



Appeal Decisions

Site visit made on 3 February 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Appeal A: APP/Q3115/C/19/3224405

Land at Mount Hill Farm, High Street, Tetsworth, Oxfordshire OX9 7AD

- 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 Martin Redman against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 28 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of the Land from agriculture to mixed purposes of (1) agriculture and (2) storage use (use class B8).
- The requirements of the notice are (i) Stop using the Land for storage purposes. (ii) Remove from the Land all stored materials and storage racking related to storage use.
- The period for compliance with the requirements is 12 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation.

Appeal B: APP/Q3115/C/19/3224407

Land at Mount Hill Farm, High Street, Tetsworth, Oxfordshire OX9 7AD

- 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 Martin Redman against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 28 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission the erection of a building extension for Class B8 storage use in the approximate position shown hatched blue on the Plan.
- The requirements of the notice are:
 - (i) Demolish the building extension referred to in 3 above.
 - (ii) Dig up the foundations of the building extension referred to in 3 above.
 - (iii) Remove from the Land all materials resulting from the works required by (i) and (ii) above.
 - (iv) Reinstate areas of the Land disturbed by the works required by (i), (ii) and (iii) above by the laying of topsoil to levels commensurate with the level of the immediately surrounding land and the sowing of grass seed.
- The period for compliance with the requirements is 18 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Appeal A Notice

1. The notice refers to the appeal site as 'shaded red' on the inset map accompanying the notice. As the land is edged rather than shaded on this inset map, I shall correct the notice accordingly.

Appeals A and B

2. In the interests of avoiding duplication, I set out the background, site and policy context in respect of both appeals below.

Background

3. In April 2008, the Council approved a prior notification application for the erection of an agricultural building of some 470 sqm¹ (this being the appeal building as originally constructed). This was erected slightly south-east of the approved location. The site of this building is shown edged red (but not hatched blue) on the Appeal B notice, and is agreed as immune from enforcement action. In September 2016, the Council approved a further prior notification application² for construction of a detached agricultural building immediately adjacent to the original appeal building, and of some 370 sqm. What was constructed was in fact an extension to the original appeal building – as shown hatched blue on the plan attached to the Appeal B notice.
4. Planning permission was granted for two further agricultural buildings to the north of the appeal site³. A retrospective planning application seeking a change of use of the appeal building (as extended) was refused in January 2018⁴.
5. The Council accepts that the original appeal building was initially used for agricultural purposes. As regards the building extension, planning contravention notice responses from the appellant indicate that this was originally used for agricultural purposes. The Council contends that this was not the case. The appellant does not though make any appeal on ground (b) in respect of Enforcement Notice B seeking to demonstrate that the erection of a building extension *for* Class B8 storage use has not occurred as a matter of fact. The appellant does not therefore appear to dispute this premise.
6. The alleged breaches of planning control then are essentially: (i) Appeal A - a change of use of the area of land occupied by the appeal building as extended – which has been facilitated by the erection of the unauthorised extension; and (ii) Appeal B – operational development comprising the erection of an unauthorised building extension.

The site and surroundings

7. The appeal site for both notices is tightly drawn around the appeal building as extended (leaving aside a small section to the rear). The building, as extended, is a large and utilitarian metal clad building. To the north are some similar style buildings, some of which are in use for agriculture, with a network of public footpaths close by. To the east are areas of open storage and to the west a housing development for 39 dwellings is under construction. Although

¹ Ref: P08/E0309/AG

² Ref: P/16/S2760/AG

³ Ref: P16/S3559/FUL

⁴ Ref: P17/S3361/FUL

located on the rural periphery of Tetsworth, the site is a relatively short distance from the centre of the village, and from the offices of Zioxi Limited (Zioxi), being the company occupying the appeal building.

Appeals A and B - the Appeal on Ground (a) and the Deemed Planning Application

8. Although the two enforcement notices relate to different breaches, the main planning issues related to these breaches are closely linked, particularly as the material change of use is alleged to have been facilitated by the building extension which is the subject of the Appeal B notice. I therefore deal with both ground (a) appeals together, making reference to the different breaches as appropriate.

Policy Context

9. Development plan policies cited in the notices comprise: (i) saved policies contained in the South Oxfordshire Local Plan 2011 (adopted January 2006 – Strike-through version on adoption of the South Oxfordshire Core Strategy December 2012) (LP); and (ii) policies in the South Oxfordshire Core Strategy (December 2012) (CS).

LP Policies

10. Saved Policy D1 of the LP states that the protection and reinforcement of local distinctiveness should be taken into account in all new development including through respecting the character of the existing landscape. Saved LP Policy C4 emphasises that development which would damage the attractive landscape setting of the settlements of the district will not be permitted. Saved LP Policy G2 states that the district's countryside, settlements and environmental resources will be protected from adverse developments. Saved Policy G4 of the LP states the need to protect the countryside for its own sake. This policy is not therefore consistent with the National Planning Policy Framework 2019 (the Framework).
11. Saved LP Policy E5 indicates that proposals for business, industry, warehousing and storage will not be permitted which, amongst other things, conflict with policies in the LP related to protection of the countryside and that these should be of a scale and type of development appropriate to the site and its surroundings. Saved LP Policy E8 encourages the re-use of rural buildings subject to certain criteria including that their form, bulk and general design are in keeping with their surroundings. LP Policy A3 supports farm diversification provided, amongst other things, that there is compliance with Policy E8.

CS Policies

12. Policy CSQ3 of the CS supports new development which is of high quality and inclusive design and respects the character of the site and its surroundings. Policy CSEN1 indicates that the district's distinct landscape character will be protected against inappropriate development.
13. Policy CS1 of the CS is an overarching policy which replicates the presumption in favour of sustainable development as contained in a previous version of the National Planning Policy Framework. Policy CSS1 of the CS expects proposals to be consistent with the overall strategy of permitting limited amounts of

housing and employment in villages, and that outside of towns and villages, change must relate to specific needs such as those of the agricultural industry.

14. CS Policy CSR2 supports proposals which contribute to the rural economy including through agricultural diversification and the re-use of rural buildings. Policy CSEM1 of the CS seeks to support local jobs and CS Policy CSEM4 encourages economic development and the re-use of rural buildings, where this accords with other policies in the plan, and permits the reasonable extension of those premises.
15. Saved Policy G4 of the LP is not consistent with the Framework for the reasons given, and saved LP Policy E5 contains a degree of inconsistency for the same reason. However, bearing in mind the other policies cited which are broadly consistent with the Framework, overall the policies most important for determining the application are not out-of-date in the terms of paragraph 11(d) of the Framework.

National Policy

16. Turning to national policy, paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth, taking into account local business needs. Paragraph 83 emphasises that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas including through conversion of existing buildings and well-designed new buildings, and the development and diversification of land-based rural businesses.
17. Paragraph 84 recognises that sites to meet local business needs in rural areas may have to be adjacent to or beyond existing settlements. Paragraph 103 notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Paragraph 124 emphasises that good design is a key aspect of sustainable development and paragraph 127 expects that new development is sympathetic to local character and landscape setting. Paragraph 170 supports recognition of the intrinsic character and beauty of the countryside.

Main Issue

18. The main issue on the planning merits is whether the alleged material change of use and unauthorised extension are acceptable, taking into account local and national policy related to sustainable economic growth in rural areas, and the effect on the character and appearance of the area.

Reasons

Rural economy

19. The appeal building is occupied by a local company which has its offices on Tetsworth High Street. The appellant states that the company is the largest employer in the village, has seen a period of expansion in recent years, and requires a storage facility located within 0.5km of its offices in order to allow it to operate flexibly and efficiently. Searches have apparently not located any alternative facilities available within the stated distance. It is contended by the appellant that the consequence of facilities not being available at the appeal site would be for the business to relocate elsewhere or to close.

20. I would expect that there are some practical benefits for Zioxi in having storage facilities located close to its offices. However, no detailed justification is put forward to substantiate the apparent necessity for such storage facilities to be located within 0.5km of those offices. Nor is there any detailed evidence such as to indicate that no alternative facilities would be available within a reasonable distance. Equally, no substantive justification is put forward as to the business requirement for the large unauthorised extension, bearing in mind that this has almost doubled the size of the original appeal building.
21. As such, the fact that the material change of use and unauthorised extension facilitate the continuation/expansion of this business weighs in favour of the proposal. I cannot though, on the evidence before me, accord much weight to the assertion that the absence of facilities at the appeal site would necessitate relocation or closure of the business.

Character and appearance

22. The appeal site appears visually as part of the rural fringes of the settlement of Tetsworth, with open fields located to the north beyond, and forming part of the wider gently rolling and essentially unspoilt landscape. The site and countryside context is clearly visible in views from the nearby public footpath.
23. The site is located within the 'Undulating Open Vales' of the 'Clay Vale' character area as outlined in the South Oxfordshire Landscape Assessment 2003 (SOLA). The SOLA emphasises that landscapes at settlement edges are vulnerable to change and that care is needed to reduce urbanising influences in these locations. The appeal site is thus one such vulnerable location.
24. As to the effect of the breaches alleged, on the evidence before me, the practical effect of the re-use of the appeal building for non-agricultural storage has meant that this building no longer serves the agricultural needs of the holding. As a consequence, the appellant has obtained planning permission for two further agricultural buildings.
25. As such, although the alleged change of use represents a re-use of a rural building and outwardly has no greater impact on the landscape than when the building was in use for agricultural purposes, it has resulted in a proliferation of buildings in the countryside which have had a harmfully urbanising effect on the natural beauty of the rural landscape. The unauthorised building extension (which has facilitated the material change of use) also has of itself resulted in the introduction of significant additional built form, which is prominent in public views, and further detracts from the open character of the landscape.

Balancing

26. The thrust of the local and national policy cited is strongly supportive of economic growth in rural areas but it is clear that this aim should not be at the expense of other proper planning objectives, including preserving landscape character and the intrinsic character and beauty of the countryside.
27. The re-use of rural buildings and reasonable extensions to those is supported in local policy as a potential means of enabling economic development in rural areas whilst maintaining the character and appearance of the rural surroundings. Related to this though, supporting text to saved Policy E8 refers to the need to prevent a proliferation of buildings in the countryside by

guarding against permitted development rights being used to secure new buildings following the re-use of existing ones.

28. Drawing these matters together, the alleged change of use has resulted in a proliferation of built development at a vulnerable settlement edge. The building extension has introduced significant additional volume to what was an already large utilitarian building in a rural setting and which is clearly visible from public vantage points. Little justification is given for the considerable increase in size of the building and how this supports the occupant business. Thus, I do not consider that re-use is supported by development plan policy and nor is the unauthorised extension supported as a reasonable extension as referenced in CS Policy CSEM4.
29. The appellant refers also to the permitted development (PD) right under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GDPO) which permits a change of use from agricultural use to a 'flexible' commercial use – including storage use. It is suggested that this new PD right, which post-dates the development plan policies referred to, is indicative of the direction of travel towards allowing alternative uses of rural buildings for employment purposes.
30. This PD right is though subject to a size limitation of the floorspace of buildings changing use within an agricultural unit and so does not apply to the appeal building. Had this right been exercised in respect of the appeal building prior to construction of the extension, the landscape impact would not have been comparable given the significant size of the unauthorised extension.
31. Although the Council did not seek to control siting or appearance of the buildings submitted as prior notification applications, and the planning application for the two agricultural buildings to the north was deemed acceptable in landscape terms, the stated agricultural need for those developments would have weighed in the balance of those assessments.
32. The same point applies in respect of other apparently similar agricultural buildings in the wider landscape, which I do not have details of in any event. I also have no detailed information relating to other extensions permitted in respect of re-used buildings apparently within a 5 mile radius, such as to enable a comparative assessment. Different considerations would have applied in respect of the residential development nearby. Areas of open storage uses to the east do not justify the landscape harm identified in this rural setting.
33. Consequently, I conclude on the main issue and on the evidence before me, that the alleged material change of use and unauthorised extension are not acceptable, taking into account local and national policy related to sustainable economic growth in rural areas, and the effect on the character and appearance of the area.
34. The support identified to the rural economy is outweighed by harm resulting to the character and appearance of the area. Both the alleged material change of use and unauthorised extension conflict in this way with saved LP policies C4, G2, and E5, and with CS Policies CSEN1, CS1, CSS1, CSR2 and CSEM4 as outlined above and which essentially together seek to preserve landscape character and local distinctiveness and to protect the character and appearance of the countryside in the conversion of rural buildings. Conflict with national

policy in paragraphs 124, 127 and 170 of the Framework also arises for similar reasons.

35. As regards the alleged material change of use, conflict would also arise with saved LP Policy E8 which encourages re-use of rural buildings only where in keeping with the surroundings. With respect to the unauthorised extension, conflict arises under saved LP Policy D1 and CS Policy CSQ3 related to respect for local character and distinctiveness.

Appeal B - The Appeal on Ground (f)

36. The appeal on this ground is that the steps required by the enforcement notice go beyond what is necessary. It is appropriate to first consider what purpose(s) that requirement is intended to achieve. This enables a proper assessment of whether the steps required are more than is necessary to achieve that purpose/those purposes.
37. Section 173 of the Town and Country Planning Act 1990 as amended (1990 Act) states two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy any consequent injury to amenity.
38. The requirements of the notice stipulate the demolition of the building extension and seek restoration of the land. As such, although the reasons for issuing the notice refer to matters of amenity, it is apparent that the purpose of the notice is to remedy the breach of planning control. Requiring demolition of the building is not an excessive step in that case. Allowing the building extension to remain as proposed by the appellant would not therefore achieve the purpose of the notice.
39. That said, the notice requires reinstatement of the land disturbed by demolition and removal works, including by the laying of topsoil and sowing of grass seed. The appellant is best placed to know what the condition of the land was prior to the breach and I shall vary the notice accordingly to remove these additional stipulations. No injustice would result from this as this would not make the requirements any more onerous and would properly achieve the purpose of the notice. The appeal on ground (f) therefore succeeds to this limited extent.

Appeals A and B - the Appeal on Ground (g)

40. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. I deal with the ground (g) appeals for both Appeals A and B together since very similar considerations apply.
41. The Appeal A enforcement notice stipulates a time for compliance of 12 months, whereas the Appeal B notice gives a period of 18 months. The appellant considers that 24 months would be necessary to allow for potential business disruption resulting to Zioxi and to allow for alternative facilities to be sought and any relocation to take place.
42. The appellant states that the search for new storage accommodation will be made more difficult by Zioxi's requirement for accommodation to be located close to its existing offices in Tetsworth. No substantive justification is given though as to why a storage facility would be required so close to the offices.

43. That said, no doubt Zioxi would have its own particular requirements related to any new premises and there would be a period of searching for a new premises, together with time taken over by negotiating the terms of any new occupation, along with a period for any relocation itself.
44. The steps required by both notices would necessitate relocation of Zioxi's storage facilities, and so taking these factors into account, I find that a period of 18 months would be appropriate for compliance as regards both notices. I shall vary the Appeal A notice accordingly. The appeal on ground (g) therefore succeeds to the extent outlined.

Overall Conclusion on Appeal A

45. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the deemed application.

Formal Decision on Appeal A

46. It is directed that the enforcement notice be corrected by the deletion of the words 'shaded red' and substitution with 'edged red' in paragraph 2; and varied by the deletion of the wording '12 months' and substitution of '18 months' in paragraph 6.
47. Subject to this correction 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.

Overall Conclusion on Appeal B

48. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision on Appeal B

49. It is directed that the enforcement notice be varied by the deletion of the wording 'by the laying of topsoil to levels commensurate with the level of the immediately surrounding land and the sowing of grass seed' and substitution with the words 'to their condition prior to the breach' in paragraph 5 of the notice.
50. Subject to this 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.

V Bond
INSPECTOR