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## Appeal Decision

Site visit made on 9 February 2021

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 March 2021**

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**Appeal Ref: APP/J1860/C/20/3260853**

**Land at Farleys Ground, Tewkesbury Road, Berrow, Malvern  
Worcestershire WR13 6AT**

- 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 Miss Hannah James against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 12 June 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a building on the Land as shown on hatched blue on the attached plan.
- The requirements of the notice are demolish the building as approximately hatched blue on the attached plan and lawfully remove all resulting material from the Land as edged red on the attached plan.
- The period for compliance with the requirements is 2 calendar 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 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 Decision: The appeal is dismissed and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.**

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### The Site and its Planning History

1. The appeal concerns a hay store building. In 2017 planning permission was granted for a 'hay store and access across field and engineering operations to raise the ground levels of the site and drainage arrangements'.<sup>1</sup> The size of the building was approved as 3.5m high to the eaves, 4m high to the ridge, 5m wide and 13m long. The overall floor area would be 65m<sup>2</sup>. The building would be constructed of concrete walls, timber boarding to the eaves beneath a grey fibrous cement roofing sheet.
2. The appeal hay store is significantly larger than that approved – I am informed that it is 4.6m high to the eaves, 5.70m high to the ridge, 5m wide and 15m long. Its overall floor area is 75m<sup>2</sup>.
3. Planning permission for the retention of the appeal building was refused in December 2020<sup>2</sup>.

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<sup>1</sup> Planning permission Ref: 17/00300/FUL.

<sup>2</sup> Planning Refusal Ref: 20/01545/FUL.

## **Appeal on ground (a) and the deemed planning application**

4. The main issue is the effect of the development on the character and appearance of the area.

### **Reasons**

#### *Character and appearance*

5. The site is an area of land situated on the north side of the A438. The overall character of the surrounding area is dominated by open fields and agricultural land. The appeal building is in an elevated position in the south east corner of the field.
6. Due to its height, scale, massing and location the appeal building can be clearly seen from the public footpath which runs beyond the eastern boundary of the site as well as from the A438. I walked a section of this public footpath at my site visit. The appeal building appears as an incongruous dominant feature in the landscape despite its distance from the highway and despite the existing trees and vegetation which afford a degree of screening. Moreover, it is visually intrusive and fails to integrate with its surroundings.
7. It is not disputed that a building could be built as per planning permission Ref:17/00300/FUL and that this building would be further from the hedge line boundary and closer to the highway than the appeal building. However, having regard to the submissions, this building would be significantly reduced in size, scale and height, compared with the appeal building and as contended by the Council, would not be as visually intrusive. Although a realistic possibility, in my view, such development that could be carried out under the granted planning permission would be less harmful than the appeal building. I therefore afford the fall-back position limited weight.
8. It is argued that a building of this height is required for the storage and safe stacking of hay bales with large agricultural machinery and that additional landscaping would add an ecological benefit for wildlife and would mitigate the impact of the buildings on its surroundings. The storage benefits a building of this size may afford to the appellant and any ecological benefit in my view, would not outweigh the identified harm. Moreover, notwithstanding the existing planting, I consider that the proposed additional landscaping<sup>3</sup> as suggested by the appellant would not provide sufficient screening to overcome the harmful impact of the appeal building. Similarly, a change in the colour/materials used would also not obviate the harm.
9. My attention has been drawn by the appellant to several agricultural buildings in the area which I was able to look at during my site visit. I have not been provided with full details of the circumstances that led to these developments and so I cannot be sure that they are directly comparable to the appeal before me. Moreover, I have determined the appeal before me on its own merits having regard to the particular context in which the appeal building is seen.
10. The appellant's comments regarding the lack of objection from the Parish Council and support of residents are noted but do not influence my decision.

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<sup>3</sup> Drawing Number 181016 07.

11. I conclude that the development is harmful to the character and appearance of the area. It is therefore contrary to Policies SWDP 21 and SWDP 25 of the South Worcestershire Development Plan and the National Planning Policy Framework which amongst other things, seek to ensure that all development is of a high design quality which integrates effectively with its surroundings and demonstrates that it is appropriate to, and integrates with, the character of the landscape setting.

### **Conclusion**

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal on ground (f)**

13. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173 (4)(b)). As the enforcement notice requires the removal of the building, the purpose is clearly to remedy the breach of planning control. No lesser steps than the removal of the building would achieve that purpose.
14. The appellant contends that because planning permission has been granted for a building on this site, the additional size could be mitigated by additional landscaping rather than the removal of the whole building. I have dealt with this matter under ground (a) above and found that the proposed additional landscaping would not overcome the identified harm. Moreover, subsequent to the appellant's submissions, a planning application to regularise the breach of planning control was refused on 11 December 2020<sup>4</sup>.
15. In order to remedy the breach of planning control, it is not excessive to require the removal of the building. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

### **Appeal on ground (g)**

16. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short.
17. The appellant argues that a compliance period of two months is too short given that the building is required for the storage of animal feed and agricultural machinery during the winter months. The appellant has suggested a compliance period of 12 months due to the Coronavirus pandemic.
18. In my view, a 12 month compliance period would be excessively long having regard to the on-going harm caused by the building. Having regard to the submissions from both parties, I consider that a period of 6 months would represent a more reasonable length of time which would strike the appropriate balance between the legitimate interests of enforcing planning control and the

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<sup>4</sup> Ref: 20/01545/FUL.

interests of the appellant. To that extent the appeal on ground (g) should succeed.

19. In their 'Additional Supporting Statement' the appellant has raised a number of planning issues as part of the ground (g) appeal. I have commented on the planning merits of the development when dealing with ground (a) above.

**Formal Decision**

20. It is directed that the enforcement notice is varied by the deletion of the words "2 calendar months" and the substitution therefor of the words "6 months" as the time for compliance in paragraph 6 of the notice.
21. Subject to the 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.

*Elizabeth Jones*

INSPECTOR