whilst the appeal site does not benefit from the same level of protection, I nevertheless consider that the north-facing slope on which the site is located is part of an unsettled landscape of a distinctive, rugged character type, and can be regarded as a "valued landscape" in the terms of the Revised National Planning Policy Framework, and which warrants protection and enhancement as required by paragraph 170 of the Framework.
12. The building stands in an isolated position; there are no other agricultural buildings in the vicinity, and it appears incongruous when viewed from the common land on the higher ground to the west. It can also be seen from Craswall, albeit at a distance. I consider it likely that when the morning sun shines on the large translucent panels on the south-east facing elevation, it would make the building stand out more, when seen from the common land above and from Craswall and roads in its vicinity. It is at odds with the undeveloped landscape, and appears as a stark intrusion. The planting of hedgerows would help to assimilate it into its setting, but due to the height of the building, it would take some years before planting would make any significant impact, and it could not be assured to screen the development in perpetuity.
13. The appellant says that the siting of the building was chosen due to the relative flatness of the ground in this location. Even so, it required engineering operations by way of "cut and fill" in order to achieve a level platform. Whilst

the landscape impact of the excavation is localised and minor, I consider that the benefits of the chosen siting are considerably outweighed by the difficulty of accessing the building, the unfavourable weather conditions for lambing as a result of the exposed, high and cold position and the harmful visual impact. On the basis of the evidence provided, I am not satisfied that the prominent siting has been justified.

14. I have had regard to the Council's decision in 2015 that the prior approval of the siting, design and external appearance of a smaller barn on the same site was not required, pursuant to a deemed planning permission granted under Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015¹, and to officer's views that the building was considered to be of an appropriate siting, design and external appearance. Although the Council now objects to the siting, I accept that there have been no material changes in planning considerations since that time, and that this previous decision carries some weight. Even so, I find that the harm caused by the building is substantial, and this building is materially different from that previously approved, and these considerations outweigh other factors. I shall refer to the approved scheme again below.
15. The proposed flue for the wood burning stove would be an unusual addition to an agricultural building. It would add a very domestic-looking appurtenance to the building which would compound the incongruity that I have found which results from its isolated siting and intrusive appearance. There is a large diesel tank nearby which could fuel any heating needed for the short periods when lambing takes place. Heating the whole of the enclosed part of the building in preference to the more usual use of a lambing box appears to me to be excessive in the circumstances and I see no compelling reason for a wood-burning stove in the building.
16. I therefore conclude on the main issue that the development as existing causes significant harm to the landscape and scenic beauty of the area, and conflicts with Herefordshire Local Plan Core Strategy Policies LD1 and DD1, which respectively deal with landscape and sustainable design and energy efficiency.

Other matters

17. Local residents contend that the development harms the setting of St Mary's Church in Craswall, a Grade II* listed building, which I visited as part of my site inspection. The small church dates from the 15th century and sits in a walled churchyard on the north side of the River Monnow. At the time of my visit, the appeal site could not be seen from the church itself, due to the extensive foliage of trees close to the church. However, it can be seen from the north-west entrance to the church yard. As a parish church serving an agricultural community, the surrounding agricultural land forms an associative part of its setting. However, the importance of that setting to the significance of the church diminishes with distance, and at about 1.4km away, the appeal site plays a very minor part. Moreover, as an agricultural building, its distant appearance, even with the incongruous features to which I have referred

¹ Ref 151925. The decision refers to the superseded Town and Country Planning (General Permitted Development) (England) Order 1995, which had been replaced by the 2015 Order, which came into force on 15 April 2015, prior to the submission of the prior approval application to the Council. I have treated the decision as one made under the 2015 Order.

above, is barely discernible, and has no materially harmful impact on the setting to the church.

18. I have had regard to the DEFRA recommendations for the welfare of sheep, and I recognise that the size of the lambing area proposed may not be wholly compatible with the appellant's stated intentions as to stocking rates. Even so, that does not preclude the barn being required for the purposes of agriculture.
19. The deemed planning permission and the Council's decision not to seek approval of the details of siting and design for a barn on the site are material considerations. The building as erected differs from the approved scheme in the following ways:
 - An additional bay about 6m long has been constructed on the western end of the barn.
 - The eaves height of the barn is higher by slightly under 0.5m.
 - The metal cladding has been painted black rather than grey.
 - The translucent panels are larger than approved.
20. I consider that all the differences between the building as approved and as constructed have the result in making the building more conspicuous and harmful in the landscape, and it is materially different from that proposed as part of the Part 6 deemed permission. The existence of a permitted fallback does not justify granting planning permission for the larger, more intrusive and visually harmful building.
21. I therefore conclude that the appeal on ground (a) fails, the deemed planning application is refused and the Section 78 appeal is dismissed.

Appeal on ground (f) – that the requirements of the notice are excessive

22. The enforcement regime is meant to remedial rather than punitive, and so I have given consideration to using powers under the Act to vary the notice to make the development comply with the terms (including conditions and limitations) of the planning permission which has been granted in respect of the land. I consider that if the building was required to be demolished, it is likely that the appellant would implement the deemed planning permission for the barn on the basis that an agricultural need is still claimed to exist. It is settled case law² that development permitted by Part 6 of the Order is not confined to the particular agricultural activity being carried on at the time of its application being considered, and so the fact that the appellant does not currently farm the land is not a critical consideration.
23. Having regard to that fallback, it seems to me to be an obvious alternative to consider whether the building could be adapted to comply with the terms of the permission for a similar building which could be erected under permitted development provisions, in which case there would be little to be gained from requiring the breach to be remedied.
24. The Council argues that it would be more "straightforward" to demolish the building than to adapt it to comply with the deemed approval but offers no evidence to substantiate this. Whilst the adaptation may require more skill and

² *Clarke v Secretary of State for the Environment and Melton Borough Council* (1992) 63 P. & C.R. 429

time than demolishing the building, I consider that it would not be more onerous.

25. In varying the requirements of the notice, I make it quite clear that what is a permitted under the deemed permission is an agricultural building, and it will be for the appellant to ensure that any building erected under the deemed planning permission will be required for agricultural purposes. I note the concerns of local residents who fear that it is to be used as a studio for the appellant, who, as well as farming land in the Cotswolds, is also a successful artist. But a studio is not what is proposed or what was approved, nor is it what I saw when I inspected the site. The amended requirements include compliance with the conditions imposed on the deemed permission, which includes a requirement that the building should be demolished if, within 10 years of the date of the substantial completion of the building, it ceases to be used for agricultural purposes, and that, if after 3 years from the permanent cessation of agricultural use, no planning permission has been granted for an alternative use, it shall be demolished.
26. I therefore conclude that the appeal on ground (f) succeeds to the limited extent that I have indicated.

Appeal on ground (g) – that the time for compliance is too short

27. A compliance period of 6 months would coincide with the coldest and wettest months of the year. I have referred above to the difficulty in accessing the site, which would be even worse in snowy, icy or very wet conditions. I therefore consider it reasonable to extend the compliance period to 9 months to ensure that the building can be accessed to undertake the remedial works. To this extent, the appeal succeeds on ground (g), and I shall vary the notice.

Overall conclusion

28. Appeal B and the appeal on ground(a) of Appeal A fail, and planning permission is refused on the deemed application made under Section 177 of the Act, and Appeal B is dismissed. The appeal on grounds (f) and (g) succeed to the extent indicated above, and, subject to variation, the enforcement notice is upheld.

JP Roberts

INSPECTOR