



Appeal Decisions

Site visit made on 25 February 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th March 2020

Appeal A: APP/B3030/C/19/3236641

Appeal B: APP/B3030/C/19/3236642

Land south of Crossways, Great North Road, Weston NG23 6TP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Peter Fendley (Appeal A) and Mrs Gillian Fendley (Appeal B) against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice, numbered 19/00098/ENF, was issued on 12 August 2019.
 - The breach of planning control as alleged in the notice is described as, 'Without planning permission, the erection of a brick-built structure shown in figure 1. The building has not yet been completed but has been refused planning permission under reference 19/01034/FUL. The structure does not accord with the details approved under reference 18/00264/AGR'.
 - The requirements of the notice are:
 - A. Remove all external red brickwork from the structure.
 - B. Remove the concrete blocks up to an external height of no more than 2 metres from ground level on the northern, southern and western elevations.
 - C. Remove all windows from the structure.
 - D. Remove concrete blocks on the eastern elevation so as to be able to install 5 roller shutter doors as approved under reference 18/00264/AGR, and reduce any remaining concrete blocks to an external height of no more than 2 metres from ground level.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision: Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the words, '*The building has not yet been completed but has been refused planning permission under reference 19/01034/FUL. The structure does not accord with the details approved under reference 18/00264/AGR*' from section 3 ('The matters which appear to constitute the breach of planning control').
2. Subject to that correction, the appeal is allowed insofar as it relates to the development as alleged in the notice, except in respect of any window, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a brick-built structure shown in Figure 1 on the plan annexed to this decision and the

enforcement notice insofar only as it relates to the building excluding any windows, subject to the following conditions:

- 1) The building hereby permitted shall be used for agricultural purposes only.
 - 2) Within 6 months of the date of this decision, timber cladding, finished in green, shall be securely and permanently fixed to the upper part of the walls of the building, so that the building is in accordance with Drawing No 1B (Rev B) attached to the appellant's 'Enforcement Notice Appeal Statement' dated September 2019. The cladding shall thereafter be retained throughout the life of the building.
3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the windows incorporated into the building as originally constructed, and planning permission is refused in respect of the windows originally incorporated into the brick-built structure shown in Figure 1 annexed to this decision and the enforcement notice, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision: Appeal B

4. I take no further action in respect of this appeal.

Application for costs

5. An application for costs was made by Mr Peter Fendley against the Council. This application is the subject of a separate Decision.

Preliminary matters

6. The second and third sentences of the breach of planning control alleged in the notice amount to an explanation of the current position rather than a description of the development which the notice is aimed at. It is important that the allegation is correct, not least because it forms the basis of the deemed planning application. I shall therefore correct the notice by deleting those two sentences, leaving the allegation as, 'Without planning permission, the erection of a brick-built structure shown in figure 1'. Since the essence of the allegation is not changed by this, and the statements to be removed are uncontroversial statements of fact, no injustice arises from this.
7. As built, the structure included a range of domestic-type windows. When I viewed the site, the window units had been removed and the openings had been blocked off with timber. The appellant accepts that the windows are inappropriate and does not seek approval for them.
8. In accordance with s177 of the Act, in determining the appeal on ground (a), I am able to grant planning permission in respect of 'the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters'. I am satisfied, as a matter of planning judgement, that the building without the windows can be regarded as 'part of the matters' alleged in the notice. Accordingly, it is open to me to consider granting planning permission for the building without the windows. Since the appellant does not take issue with the Council regarding the windows, no injustice would occur as a result of this and I have considered the appeal on ground (a) (Appeal A) with that in mind.

Appeal A: The appeal on ground (a)

Main issues

9. The main issues are:

- Whether the building should be permitted in this rural location, having regard to policies relating to agricultural need and development in the countryside; and
- The effect of the building on the character and appearance of the area.

Need

10. The appeal building is located in a farm field in the countryside. Development in the open countryside is controlled by Spatial Policy 3 of the Newark and Sherwood Core Strategy and Policy DM8 of the Council's adopted Allocations and Development Management Development Plan Document (ADMDDP). Spatial Policy 3 permits development which supports local agriculture and Policy DM8 requires the need for agricultural development to be explained.
11. Neither policy specifies in detail the information that is required to explain the need for the development, but the supporting text to DM8 says that applications should be accompanied by an explanation of the operational requirements for the development. It also indicates that the purpose of this requirement is to minimise the scale of new agricultural buildings, specifically those which are too large to fall within permitted development provisions.
12. An explanation of the need for the building was given in the application for prior approval. The site forms part of an established agricultural unit. The building is described as a '5 bay tractor shed', to be used for storing farm machinery, including tractors, trailers and cultivators. The appellant has subsequently suggested that the building could be used for other agricultural uses such as storing fodder and grain.
13. There is not complete certainty regarding precisely how the building will be used and the agricultural items that will be stored in it. Nevertheless, the level of explanation is adequate and proportionate for a building of this scale in order to indicate an agricultural use and meet the requirements of DM8, Spatial Policy 3, the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG). In any event, the notice does not seek the removal of the building but amendments to it. Accordingly, even if I were to dismiss the appeal and uphold the notice without change, the building could remain. Indeed, if the building were modified in accordance with all the requirements of the notice, s173(11) of the Act would then have the effect of granting planning permission for that modified building. In these circumstances, there is no reason to withhold planning permission on the basis of need.

Character and appearance

14. The extensive use of red brick is not typical of modern agricultural buildings of this scale and gives the building a rather incongruous appearance. The materials for the walls proposed in the prior approval application were concrete blocks at the base and timber above, which would have been more fitting.
15. The use of green timber cladding on the upper part of the walls, as shown on Drawing No 1B (Rev B), submitted by the appellant, would be appropriate for

an agricultural building of this type and would be a clear improvement compared to the extensive red brick currently used. However, I do not see any need to remove the existing blockwork or brickwork to achieve this change. Essentially the same visual effect could be achieved by the appellant's proposal to fix the cladding onto the existing brickwork. This has been demonstrated by a small sample of the cladding which was fixed to a wall of the building when I inspected it. I can see no merit in removing the existing masonry to achieve fundamentally the same appearance. The installation of the cladding could be secured by a planning condition.

16. The proposals shown on Drawing No 1B (Rev B) differ from what the Council seeks in two further respects. First, the drawing shows brickwork retained on the lower walls rather than the blockwork the Council seeks. However, this would not be visually harmful. The extensive wooden cladding proposed would dispel any impression of this as an oversized domestic building. With that change, the brickwork would not dilute the agricultural character of the building.
17. The second difference is that the Council seeks the provision of a total of 5 large openings for roller shutter doors compared to the 2 on the current building and shown on the drawing. However, I can see no merit in providing additional openings. While such doors are commonly used in farm buildings, the 2 large door openings in the building as it stands are sufficient to reinforce its character as a barn. There is disagreement between the parties as to whether 5 roller shutter doors were part of the prior approval scheme, but that has no bearing on my view that there is no need (in visual terms) for the building to have them.
18. For these reasons, I conclude that, with the windows now removed, and subject to the installation of wooden cladding as proposed, the character and appearance of the building is satisfactory. Consequently, in this revised form, there is no conflict with the design and appearance aims of Spatial Policy 3 and Core Policy 9 of the Core Strategy, Policies DM5 and DM8 of the ADMDPD, the Framework and the PPG.

Conclusion and conditions

19. My findings above are based on the building with the windows removed. In view of those findings, I conclude that the appeal should succeed in part. I will grant planning permission for the building without the windows, but I will uphold the notice with a correction, and refuse to grant planning permission for the windows. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.
20. I have attached a condition specifying the use of the building to provide certainty and to ensure that it is not used for purposes inappropriate to this countryside location. I have required the building to have timber cladding added to it to ensure a satisfactory appearance.
21. In view of my decision on the ground (a) appeal, and bearing in mind that the appellant has removed the windows and does not contest this aspect of the notice, the appeal on ground (f) does not need to be considered.

Appeal B

22. Appeal B is on ground (f) only and the case made out is the same as that for Appeal A. For the reasons explained in relation to Appeal A, it is not necessary to consider ground (f) further. Accordingly, I shall take no further action in respect of this appeal.

Peter Willows

INSPECTOR



Figure 1

This is the figure referred to in my decisions dated:

by P H Willows BA MRTPI

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References: APP/B3030/C/19/3236641 and APP/B3030/C/19/3236642

Scale: Not to Scale

