



Appeal Decision

Site visit made on 29 September 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal Ref: APP/P0119/C/19/3226472

Land on the south side of Lansdown Lane, Bitton, Bristol

- 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 David Hawking against an enforcement notice issued by South Gloucestershire Council (the LPA).
- The enforcement notice was issued on 18 March 2019.
- The breach of planning control as alleged in the notice is: erection of a building; erection of wooden structure with raised platforms; without the benefit of planning permission.
- The requirements of the notice are:
 1. Demolish the building and remove its constituent materials as indicated by the black line on the attached site plan (for identification purposes only) and within the attached photographs annexed figure 1.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

The Notice

1. The plan attached to the notice incorrectly identifies the land to which the notice relates. An incorrect plan does not necessarily render the notice invalid so long as the recipient is not misled. The matter was raised by the appellant and there is no indication that they have been misled by it. The LPA has submitted an amended plan to substitute for the original plan. I am satisfied that no injustice would arise to either the LPA or the appellants were I to correct the notice to incorporate the revised plan. This is therefore annexed to my decision as Plan A and I shall correct the notice accordingly.
2. Section 173A(1)(b) of the 1990 Act allows for the LPA to waive or relax any requirement of an enforcement notice. On 6 November 2019, the LPA issued a notice under section 173A(1)(b) to waive requirement two of the notice which related to the demolition of the wooden structure and the removal of its constituent materials from the land. As a consequence, in accordance with section 173(11) of the 1990 Act, planning permission is deemed to be granted for the erection of the wooden structure with raised platforms under section 73A of the 1990 Act provided all requirements of the notice have been complied with.

Preliminary Matters

3. In light of the provision of the amended plan, the appellant no longer seeks to pursue the appeal on ground (e). I take no further action in that regard.
4. The appellant has also withdrawn the appeal on ground (d) on the basis that their submissions related only to the erection of a wooden structure with raised platforms element of the breach. I take no further action in that regard.

Application for Costs

5. An application for costs was made by David Hawking against South Gloucestershire Council. This application is the subject of a separate Decision.

The appeal on ground (b)

6. An appeal on ground (b) is made on the basis that those matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact.
7. The appellant's case is predicated on the basis that the erection of a building has not occurred on the Land. It is said that the building which is present on site has existed for many years and that what has occurred is the repair and refurbishment of that building. The appellant indicates that there was previously a corrugated iron cow byre in the same location as the building enforced against. The LPA's officer report from the 2014 prior approval application¹ indicates that at that time the building was in dilapidated condition, comprising an open side with timber posts supporting a steel sheet roof and steel sheet walls to the sides.
8. It is put to me that the original timber framework of that structure has largely been retained. Indeed, I saw from my site visit that timber columns formed part of the structure subject of the notice. However, I cannot ascertain from the single photograph that has been provided by the appellant whether the timber columns I saw were in the same place as those shown on the photograph. There is little indication from the evidence provided whether the structure of the previous building has been utilised for what now exists or whether the timber has been removed and reused in the construction of the new building. Indeed, such is the limited nature of the evidence of both what existed previously and what has been done, I am unable to ascertain whether they are actually the same timbers. The ones I saw on my visit appeared narrower than the ones shown on the photographs.
9. Moreover, at my visit I was able to see that new timber appears to have been used to provide lateral and longitudinal support to the structure. What is more, the photographs indicate that new external walls have been erected where a significant proportion of the previous structure was open fronted. It is not clear if the walls that now exist are those original walls or new walls. Internally, all sides of the building appear to have been finished with plywood walls with a smooth textured finish.
10. In addition, the photograph from the appellant and the two from the LPA indicates that almost all of the previous structure contained no solid floor. I saw from my site visit that there appears to be a new floor throughout the

¹ LPA Ref: PK14/1416/PNC

building. Furthermore, a comparison of the photographs appears to show that the building which now exists has a roof pitch which is shallower than that which existed previously. In the absence of evidence to the contrary, this indicates that a new roof has been constructed. Also, new openings have been made in the structure which did not previously exist in order to install various windows and doors.

11. The High Court in *Oates v SSCLG and Canterbury City Council* [2017] EWHC 2716 (Admin) reaffirmed the findings in *Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 that it is possible to conclude that there is a new building even where parts of the old building remain as opposed to being demolished.
12. In this instance, given the lack of evidence regarding which elements of the previous building have been retained and the extent of new works which have been carried out to facilitate the building which now exists, I find that the development which has been carried out amounts to the erection of new building as a matter of fact.
13. As a result, on the evidence before me, I find the appellant has not demonstrated that the matters stated in the notice which give rise to the breach of planning control have not occurred as a matter of fact.
14. The appeal on ground (b) therefore fails.

The appeal on ground (c)

15. In the appeal on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control did not constitute a breach of planning control.
16. Section 55(1) of the 1990 Act states that development includes the carrying out of building, engineering, mining and other operations in, on, over or under land. Section 55(1A) states that for the purposes of the act, building operations includes the demolition of buildings, rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
17. Section 55(2)(a)(ii) states that the maintenance, improvement or other alteration of any building which does not materially affect the external appearance of the building does not constitute development.
18. The appellant argues that the works which have been carried out do not materially affect the external appearance of the building and therefore do not constitute development for the purposes of the 1990 Act.
19. However, as set out in my reasoning on the appeal on ground (b), I have concluded as a matter of fact that what has been carried out amounts to the erection of a new building. With replacement structures, there is a point where works do not amount to maintenance, improvement or alteration but to rebuilding. In this instance, the erection of a new building, including the provision of new external walls, structural framing, new floor, new roof and new opening do not amount to the maintenance, improvement or other alteration to a building. The works cannot therefore fall within the exemption afforded by section 55(2)(a)(ii).

20. In contrast, I find that the erection of a building amounts to the carrying out of building operations on land. As a result, I find the matters subject of the notice amount to development for the purposes of section 55(1) of the 1990 Act.
21. Section 57(1) of the 1990 Act makes clear that planning permission is required for the carrying out of any development of land. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the 1995 GPDO), as was the legislation in force at the time of the application for prior approval in 2014, grants planning permission for the classes of development described as permitted development in Schedule 2.
22. Part 3 of Schedule 2 of the 1995 GPDO relates to changes of use. Class M of Part 3 indicates that development consisting of a change of use of a building from use as an agricultural building to a flexible use falling within, inter alia, Class D2 (assembly and leisure) of the Town and Country Planning (Use Classes) Order 1987 (as amended) is permitted development. Section M.3 of Class M sets out that, before the development under Class M commences, the developer must apply to the LPA for a determination as to whether the prior approval of the LPA will be required.
23. An application for such prior approval in respect of the agricultural building on the Land was submitted to the LPA in 2014². The LPA's decision on 19 June 2014 was that such prior approval was not required. As such permission for the change of use was granted by virtue of Article 3(1) of the 1995 GPDO. However, Class M relates only to the change of use of a building, it does not permit building operations.
24. Moreover, it is clear from the evidence before me, that the development granted permission by virtue of Article 3(1) of the 1995 GPDO related to the previous building which existed at the time. The development enforced against here is the erection of a building and is in respect of operational development. I have found in respect of the appeal on ground (b) that what has taken place amounts to the erection of a new building. Thus, the new building cannot benefit from the consent for a change of use under Article 3(1) of the 1995 GPDO because that consent applies to a building which had existed before the operational development subject of this notice took place, but which no longer exists. The planning permission under Article 3(1) to which the 2014 prior approval relates is therefore not capable of implementation.
25. There is no evidence that the development would fall within any other class of permitted development granted planning permission by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 which is the current legislation in force. Nor is there any evidence of planning permission having been granted for the building by virtue of section 58 of the 1990 Act.
26. Consequently, the matters in the notice amount to development without planning permission and therefore constitute a breach of planning control.
27. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issues

² LPA Ref: PK14/1416/PNC

28. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and any relevant development plan policies;
- the effect of the development on the openness of the Green Belt;
- whether the development will conserve or enhance the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB); and,
- whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Whether inappropriate development?

29. Policy CS5 of the South Gloucestershire Local Plan Core Strategy 2006-2027 (2013) (the CS) states that development in the Green Belt will need to accord with the provisions of the Framework or any relevant CS policies. CS Policy CS34 seeks to protect the Green Belt from inappropriate development.
30. Policy PSP7 of the South Gloucestershire Local Plan Policies, Sites and Places Plan (adopted November 2017) (the PSPP) states that inappropriate development is harmful to the Green Belt and will not be acceptable unless very special circumstances can be demonstrated that clearly outweigh the harm to the Green Belt, and any other harm.
31. This is consistent with paragraph 143 of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework makes clear that the construction of new buildings should be regarded as inappropriate development.
32. Paragraph 145 sets out a list of exceptions which are deemed not to constitute inappropriate development. They include under sub paragraph b), amongst other things, the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
33. The appellant suggests that the development is an appropriate facility for outdoor recreation. The appellant's evidence indicates that there are several uses of the building. It is used as a communal building for visitors in the adjoining camping element of the farm business and also in association with the annual outdoor event in which participants compete in an obstacle race over the land. Such uses could be considered to be outdoor recreation.
34. However, the building in those instances is said to be for visitors to socialise and shelter from the weather. In my view, such use would not be an appropriate facility for those outdoor recreation uses unlike say a shower or toilet block. Moreover, it seems to me that, given the event is only held once a year, its use as such would be ancillary to its main use.
35. Furthermore, and in any event, the appellant also states that the building is used for small meetings, yoga sessions and workshops which are not

- associated with the outdoor camping element of the business nor indeed the obstacle race. Such use of the building is reflective of my observations from my site visit, where I saw the building was largely open plan with sofas, table and chairs. Those uses would not in my view amount to outdoor recreation.
36. Taking the use of the building as a whole as presented to me in the appellant's evidence, I conclude that the building does not amount to an appropriate facility for outdoor recreation. As a result, the development does not fall within the exemption under paragraph 145(b) of the Framework.
37. The appellant indicates that paragraph 145(d) is also relevant as it states that the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, is not inappropriate development. I am unable to ascertain whether or not the building subject to the notice is materially larger than the previous building.
38. However, even were I able to conclude the new building is not materially larger than the one it replaces, it is not in the same use since the previous building was in agricultural use. It cannot therefore fall within the exception under paragraph 145(d).
39. In the absence of evidence from the parties that the development falls within any other exception in paragraph 145 or 146 of the Framework, I conclude, that the development is inappropriate development in the Green Belt and, by definition, harmful to it. It therefore conflicts with CS Policies CS5, CS34 and PPSP Policy PSP7, as well as the provisions of the Framework.

Openness

40. Paragraph 133 of the Framework makes clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
41. The Courts have held that the concept of openness can have both spatial and visual aspect. Recent case law has confirmed that the matters relevant to openness in any particular case are a matter of planning judgement.
42. Spatially, it appears that the building sits on the same footprint as the previous agricultural building. In that sense, the development does not result in any further encroachment of built form into the land. Nevertheless, in visual terms, the building appears solid in its form and at odds to the open character of the land in which it sits. It appears as substantial built form in a vista which is largely free of it.
43. I conclude, therefore, that the development will have an adverse effect on the openness of the Green Belt. I consider the extent of that impact would be limited and therefore limited harm would occur. Case law has nevertheless established that openness cannot be preserved if there is a finding that there would be an adverse impact on it of any kind. On that basis, the development will fail to preserve the openness of the Green Belt, in conflict with Paragraph 133 of the Framework.

Effect on the AONB

44. The appeal site lies within the Cotswolds AONB which I saw from my site visit is characterised by open, undulating farmland and rolling hills. Paragraph 172 of the Framework states that great weight should be given to conserving and enhancing landscape and scene beauty in AONBs.
45. The building subject of the notice is located within a field which is agricultural in appearance and which slopes to the south down the valley side. The field is bound on all sides by mature trees and hedgerows, although there are several gaps therein. The surrounding area is characterised by farmland, occasional copses of trees and sporadic buildings of distinctly rural form and appearance.
46. The building is externally clad in corrugated sheets on all four external walls and on the roof. As such, the building appears somewhat stark in contrast to its gentler surroundings. Moreover, the use of anthracite framed, bi-folding doors gives the building an urban appearance at odds to its location. Whilst I note that vegetation has been allowed to grow around the edges of the building, I was nevertheless able to see from my site visit that the building was clearly visible from Lansdown Lane to the north where it appeared as a somewhat obtrusive presence in the landscape. The introduction of additional planting would take time to grow and even then, once established, would only further draw attention to the presence of a building therein.
47. I note that the building sits on the same footprint as that which it replaced. However, it appears from the limited photograph submissions that the previous building was partially open and distinctly agricultural in appearance. As such, the existence of the previous building does not justify the harm that results to the AONB from the new building.
48. I conclude, therefore, that the development will fail conserve or enhance the landscape and scenic beauty of the Cotswolds AONB. Consequently, the development will conflict with CS Policies CS1, CS9 and CS34 which seek high quality design, seek to conserve and enhance the character, quality, distinctiveness and amenity of the landscape and protect the Cotswolds AONB from inappropriate development. There would also be conflict with Policies PSP1 and PSP2 of the PSPP which state that development will be acceptable where it makes a positive contribution to the distinctiveness of the area and where it conserves and enhances the quality, amenity, distinctiveness and special character of the landscape. I attribute moderate weight to the harm that will arise.

Other Considerations

49. The building supports the diversification of the farm business which has incorporated a wide range of uses. It is said that the building will materially assist in protecting the sustainability of the diversified farming enterprise that is carried out at Manor Farm. I have no reason to disagree. On that basis I afford the economic benefits to the farming enterprise significant weight. Likewise, the presence of an agricultural building on the site previously also carries moderate weight in my decision whilst the level of local support also carries moderate weight.

Balance

50. In accordance with paragraph 144 of the Framework, I afford substantial weight to the harm to the Green Belt by reason of inappropriateness and the limited harm that arises to the openness of the Green Belt. In addition, I afford moderate weight to the harm resulting from the failure to conserve or enhance the landscape and scenic beauty of the AONB.
51. I have found that the development results in economic benefits to the appellant's farming enterprise to which I afford significant weight. I also afford moderate weight to the fact that a previous building existed in the same location and to local support for the building. However, such weight does not clearly outweigh the totality of the weight I afford to the harm that will arise to the Green Belt and any other harm. As a consequence, the very special circumstances required to justify the proposal do not exist.

Alternative Development

52. The appellant advances, largely under the appeal on ground (f), that alterations could be made to building to remove the southern external wall and the internal floor to allow the appellant to use the building as an agricultural shelter.
53. However, whilst the removal of one external wall would slightly reduce the visual impact of the building, the footprint would remain and its impact on the spatial qualities of the openness of the Green Belt would be unchanged. Moreover, there would be little discernible reduction in the harm to the AONB. As a result, I find the alternative suggested by the appellant would not overcome the planning harm identified.

Conclusion

54. For the reasons given above I conclude that the appeal on ground (a) should not succeed and planning permission on the deemed application is refused.

The appeal on ground (f)

55. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
56. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements are to demolish and remove the unauthorised development. I am satisfied, therefore, that the purpose of the notice falls solely within section 173(4)(a), that being remedying the breach. To that end, the requirements to not go beyond what is necessary to remedy the breach. There are no lesser steps that would remedy the breach.
57. Case law has established that it is open to me to consider clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant than total demolition. The appellant has suggested that I vary the notice to require only one external wall and the internal floor of the building to be removed so that it can be used for agricultural buildings. However, I have concluded in respect of the appeal on ground (a) that such an alternative

would not overcome the planning harm. Therefore, it is not open to me to vary the requirement in the way suggested by the appellant.

58. As a result, the appeal on ground (f) fails.

The appeal on ground (g)

59. An appeal on ground (g) is made on the basis that the time period for compliance with the notice is too short.

60. The appellant suggests a timescale of six months for compliance with the requirements of the notice would be more reasonable. However, no reasoning has been provided as to why such a timescale is justified. It seems to me that a period of three months would be reasonably sufficient to demolish the building and remove the materials from the site. It would also ensure the necessary expediency to overcome the planning harm.

61. The appeal on ground (g) therefore fails.

Formal Decision

62. It is directed that the enforcement notice be corrected by:

- the deletion of the plan attached to the enforcement notice and its substitution for the plan attached to this decision (Plan A).

63. Subject to the correction, the appeal is dismissed, 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.

J Whitfield

INSPECTOR



Plan A

This is the plan referred to in my decision dated: 09 December 2020

by J Whitfield BA(Hons) DipTP MRTPI

Land at: Land on the south side of Lansdown Lane, Bitton, Bristol

Reference: APP/P0119/C/19/3226472

Scale: NTS

