The Planning Inspectorate

Appeal Decisions

Hearing Held on 6 October 2020

Site visit made on 9 October 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 20 October 2020

Newbridge Farm, New Road, East Huntspill, Highbridge, TA9 3QA

Appeal A Ref: APP/V3310/C/18/3216985

- 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 Amber Real Estate Investments Ltd against an enforcement notice issued by Sedgemoor District Council.
- The enforcement notice, numbered ENBOC/E25/00133, was issued on 6 November 2018.
- The breach of planning control as alleged in the notice is:
  On 29 November 2011 planning permission was granted for the erection of five poultry buildings and feed bins to replace existing (to be demolished) (25/11/00018) subject to conditions. Two of those conditions (numbers 2 and 3) stated:
  2 The development hereby permitted shall be carried out in accordance with the approved plans listed in Schedule A.
  Reason: for the avoidance of doubt and in the interests of proper planning.
  3 No approval is hereby granted to the colour of the materials proposed in the application for the construction of the roofs (ie Goosewing Grey). Revised colour details shall be approved in writing by the local planning authority before any work on the construction of the roofs is commenced. The development shall be carried out in accordance with the details so approved.
  Reason: In the interests of visual amenity. Light colours such as Goosewing Grey are significantly more conspicuous in the landscape than darker colour. A darker colour should instead be used.
  It appears to the council that the conditions have not been complied with, because:
  1) The material used for the walls are not in accordance with the approved plans number 200/05A (timber cladding instead of Merlin Grey cladding) and not in accordance with condition 2 and
  2) Revised colour materials in 'Merlin Grey' for the construction of the roofs were submitted to and approved by the Council pursuant to condition 3. The material for the roofs are in goosewing grey, therefore the development has not been carried out in accordance with the colour materials approved and is in direct contravention of condition 3.
  3) It is noted that buildings 1, 2 and 3 are not as long as the approved plans.
- The requirements of the notice are:
  1) Dark timber stain the wood clad wall elevations of all five poultry buildings erected pursuant to planning permission 25/11/00018.
  2) Paint the entire roofs of all five poultry buildings erected pursuant to planning permission 25/11/00018 in the colour 'Merlin Grey'.
- The period for compliance with the requirements is 3 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.
- **Summary of decision: notice quashed, appeal upheld and planning permission granted.**

Appeal B Ref: APP/V3310/W/18/3216993

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Amber Real Estate Investments Ltd against the decision of Sedgemoor District Council.
- The application Ref 25/17/00047, dated 31 August 2018, was refused by notice dated 15 October 2018.
- The application sought planning permission for variation of Condition 2 (approved plans) and removal of Condition 3 (roofing material) of Planning Permission 25/11/00018 (erection of five poultry buildings and feed bins to replace existing (to be demolished)) to vary the approved plans and retain Goosewing Grey roofing material.
- The conditions in dispute are Nos 2 and 3 which state that:
  2 The development hereby permitted shall be carried out in accordance with the approved plans listed in Schedule A.
  3 No approval is hereby granted to the colour of the materials proposed in the application for the construction of the roofs (ie Goosewing Grey). Revised colour details shall be approved in writing by the local planning authority before any work on the construction of the roofs is commenced. The development shall be carried out in accordance with the details so approved.
- The reasons given for the conditions are:
  2 For the avoidance of doubt and in the interests of proper planning.
- 3 In the interests of visual amenity. Light colours such as Goosewing Grey are significantly more conspicuous in the landscape than darker colour. A darker colour should instead be used.
- **Summary of decision: appeal allowed subject to conditions.**

Procedural Matters

1. The hearing was originally due to be held in January 2020 but this was cancelled. The revised date in April had also to be cancelled due to Covid-19. This hearing is being carried out under the arrangements for the carrying out of virtual events for s174 hearings and inquiries necessitated by the Covid-19 pandemic.

2. The alleged breach in the notice refers to 'Schedule A to be inserted'. This was an error by the Council as reference should have been made to the site location plan 200/01; site survey 200/02; proposed block plan 200/03; proposed floor plans 200/04; elevations and sections 200/05A; drainage details 200/07 as listed in the decision notice of Planning Permission 25/11/00018. The parties do not raise concerns with the notice being corrected accordingly, which had my decision been to dismiss the appeal is what I intended to do.

3. The Council has requested that the notice be varied by adding "and maintain as such in perpetuity" at the end of both points 1 and 2 in the requirements part of the notice (section 3). This is requested on the basis that in the event paint is eroded or panels require maintenance the building would once again be in breach of the original condition and could result in further notices being served. However, I agree with the appellant's view that such an approach to be unclear and inconsistent with the general approach to conditions, bearing in mind that the conditions of the original permission made no such requirements.

Furthermore, although I have the power to vary the notice, it is not one I consider merits exercising because, in the event that any further enforcement action may be deemed to be expedient in the future, the Council would need to consider taking action at that time on the basis of the evidence before them. I should also remark that the Council has had the opportunity to withdraw the notice and serve a new notice setting out the requirements they now consider appropriate. However in view of my decision on Appeal A, it is unnecessary to pursue this matter.

4. Although no appeal had been made on ground (f) in respect of Appeal A, the appellant's statement referred to the relevant costs of painting the roof as required in step 2 against the costs of replacing the roofing sheets in setting out the economic considerations of the appeal. The appellant at the hearing confirmed that they wished for ground (f) to be considered and the Council raised no objection to this. As a 'hidden' ground of appeal I am able to consider the matter and I have included it in the grounds set out above although, in view of my decision on Appeal A, it is unnecessary for this to be considered further.

The appeal site and relevant planning history

5. The Statement of Common Ground dated 17 March 2020 describes the site as being in an area of low lying field enclosures defined by a hedgerow and drainage network lying in close proximity to the M5 motorway corridor to the west and the settlement of Highbridge. The site has been a long standing poultry rearing unit consisting of four timber poultry buildings holding 155,000 birds and associated infrastructure. To the north of the appeal site is a grass enclosure and the farm manager's dwelling which, although not forming part of the appeal site is within the appellants' control.

6. In 2011 permission was granted under 25/11/00018 for the redevelopment of the poultry farm consisting of five buildings of varying sizes for 293,900 birds. The application had been subject to an Environmental Impact Assessment. Although goosewing grey polyester coated steel sheeting was specified in the application as the colour of the roofing material (and merlin grey cladding for the gables and sides) a condition on the permission required the submission and approval of details of the roof materials as light colours were considered to be significantly more conspicuous in the landscape than darker colours. This condition was subsequently discharged proposing merlin grey colour. The appellant confirmed that due to a miscommunication, goosewing grey was still used for the roof, that the gable and elevation details differed from the approved plans and the sheds as constructed were marginally smaller than permitted.

7. The application subject to Appeal B sought approval of the development as constructed and considered whether mitigation of the impact of the buildings could be overcome through landscaping. An addendum to original Environmental Statement was submitted.

8. An extensive accompanied site inspection was carried out within the appeal site and from various viewing points on the surrounding footpath and road network, from the Mark Road bridge over the M5, and from the top of Brent Knoll, some kilometres north of the site, where expansive views can be gained from the Mendips to the Quantocks and beyond. The weather on the day of the site visit was mixed with heavy showers and sunny intervals. I also carried out an

unaccompanied inspection of the area on 1st October at which time the weather was generally overcast. I am satisfied that I have experienced the visual impact of the site at different times of the day and in changing weather conditions.

Appeal A – the appeal on ground (a) and Appeal B

Main Issue

9. The main issue in both appeals is the effect that the external materials used in the construction of the buildings have on the character and appearance of the area.

10. In considering the main issue, certain factors need to be borne in mind:

- A poultry farm existed for many years prior to the redevelopment. This comprised four timber buildings which, on the basis of photographs submitted by the parties, were of a generally darker colour than the replacement buildings as built..
- One of the approved buildings (building 5) has been constructed at right angles to the others which has significantly extended the footprint of the buildings on the poultry farm. However, whilst the siting of building 5 disregards the axis of the other four buildings and appears distinctly at odds in this respect, it was nevertheless approved as part of the 2011 planning permission.
- Although the reflective external materials of the six feed silos exacerbates their prominence, these are not subject to the notice.
- There are many roof vents positioned close to the ridges of all five buildings. These are significant in scale and they create a distinctive castellated profile of the roofs of buildings when seen from the middle distance (such as from Catherine Street). They are coloured Goosewing grey but this part of the development is not the subject of the notice.
- The reduction in the size of the poultry buildings as built from the size approved is not significant in the context of the main issue of this appeal.
- There are a number of solar panels on the south facing part of the roof of Building 5 but these are not subject to the notice.

11. Bearing in mind these factors, it is the impact that the use of the lighter coloured roof material and the timber gable ends have on the character and appearance of the area that is primarily relevant, not the scale and siting of the buildings, nor the visual impact of the light coloured roof vents or reflective feed silos.

Visual and landscape impacts

12. An area of disagreement between the parties is whether the initial Environment Statement (ES) considered the proposal with a goosewing grey roof. Whilst the appellants believed it did, the Council's position is that whilst the ES described the proposal as having goosewing grey roof materials, the visual effect of the colour regardless of shade was not evaluated. Setting aside this difference of opinion, the fact is that the Council was not prepared to accept that the impact

of the proposed goosewing grey roof colour was acceptable and consequently imposed condition 3 on the permission in the interests of visual amenity.

13. Landscape and Visual Assessments (LVIA) provide an important objective and systematic approach to subjective judgements. The submitted LVIA concludes that the significance of effect on the site and its immediate context is 'negligible – minor adverse effect'; the difference between merlin grey and goosewing grey does not result in a magnitude or impact on the landscape character of the site and its immediate surroundings; and, in longer distance views, the change in colour would be barely perceptible. Although LVIAs are an important tool in assessing impacts, they are usually carried out to assess the impact of a development before it has been built. In this case, the building exists and any change between its current impact and the impact of either the former poultry farm as the baseline position or the scheme had it been built in accordance with the approved roof colour, is not as useful as being able to make a judgement based on the visual and landscape impacts that have actually occurred and can be readily observed by a receptor.

14. There are numerous receptors with high sensitivity to changes in views and visual amenity and these include occupiers of nearby residential properties, users of local public rights of way and visitors to the nearby Westhill Farm caravan park.

15. From within the site, such as from the entrance and the security building, the relationship of the observer and the buildings is such that the roof colours are not the principal factor of the view. It is more the horizontal clad timber gable ends and low Goosewing grey walls. The permitted scheme provided for Merlin Grey cladding to the walls but the gable ends have been clad in timber (with a metal internal face). Generally timber-clad agricultural buildings are commonplace in the countryside and are an accepted building material for such utilitarian buildings. In this case, the Council does not raise concerns about the use of timber, only about its colour which is lighter than that of the approved material been used. The requirements of the notice specify that the gables should be dark stained (although the notice does not specify how dark such a stain should be). At the time of my site inspection I found little visual harm arising from the colour of the timber used and I noted that in the wet conditions prevalent at the time the cladding darkened in appearance. The appellant was unable to indicate whether the shade of the timber would change over time, or indeed what type of timber had been employed. That aside, the colour of the timber cladding appeared appropriate in its context when viewed from within the site. When viewed from outside the site views of the gable ends were limited due to the orientation of the buildings and to the extent of landscaping. It was impossible to distinguish the colour or tone of the gable ends from longer distance views.

16. The buildings are screened to some extent by established hedgerows within the field pattern and by the bunding and conifer planting on the east and north sides of building 5. The extent of screening is substantial from some viewpoints close to the site, such as from Newbridge Drove, but less so further away where some hedgerows are lower in height or breached leading to the poultry buildings having varying degrees of impact from public viewpoints.

17. The development is most visible from Viewpoints 3 and 10 either side of the River Brue and close to a caravan park and from the footpath from VP3 to

Newbridge Drove. From these points, building 4 is particularly visible by virtue of the roof colour, profile and roof vents. Building 5 however is less visible as it is set behind an established boundary hedge and the line of conifers planted on a bund within the site breaks up the apparent extent of the building

18. From the footpath towards VP2 and Pear Tree Farm, the roofline of building 5 is plainly apparent above the hedgerow trees although against a white sky its visual impact is diminished.

19. The impact on views of the buildings is significantly affected by weather conditions with the pale colour of the buildings appearing less intrusive in cloudy conditions where contrast is low, compared to their appearance when contrasted against a backdrop of blue sky. However it is not only the roof colour that is significant, but the visibility of the roof vents and from certain viewpoints, the reflective grain silos.

20. Extensive views of Sedgemoor and beyond are visible from the top of Brent Knoll. The view is of the countryside, the Quantock and Mendip Hills, the sea and coastal fringe, and the urban areas of Highbridge and Burnham-on-Sea. Looking south from the top the M5 motorway cuts prominently through the landscape with the Walrow Industrial Estate of Highbridge with its expansive light coloured buildings to the west of the motorway being particularly prominent. To the east and relatively close to the Industrial Estate within the overall panorama, it is possible to discern building 5 on the appeal site. Although it was a bright day, the building or its roof did not appear particularly light or bright but it was more of a subdued neutral tone that did not look unduly incongruous in the totality of the view. Having said that, its prominence may be increased or decreased in other weather conditions and had it been constructed with a merlin grey roof it would have been less apparent in the landscape. Nevertheless, the degree of harm caused to the landscape and to visual amenities from this viewpoint is limited, despite it being separated by the motorway from the industrial area to the west. I have had regard to the Sedgemoor Landscape Character Assessment and Countryside Design Summary 2003 in respect of the scale and colour of modern agricultural buildings, in particular paragraph 4.60, but I do not consider the extent of any harm to compromise the intentions behind that document.

21. It is evident that the extent of screening through planting has increased over the relatively short period that the buildings have been in place as illustrated in the photos in the submissions and what is visible today. The additional planting of conifers on the bund has had a considerable screening effect on building 5. However, as the Council point out, the extent of vegetation outside the site, and consequently its contribution to screening, could change as a result of the maintenance of watercourses, the loss of hedgerow trees to Dutch Elm disease or hedgerow management by other landowners or farmers.

22. The proposed illustrative landscape strategy indicates opportunities for the mitigation of the visual impact of the roof colour albeit these are limited due to the relatively tight confines of the site and the need for access to be achieved for maintaining the drainage network. The appellant accepts that additional planting could be undertaken on the land between the appeal site and farm manager's house and that a planting scheme can incorporate native species of varying sizes on this land and elsewhere on the site.

Economic considerations

23. The poultry farm employs 3 full-time persons, one of whom lives on the site and a range of support businesses associated with the poultry operation. The notice requires the painting of the roof which the appellant states would be at a cost in the region of £160-£190,00 and in view of biosecurity issues would take at least 10 weeks impacting on the operation of the business. The option of replacing the roofing material would be in the order of £225,00 and the work to do this would also disrupt the business. There would also be costs of about £500 per building for the dark staining of timber.

24. Whilst I have had regard to national and local policies that support economic growth and activity, I attach only limited weight to the costs of meeting the requirements of the notice as it is of modest significance in the overall assessment of any potential harm arising from non-compliance with the approved roofing colour. Furthermore the appellant, whilst highlighting the potential disruption to the business, has not indicated that the business would cease to operate if it were to be exposed to these costs.

Planning Balance

25. Having had regard to all planning considerations I consider that the visual impact of the timber gable ends is not materially harmful to either the landscape character or to the visual amenities. With regard to the light colour of the roof, some harm is caused to landscape character and to visual amenities and this is most apparent from viewpoints in relatively close proximity to the site such as from Catherine Street and the footpath. However the degree of harm is limited due to existing vegetation which contains views of the buildings and the harm caused could be mitigated further with additional landscaping. There is limited harm in the landscape and to visual amenities when viewed from the top of Brent Knoll. I attach limited weight to the economic consequences on the business of complying with the enforcement notice.

26. In assessing the degree of harm, I am conscious that the size and scale of buildings have been approved and that the colour of the numerous roof vents and feed silos are not subject to control and would remain as they appear now irrespective of any decision on the colour of the roof. I therefore consider that, on balance, the roof colour does not cause a level of harm that justifies its replacement. With further landscaping, the development would not be contrary to policies of the Sedgemoor Local Plan (adopted 2019), in particular policy D2 regarding design and the amenity value of local occupiers of buildings, policy D19 regarding the protection of landscape character and Policy D25 which is concerned with living conditions.

Conditions

27. I have imposed the same conditions in respect of both appeals. These conditions are necessary in order to make the development acceptable in planning terms. Condition (i) defines the permission in the interests of the proper planning of the area. Conditions (ii) and (iii) are intended to safeguard local residents from noise and disturbance. Condition (iv) is necessary to mitigate the visual impact of the development through the approval and implementation of a landscape scheme.

Other considerations

28. Representations from local people, including Mr Stanbury, express concerns regarding nuisance of odour about which there had been 539 recorded complaints between January 2017 – July 2020. These are matters controlled through the Environmental Permit regulated by the Environment Agency. The appellant states that they are working with the regulator to limit the odour nuisance and have taken voluntary actions to this effect, including a change in production methods, a reduction in the number of birds and a change in the type of bird to a high welfare bird. At the time of my visit, building 5 was not occupied and I was unable to distinguish any malodorous smells on the site. The whole site appeared to be well maintained and managed.

Conclusions

Appeal A Ref: APP/V3310/C/18/3216985

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Appeal B Ref: APP/V3310/W/18/3216993

30. For the reasons given above I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Decisions

Appeal A Ref: APP/V3310/C/18/3216985

31. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of five poultry buildings and feed bins to replace existing on land at Newbridge Farm, New Road, East Huntspill, Highbridge, TA9 3QA, referred to in the notice, subject to the following conditions:
    i) The development shall comply with the following approved plans:
        528-19-600 proposed layout
        528-19-601 drainage layout
        528-19-602 GF and roof layouts houses 1-4
        528-19-603 GF and roof layouts house 5
        528-19-604 elevations and sections houses 1-4
    ii) The development hereby permitted shall not give rise to noise levels greater than 8 dB LAeq (60 min daytime, 5 min night time) when measured at the façade of the nearest noise sensitive dwelling.
    iii) The sound output of the fans installed on the roofs of the poultry buildings hereby approved shall not exceed a sound pressure value of 58 dB LAeq at I metre distance or a sound power level of 69 dBA (per fan).
    iv) Within three months of the date of this decision a comprehensive scheme for the landscaping the site shall be submitted to and approved in writing by the local planning authority. The scheme shall

be based on the Proposed Illustrative Landscape Strategy (Plan No. P17-1775-04-A) and incorporate additional landscape proposals on land between the site and the Farm Manager's dwelling. The approved landscaping scheme shall be fully implemented and completed no later than the end of the first planting season following approval. The trees and shrubs shall be protected, maintained and retained thereafter as an integral part of the development hereby approved.

Appeal B Ref: APP/V3310/W/18/3216993

32. The appeal is allowed and planning permission is granted for the erection of five poultry buildings and feed bins to replace existing at Newbridge Farm, New Road, East Huntspill, Highbridge, TA9 3QA , in accordance with the application Ref 25/17/00047 made on the 31 August 2018 without complying with conditions Nos 2 and 3 set out in planning permission Ref 25/11/00018 granted on 29 November 2011 by the District Council, but otherwise subject to the following conditions:

i) The development shall comply with the following approved plans:
528-19-600 proposed layout
528-19-601 drainage layout
528-19-602 GF and roof layouts houses 1-4
528-19-604 and roof layouts house 5
528-19-604 elevations and sections houses 1-4

ii) The development hereby permitted shall not give rise to noise levels greater than 8 dB LAeq (60 min daytime, 5 min night time) when measured at the façade of the nearest noise sensitive dwelling

iii) The sound output of the fans installed on the roofs of the poultry buildings hereby approved shall not exceed a sound pressure value of 58 dB LAeq at I metre distance or a sound power level of 69 dBA (per fan).

iv) Within three months of the date of this decision a comprehensive scheme for the landscaping the site shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on the Proposed Illustrative Landscape Strategy (Plan No. P17-1775-04-A) and incorporate additional landscape proposals on land between the site and the Farm Manager's dwelling. The approved landscaping scheme shall be fully implemented and completed no later than the end of the first planting season following approval. The trees and shrubs shall be protected, maintained and retained thereafter as an integral part of the development hereby approved.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr D Onions,	Pegasus Planning
Mr J Atkins	Landscape consultant, Pegasus Planning
Mr P Wood	Estate Manager, Amber Real Estate Investments
Mr A Irving	Environment Manager, Hook2Sisters
Mr C Chater	General Manager, Hook2Sisters

FOR THE LOCAL PLANNING AUTHORITY:

Ms Dawn de Vries	Principal Planning Officer
Ms Janette Burton	Landscape officer SDC
Mr S Houlet	Assistant Director

INTERESTED PERSONS:

Mr I Stanbury	Local resident

DOCUMENTS

1 Application documents relating to Appeal B:

528-19-600 proposed layout
528-19-601 drainage layout
528-19-602 GF and roof layouts houses 1-4
528-19-603 GF and roof layouts house 5
528-19-604 elevations and sections houses 1-4
Proposed illustrative landscape strategy P17-1775-04-A