
Appeal Decisions

Hearing Held on 23 February 2021

Site visit made on 25 February 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Appeal A: APP/R1845/C/19/3235094

Appeal B: APP/R1845/C/19/3235095

Appeal C: APP/R1845/C/19/3235096

Land at Hexton Farm, Hexton Farm Lane, Arley, Bewdley DY12 1SW

- 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 appeals are made by Mr Paul Lawley (Appeal A), Mr John Lawley (Appeal B) and Mrs T Lawley (Appeal C) against an enforcement notice issued by Wyre Forest District Council.
 - The enforcement notice was issued on 9 July 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of three residential units ("the Dwellings").
 - The requirements of the notice are: Demolish the unauthorised Dwellings and remove all resulting demolition materials from the land.
 - The period for compliance with the requirements is nine months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeals B and C are proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g). 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 as amended.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. After assessing the appellants' evidence, some of that evidence would reasonably be construed to apply to a ground (b) appeal. Prior to the hearing the appellants' agreed that a ground (b) appeal should be included in the appeal proceedings, and the Council agreed that in doing so there would be no prejudice to them. I have dealt with the appeals on that basis.
3. A completed and signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 which included obligations to come into effect if planning permission is granted has been submitted by the appellants. I will address this matter later in my decision.
4. There is some inconsistency between the prior approval drawings and the 2018 planning application drawings in respect of the labelling of the two barns and

units within them. For the purposes of my decision and in the interests of clarity, I have referred to the dwellings as Units 2 and 3 in the West Barn (Barn 2) and Unit 1 in the East Barn (Barn 1).

Background

5. The enforcement notice is against the development on the site of two former agricultural buildings and involves the creation of three dwellinghouses.
6. An application was made for prior approval for a proposed change of use of agricultural buildings to three no. dwellinghouses and associated operational development (ref: 15/3027/PNRS).
7. By a decision dated 17 June 2015, the Council as a local planning authority confirmed that prior approval is required and granted in accordance with the details submitted with the application as set out by Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). A condition set out in Q.2.(3) of the GPDO states that the development must be completed within a period of 3 years starting with the prior approval date. In addition, Part 3 W.(12) (a) of the GPDO states that the development must be carried out, when prior approval is required, in accordance with the details approved by the local planning authority, unless the local planning authority and the developer agree otherwise in writing.
8. The decision notice did not list the relevant drawing reference numbers. However, there is no dispute between the main parties as to what details and plans received approval.

Appeals A, B and C on grounds (b) and (c)

9. The main issue is whether as a matter of fact the appellant has constructed three residential dwellings (ground (b)), and if so, whether the construction of those three dwellings constitutes a breach of planning control (ground (c)). The burden of proof falls on the appellants to make out their case on these legal grounds.
10. The agricultural buildings were open fronted corrugated iron 'Dutch' barns. The frames of the buildings remain on the site and have been incorporated into the new dwellings. However, the creation of the dwellinghouses has involved the construction of new ground floor slabs, blockwork walls with new foundations, and new roofs. In addition, first floors and staircases have been constructed as part of the buildings. Although parts of the buildings' original frame have been incorporated into the new dwellings, the frames do not provide a significant structural element to the new buildings. Indeed, I noted on my site visit that some of the exposed posts were corroded at their base and it appeared that new steels have been installed to support the overhanging roof. The main parties agree that the building works involved in the creation of the units were substantial. Indeed, it is agreed in the Statement of Common Ground that the development could not be considered to involve the re-use of buildings which were of permanent and substantial construction.¹ From the evidence before me and my own observations on my site visit, as a matter of fact and degree, the construction of three residential units, as alleged in the notice, has taken place.

¹ Statement of Common Ground – Matters on which parties agree, Paragraph 6.9.

11. The appellants' case is that the development carried out was authorised by a grant of planning permission, and they have implemented the prior approval granted in 2015. They accept that, in so far as the development was not completed within three years, and the works undertaken were not in accordance with the details approved by the local planning authority in the prior approval granted, then conditions attached to that grant of permission by the GPDO were breached. However, the appellants maintain that these were breaches of conditions and failing to comply with any condition or limitation subject to which planning permission has been granted should be controlled by the service of an enforcement notice based on s171A (1)(b) of the 1990 Act. It is the appellants' case that there has been no breach of planning control under s171(1)(a) of the 1990 Act as alleged in the notice.
12. Taking into account the condition and design of the former agricultural buildings, there is no dispute that the prior approval granted included works for new foundations, a ground floor slab, new walls, and roofs to the buildings. The materials of construction were detailed as grey PVC coated galvanised sheets to the roof, black weatherboard above brick to the walls, and timber windows and doors. The ground floor plans were also clear in that they showed that the new walls would be constructed inside of the existing portal frame, and there was a note on the plans which stated that no part of the converted build was to project outside of the enveloping profile of the existing barn. There was also a note on the plans dated 16 June 2015 stating that, with the exception of windows on the end field elevation, all upper windows had been removed from the proposals. The Council agree that when they granted prior approval in June 2015, they were satisfied that the proposed building works fell within the ambit of Class Q and that the limitations in Class Q.1 of the GPDO at that time were met.
13. The building works commenced on 4 December 2017. However, by June 2018 the dwellings were only 80% complete² and the building works undertaken were not in accordance with the details of the prior approval granted and had not been completed within the three-year time restriction. A retrospective full planning application was submitted in July 2018 for the conversion of farm buildings to 3No. residential dwellings³. This application was subsequently refused by the Council on 24 September 2018.

Comparison of approved and as-built developments

14. A comparison of the floor and elevation plans for the prior approval and the plans submitted with the 2018 planning application, together with the photographic evidence submitted with the Council's Statement of Case show the changes in the appearance of the new dwellings at the time the enforcement notice was issued.

West Barn (Units 2 & 3)

15. The front elevation of the building has six additional windows, all at first floor level. A roof light has been inserted within the rear roof slope and four new stainless-steel flues project from the roof of the building. The facing brickwork and weatherboarding used to clad the blockwork walls encapsulate the building's original steel frame, as opposed to being constructed within it.

² Planning Statement, Studio Smith Architects, July 2018.

³ Local Planning Authority, Ref 18/0486/FUL

Consequently, the length of the barn has increased by 300mm and its width by 400mm. Cladding also encloses the flank elevations of the roof overhang at the front of the building. The cladding has a natural finish and is not black.

16. The internal layout in the prior approval scheme provided Units 2 and 3 as single storey one-bedroom dwellings. The ground floor area of each unit is shown as 110m² (ext). The built development includes a first floor and provides 2 x 3 bedroom dwellings, each with an internal floor area of 134.5m². Consequently, the internal layout of the accommodation has also changed significantly.

East Barn (Unit 1)

17. The front elevation of the building has four additional windows at first floor level and there are a further five first floor windows on its rear elevation. There is single stainless steel flue projecting through the roof. As with the West Barn, the facing brickwork and weatherboard cladding to the blockwork walls envelope the original steel frame, as opposed to being constructed within it. Cladding has also enclosed the flank elevations of the roof overhang at the front of the building. The cladding has a natural and not a black finish.
18. The internal layout of Unit 1 in the prior approval scheme provided a single storey 2-bedroom dwelling with a floor area shown as 120m²(ext). The built development includes a first floor and now provides a 5-bedroom dwelling with a completely different internal layout. The internal floor area of Unit 1 is 196m².
19. The Council's reasons for issuing the notice refers to ancillary external ground works that have been carried out. However, at the hearing the appellants' advised that there had been no changes to external ground levels, albeit a level floor had been created within the buildings. The Council conceded that they had no substantive evidence to demonstrate that external ground levels had been altered. Furthermore, the Council stated at the hearing that this was not a matter that they wished to pursue and was not determinative. Indeed, the enforcement notice does not require any reinstatement of ground levels. I did not see any evidence of changes to external ground levels when I visited the site, and taking into account the Council's comments at the hearing and the requirements of the enforcement notice, I agree that this is not a matter which requires my further consideration in this appeal.
20. The significant material difference between the prior approval and the as-built scheme is the installation of first floors to all of the units and the consequent change to their external appearance, their internal layouts and to the size of the units. The floor area of the new units totals 465m².
21. The scheme submitted for prior approval was designed, and amended prior to the Council granting prior approval, to ensure that it met the limitations of Class Q.1. In particular, the approved details show that the development would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point (Q.1 (g)), and that development would not result in the buildings having more than 450 square metre of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order (Q.1 (h)).

22. Taking into account the increase in the amount of floor space, the changes to the layout and appearance of the new dwellings, including the enveloping of the steel frame within the buildings, such that the facing brickwork and cladding now extend beyond the external dimensions of the original building, I conclude that the prior approval scheme was not commenced and then carried out. Furthermore, the three-year time limit for completion of the prior approval scheme has not and cannot be met.
23. A substantial amount of operational development took place to create the three dwellings. Whilst I appreciate that the prior approval granted in 2015 did permit extensive building operations, the dwellings as constructed, by reason of their size, do not fully accord with the limitations set out in the 2015 GPDO which was in operation when the development commenced. Development took place for which no planning permission was granted by the local planning authority, nor is the development permitted under any provision of the GPDO. The enforcement notice therefore correctly states that the breach of planning control is within paragraph (a) of section 171A(1) of the 1990, the carrying out of development without planning permission, as opposed to paragraph (b), failing to comply with any conditions or limitation subject to which planning permission has been granted.
24. I have taken into account the legal submissions submitted with the appellants' Written Statement of Appeal and those which form part of their Hearing Statement. However, the submissions rely on the appellant having implemented a grant of planning permission. I have found that the dwellings constructed were not permitted development and there was no grant of planning permission for them. In that respect, the legal submissions carry limited weight.
25. I conclude that as a matter of fact the appellant has constructed three dwellings and a breach of planning control has occurred. The appeals fail on grounds (b) and (c).

Appeal on ground (a), the deemed planning permission (Appeal A only)

Main Issues

26. The main issues are:

- Whether the development is inappropriate development;
- The effect on the openness, character, appearance and purposes of the Green Belt; and
- If it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

27. The appeal site is in the Green Belt and the deemed planning application is for the construction of three residential units ("the dwellings").

28. Paragraph 145 of the National Planning Policy Framework (the Framework) states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless it falls within one of the listed exceptions. Policy SAL.UP1 Green Belt, of the Wyre Forest District, Site Allocations and Policies Local Plan, adopted 2013 (LP) is consistent with the Framework and advises that new housing development will not be permitted unless there is a proven need in association with the purposes of agriculture or forestry or it is for small-scale affordable housing, reserved for local needs in accordance with Policy SAL.DPL2: Rural Housing.
29. There is no dispute between the main parties that the construction of three new dwellings is inappropriate development in the Green Belt. The dwellings do not fall within any of the listed exceptions in paragraph 145 of the Framework and conflict with Policy SAL.UP1 of the LP.

Openness, character, appearance and purposes

30. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and essential characteristics of Green Belt are their openness and their permanence.
31. The site is within landscape type Principal Timbered Farmlands⁴, which is a substantially agricultural landscape of irregularly shaped woodlands, winding lanes and frequent wayside dwellings. Key characteristics are the small-scale landscape with filtered views, an organic enclosure pattern with hedgerow boundaries to fields, brick and timber buildings style of old properties within a rolling lowland with occasional steep-sided hills and low escarpments. The settlement pattern is dispersed.
32. The agricultural buildings and adjacent farmland at Hexton Farm were consistent with this rural pattern of development. Neighbouring Hexton Farm is a traditional farmstead and comprises a substantial vernacular farmhouse and an array of predominantly single storey brick traditional farm buildings which have been converted into residential use. The nuclear built form of the former farmstead is visually distinct from the appeal site which lies on the opposite side of Lowe Lane.
33. The size and form of the new residential development has some reference back to the former agricultural buildings. The dwellings have been constructed on the same footprint and maintain the same curved roof form and height as the former 'Dutch' barns. Consequently, I would concur with the Council that the harm to the openness of the Green Belt is not significant, albeit the appearance of the new development is one of much greater solidity than the original farm buildings. The external materials, including timber cladding, brick and steel sheeting reflect materials seen in the surrounding area. However, the construction of three new dwellings by reason of their siting and design, including the composition of materials and fenestration, have brought about a very significant change to the appearance and character of the site.
34. The dwellings are sited on the opposite side of Lowe Lane to Hexton Farm. They are neither physically nor visually related to the neighbouring historic farmstead. Moreover, they are prominent in the landscape from middle

⁴ Landscapes of Worcestershire, Landscape Type Advice Sheet, Principal Timbered Farmlands.

distance views on the approach along Lowe Lane from the south, and short distance views from the Public Rights of Way which pass the site. The design and appearance of the dwellings is imposing, and the development is not in character with, and fails to reinforce the rural and agricultural setting of Hexton Farm or the surrounding landscape.

35. I have taken into consideration the appellant's suggestion that the alleged harm could be overcome by the use of planning conditions. It has been proposed that it could be a condition of any planning permission granted to paint the cladding black, or some other agreed neutral colour. In addition, the first floor windows have now been blocked up and it suggested that the removal of the first floor windows could be secured by condition.
36. I appreciate that by the removing the first floor windows and painting of the external timber cladding black the proposal would be not be substantially different in visual appearance to the elevational details approved in the 2015 prior approval. Painting the timber would help to mitigate the stark appearance of the existing cladding. However, the details of the prior approval were in relation to a grant of planning permission for the change of use of an agricultural building, and the considerations in granting prior approval are different from those under consideration in this appeal, which is for three new dwellings in the Green Belt. The overall scale, design and appearance of the new dwellings in this location does not respond to the character of the area and they appear incongruous in this rural setting and have a harmful and urbanising effect on the appearance of the Green Belt.
37. I conclude that whilst there would be minimal harm to the openness of the Green Belt, the development would have a significant and harmful effect on the character and appearance of the area. There would be conflict with the development plan, and in particular with Policy SAL.UP1 of the LP which seeks to ensure, amongst other things, that proposals within the Green Belt area not detrimental to the visual amenity of the Green Belt, by virtue of their siting, material or design. I also find conflict with Policy C12 of Wyre Forest District Local Development Framework which requires new development to protect and where possible enhance the unique character of the landscape, including the individual settlement or hamlet within which it is located.

Other considerations

38. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
39. The appellant is of the view that he sought to implement the prior approval scheme granted in 2015 with the aim of completing the development within the required three years. The delays were as a result of a delayed start due to the availability of finance, architects and builders as well as unforeseen unprecedented inclement weather conditions. The appellant was therefore unable to complete the scheme on time but has made a significant investment in the development.
40. I have no doubt that the appellant aimed to start and complete the development within the required three-year period. However, it can be seen from my findings on the ground (b) and (c) appeals, that the prior approval scheme was not commenced or carried out. Moreover, before works

commenced, both in 2015 and again in 2017, the appellant was advised by the local planning authority that the installation of a first floor would not be permitted development. I have no doubt that there was a clear intention to carry out the unauthorised development, and taking into account the 2015 Written Ministerial Statement, Green Belt Protection and Intentional Unauthorised Development, this is a material consideration which weighs against rather than in favour of the scheme. The appellant's consideration that the development was carried out in good faith therefore carries no positive weight in the planning balance, as he was clearly aware that the development undertaken would be unlawful.

Planning conditions

41. The appellant considers that any harm caused by the development could be overcome by the imposition of planning conditions, and I recognise that the development could be altered to give the dwellings an external appearance very similar to the details approved in the 2015 prior approval. However, as set out above, the planning considerations in a prior approval application for a change of use of an existing farm building are very different from those for the construction of three new dwellings in the Green Belt, and I have found that those suggested amendments to the design would not mitigate the harm I have identified. Furthermore, I have concluded that the development as built is not in accordance with and is substantially different from the scheme granted prior approval on 17 June 2015. This prior approval is no longer extant and consequently it does not represent a realistic fallback. The operational development has resulted in the erection of new Class C3 dwellinghouses. Permitted development rights under Class Q or any other Class in Part 3 of the Schedule 2 do not apply. Moreover, the permission granted by Schedule 2 does not apply if the existing building or the existing use is unlawful (article 3(5) of the GPDO). The rights to convert the old agricultural buildings were lost when the new dwellings were constructed. This consideration therefore has no weight in the Green Belt balance.
42. Neighbouring residents have written to advise that they would be in support of the scheme, provided the proposed landscaping and parking layout plan are secured and implemented. It would seem that the neighbours are keen that the development is completed to prevent further disturbance from construction work. The appellant and the Council have suggested conditions to ensure that the site is landscaped appropriately and that on-site parking, including electric charging points are provided for future occupiers. Whilst those planning conditions would address certain details of the scheme, they would not satisfactorily mitigate or overcome fundamental harms arising from the location of the site in the Green Belt, the siting and the scheme design. This consideration therefore carries no positive weight.

Planning Obligation

43. The appellants have submitted a signed and completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act, 1990, which includes a number of obligations. Consideration of planning obligations is to be undertaken having regard to paragraph 56 of the Framework and the statutory requirements contained within regulation 122 and 123 of The Community Infrastructure Levy (CIL) Regulations 2010.

44. The planning obligation sets out detailed obligations regarding the provision of Units 2 and 3 in Barn 2 as affordable housing.
45. The provision of affordable housing is directly related, and fairly and reasonably related in scale and kind to the development. There would also undoubtedly be some social benefits from the provision of two affordable dwellings. However, Policy SAL.DLP2 of the LP only makes provision for affordable housing in the Green Belt where, amongst other criteria, the site has been identified as an exceptions site to meet an identified local housing need, would provide 100% affordable housing, is well related to the existing built up area of the settlement and the site is accessible to local services and facilities by sustainable modes of transport. Considering that the development would not provide for 100% affordable housing, and is on a site which is not well related to an existing settlement or accessible by sustainable modes of transport, the weight that can be attribute to the provision of two affordable dwellings in this location is moderate as best.

Green Belt Balance

46. I have found that the proposal would constitute inappropriate development in the Green Belt and is by definition harmful to the Green Belt; harm which the Framework indicates should be given substantial weight. Added to which is the harm to the character and appearance of the area which has been identified. On the other side of the balance the development would provide two units of affordable housing.
47. On the analysis of the above, the harm by reason of inappropriateness and additional identified harm are clearly not outweighed by other considerations. Very special circumstances do not exist to justify the development. The development fails to comply with national planning policy in the Green Belt to protect the Green Belt.

Human Rights

48. If upheld without variation, compliance with the enforcement notice would result in the loss of three newly constructed dwellings. The dwellings are not occupied, however, through Article 1 of Protocol 1 a person has the right to the peaceful enjoyment of their possessions. It is a qualified right and so a balance is required against the public interest. The fact the appellants carried out the development without the necessary authorisation weakens their position and reduces the seriousness of the interference with their rights. In view of the serious harms identified as a result of the development, refusal of planning permission is necessary and proportionate in the public interest.

Conclusion

49. For the reasons given above and taking into account all other matters raised, the construction of three residential units is not complaint with the development plan and no considerations merit a decision other than in accordance with the development plan and Framework. I conclude that the appeal on ground (a) should not succeed and planning permission on the deemed planning application is refused.

Appeals A, B and C on ground (f)

50. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
51. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. At the hearing the Council confirmed that the purpose of the notice is to remedy the breach of planning control.
51. The notice requires the demolition of the unauthorised dwellings and removal of all resulting demolition materials from the land. The requirements are therefore confined to remedying the breach and are not excessive.
52. Nevertheless, I have to consider whether there is any obvious alternative to the stated requirements that would remedy the breach. To require alteration to secure compliance with the prior approval scheme does not provide an appropriate alternative as for the reasons set out in my decision above, the prior approval is no longer extant.
53. There are no lesser steps that would achieve the statutory purpose behind the notice and Appeals A, B and C fail on ground (f).

Appeals A, B and C of ground (g)

54. The issue is whether the compliance period of nine months is reasonable. The appellants consider that a period of 12 months would be more reasonable given that the buildings are near completion and partially fitted out. The services of builders would be required to facilitate the removal and disposal of the materials and additional finance would have to be raised. Furthermore, restrictions in place relating to the COVID-19 pandemic are likely to make the engagement of those services and the disposal of materials more difficult.
55. The dwellings are not occupied and taking into account the appellant's evidence, without the inclement weather, the development would have taken seven months to carryout. Therefore, the demolition of the buildings is unlikely to take longer, even with the restrictions currently in place.
56. The Framework and Planning Practice Guidance confirm the importance of effective enforcement to maintain public confidence in the planning system and to tackle breaches of planning control which otherwise have an unacceptable impact on the amenity of the area. Whilst the Council advised at the hearing that they would not oppose an extension of the compliance period to 12 months, I am also aware that this would mean that the neighbouring residents would have to suffer further disruption for a longer period.
57. Balancing the competing considerations and taking into account the current situation with the pandemic, I conclude that the compliance period of nine months is reasonable. The appeals on ground (g) fail.

Overall Conclusions

58. For the reasons given above, the appeals 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.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Paul Lawley	Appellant
John Lawley	Appellant
Hugh Richards	No.5 Chambers
David Addison BSc, MA MRTPI	AddisonRees Planning Consultancy Limited

FOR THE LOCAL PLANNING AUTHORITY

Paul Round	Development Manager
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DOCUMENTS SUBMITTED AT THE HEARING

Letter dated 11 July 2018 from Turford and Son Ltd (Director)
Landscape Type Advice Sheet – Principal Timbered Farmlands

DOCUMENTS SUBMITTED AFTER THE HEARING

Schedule of Conditions (Agreed)
Completed and Signed Unilateral Undertaking.
Affordable Housing, Supplementary Planning Document, July 2014.
Wyre Forest District Council Adopted Local Connection Policy.
Wyre Forest District Council Adopted Housing Allocations Policy.