



Appeal Decisions

Hearing Held on 6 and 15 January 2021

Site visit made on 14 January 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2021

Appeal Refs: APP/N4205/C/19/3241449 ('Appeal A') and APP/N4205/C/19/3241450 ('Appeal B')

Aldreds Farm, Jacks Lane, Westhoughton, Bolton BL5 2DJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Stephen Edmonds (Appeal A) and Mrs Wendy Edmonds (Appeal B) against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 16 October 2019.
- The breach of planning control alleged in the notice is failure to comply with conditions No 7 and No 12 of a planning permission Ref 88690/12 granted on 18 October 2012.
- The development to which the permission relates is the demolition of all buildings and erection of dwelling together with landscaping and erection of boundary fence. The conditions in question are:
 - No 7 which states that: Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning General Permitted Development Order 1995 (or any order amending or replacing that order) no extensions, porches, garages, outbuildings, sheds, greenhouses, oil tanks, or hardstandings shall be erected within the curtilage of (any of) the approved dwellinghouse(s), other than those expressly authorised by this permission; and
 - No 12 which states that: Prior to first occupation of the approved dwelling all structures as indicated on drawing ref: 1119-PL-05 Dated May 2011 shall be demolished in full and the land returned to an open and undeveloped state (inclusive of hardstandings) unless otherwise agreed in writing with the Local Planning Authority.
- The reason given for imposing condition No 7 was that the site lies within the Green Belt as defined within the Council's Unitary Development Plan, and further extensions could prejudice the aims and purposes of the Green Belt. The reason given for imposing condition No 12 was to safeguard the character and visual appearance of the green belt.
- The notice alleges that condition No 7 has not been complied with in that outbuildings, an aviary, timber enclosures and a concrete hardstanding have been erected. It alleges that condition No 12 has not been complied with in that structures indicated on drawing ref: 1119-PL-05 have been retained.
- The requirements of the notice are to:
 - (i) Demolish the building shown in photograph A attached to the notice;
 - (ii) Demolish all outbuildings, aviary, timber outbuildings and concrete hardstanding as shown in photographs B, C, D and E attached to the notice; and
 - (iii) Permanently remove from the land all materials and rubble arising from compliance with requirements (i) and (ii).
- The period for compliance with the requirements is 90 days.
- Appeal A is proceeding on the grounds set out in section 174(2)(a)(b)(c)(e) and (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act'). Appeal B proceeds on the same grounds, save that since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed in respect of Appeal B.

Summary Decisions: Appeal A succeeds in part on ground (a) and permission for that part is granted. Both appeals partly succeed on ground (b) but otherwise fail and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Preliminary Matters

Clarifying the structures, the allegations, and the grounds of appeal

The structures

1. The structures against which the requirements of the Notice are directed are not identified by the Council by their position on a plan, but by photographs dating from May 2018 that were attached to the Notice. The appellants' Appendix 6 provides a schedule and plan of structures on the site (which includes buildings that are not permitted by the 2012 permission or required to be removed by the Notice). The parties agreed at the Hearing that these documents were to be reconciled as set out in the table below. The descriptor in the left hand column will be used in the remainder of this decision.
2. The corrected allegations and the grounds of appeal (save for grounds (e) and (g) which apply to all structures and/or the Notice as a whole) are also set out in the table and explained further below.

Description	EN Photograph	Appellants' Appendix 6	Allegation	Grounds of appeal
Agricultural Barn ('the Barn')	A	6	BoC12	(a)
Timber outbuilding	B	2	BoC12	(b) and (c)
Polytunnel	C	n/a	OD without PP	(b) and (c)
Aviary	D	7	OD without PP	(b)(c) and (a)
Kennels/run/hardstanding ('the hardstanding')	E	3, 4, 5	OD without PP, but applicable only to the hardstanding	(a)

Defining Structure E

3. At the Hearing it was established that the kennel is found within the northernmost 'bay' of the timber outbuilding (structure B) with the hardstanding area forming the dog run leading off to the north. The Notice refers to 'enclosures', although not in its requirements which relate only to 'outbuildings, aviary, timber outbuildings and concrete hardstanding' (in 5(ii)). I saw that there was some construction-style fencing surrounding the hardstanding area, and earlier photographs show enclosures within the timber outbuilding. (Permitted development rights to construct means of enclosure

have not been withdrawn, but as the Notice imposes no requirements in this regard it does not need amending.)

4. The position on site at the time of my visit was a little different from that shown in photographs 'B' and 'E' attached to the Council's Notice, where the wooden struts to the front (adjoining the northern end of the timber outbuilding) have been removed. However there is nothing in the photographs or presently on site that could reasonably be described as a building (rather than an enclosure, or the hardstanding area) outside of the timber building to its north.
5. It therefore appears to me that the kennel comprises an enclosure found within the timber outbuilding. That outbuilding is due to be removed as required by condition 12 of the permission. The 'timber enclosures' referred to in the Notice appear to me to constitute the enclosures found within that outbuilding and to which the requirements of the Notice make no express reference. Thus my consideration of structure E, as far as the Notice's requirements are concerned, amounts to the concrete hardstanding.

The allegations

Condition 7 allegations

6. At the Hearing I expressed some misgivings about the drafting of the 'condition 7' allegations. The parties agreed that the effect of article 3(4) of the present Town and Country Planning (General Permitted Development) (England) Order 2015 (and its predecessor provisions) ('the Order'), coupled with condition 7, is to withdraw any planning permission for any extensions or outbuildings in the curtilage of the dwelling which would otherwise be permitted by article 3(1) of the Order. As a result (and whether or not the structures on the site and referred to in the Notice would in fact otherwise be permitted by the Order) the erection of the structures is better described as an allegation of operational development carried out without planning permission, rather than development in breach of a condition. This way, the deemed planning application on ground (a) would be to seek permission for their erection. Alleging a breach of condition would result in the deemed planning application on ground (a) comprising an application merely for the erection of the dwellinghouse (and related works) without complying with condition 7. This could not in itself have the effect of retrospectively authorising the structures, which would not have constituted permitted development at the time of their construction and such rights cannot be claimed retrospectively¹.
7. The corollary of amending the allegation is that the time limit for taking enforcement action set out in section 171B of the Act would be reduced to four years under section 171B(1) rather than the period of 10 years recited in the Notice, deriving from the present characterisation of the alleged breach as 'any other breach' under section 171B(3). Following a short adjournment to consider the point, it was confirmed that the appellants were content to proceed without adding appeals on ground (d) or otherwise revising their case. Mr Edmonds confirmed that, of the 'condition 7' structures, the only one he would have contended had been there for longer than 4 years at the time of issuing the Notice was the timber outbuilding.

¹ *R (Watts) v SSETR and Hammersmith & Fulham LBC* [2002] JPL 1473

8. All parties subsequently agreed that the timber outbuilding was a structure of some antiquity, appearing on the Demolition Plan (as described below). It therefore falls to be considered under the 'condition 12' allegation. Consequently I find that no injustice results to either party from my proposed corrections of the Notice relating to the 'condition 7' allegations.

Condition 12 allegation

9. Condition 12 required the demolition of certain buildings prior to the 'first occupation' of the dwelling. Although the Notice as drafted does not recite that the dwelling had been occupied, thus triggering any breach of the condition, all parties at the Hearing agreed that it had been occupied by the time the Notice was issued. I shall therefore correct the Notice to reflect this fact, again without any resulting injustice to any party.
10. In the interests of precision and following discussion at the Hearing, I shall also correct the allegation to clarify that it is the Barn and the timber outbuilding (structures A and B, alternatively known as 6 and 2) that are alleged to have been retained in breach of the condition, rather than the present rather generalised reference to 'structures indicated on [the Demolition Plan]'. I shall also correct the Notice to clarify that there has been an alleged failure to comply with the condition, rather than that it has been 'breached', to reflect the statutory wording of section 171A(1)(b).

The grounds of appeal

11. As a result of my proposed restatement of the 'condition 7' allegations, the contentions made in the appeals on ground (b) in respect of the 'curtilage' point fall away, leaving the appeals on this ground to relate expressly only to the timber outbuilding and the polytunnel (structures B and C). The appeals on ground (c) relate expressly only to the aviary (structure D). However, 'hidden' grounds of appeal on grounds (b) or (c) are raised in relation to all 3 structures where not expressly made.
12. The Appeal A appeal on ground (a) relates to each of the Barn, the aviary and the hardstanding. For the Barn, planning permission is sought to construct the dwellinghouse (and related works) without complying with condition 12 to the extent that it requires the demolition of the Barn. For the aviary and hardstanding, as a result of correcting the allegations, retrospective planning permission for each of them is sought.

Demolition Plan

13. At the Hearing it was noted that the plan 1119-PL-05 referred to in condition 12 of the 2012 planning permission and in the Notice had been revised. Both parties had supplied a copy of the same plan, labelled Rev C, with their Statements (Council Appendix 6 and Appellant Appendix 14) as being the one relevant to condition 12. That Rev C plan is dated May 2011 (as recited by the condition) and I am satisfied that nothing turns on the omission of the revision number from the Council's condition 12 or from the Notice. I refer to this plan as 'the Demolition Plan' in this decision.

Service, notifications and the appeals on ground (e)

14. Although the appeals on ground (e) raise substantive appeals like any other ground, I shall deal with them here prior to determining the other main issues

in the appeals. This is because, if successful, they would result in the quashing of the Notice without discussion of the remaining issues.

15. The appellants' case on ground (e) is essentially that, at the time the Notice was issued, although they were in occupation of the land they were not the registered owners, and the Council had failed to serve the owner of the land with a copy of the Notice as required by section 172(2)(a) of the 1990 Act. As well as this, I raised concerns at the Hearing that there were a number of entries shown in the Charges Register of the property, raising the question whether there were other persons required to be served with the Notice pursuant to section 172(2)(b). Additional to that, it was clear from the parties' cases that NatWest had been served with the Notice, but had not been notified of the appeal or of the arrangements for the Hearing.
16. Section 176(5) provides that the failure to serve a copy of the Notice may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve him. It was ventured on behalf of the appellants that there was substantial prejudice to them, because ground (d) appeals based on time limits could be available against a later notice but not this one. However that ignores the "second bite" provisions of section 171B(4)(b) that extend the Council's time limits for taking enforcement action in this type of scenario.
17. As to whether there has been substantial prejudice to anyone else, I am satisfied, on balance, that there has not. The former owner has belatedly been served with the Notice and notified of the arrangements for the appeal, and has not sought to participate. The parties explained to me that the ownership of the land has in fact transferred to the appellants and the entries shown on the Charges Register are due to be cleared, with none of those persons (save for the appellants) retaining an interest in the land. An application for registration is pending.
18. Although I have received no documentary evidence as to the position of the chargees, I have no reason to disbelieve this account which was agreed by the parties at the Hearing. Additionally, having regard to my overall findings on the remaining grounds of appeal, I consider that the costs of complying with the Notice, when set against the likely land value, are unlikely to substantially prejudice the interests of any chargee. I am therefore prepared to disregard the failure to serve those persons with interests noted in the Charges Register to the title.
19. NatWest were described to me as being the current mortgagees of the property with an interest that has yet to be noted on the register because of the pending application for registration. They have been served with the Notice but not made aware of the appeal, contrary to the requirements of Regulation 9 of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002. As they are not in occupation of the site it is most unlikely that they will be taking any steps to secure compliance with the Notice whilst unaware that its effects are suspended pending the outcome of the appeals.
20. In conclusion I find that there has been a probable failure by the Council to serve all of those persons required to be served with a copy of the Notice pursuant to section 172(2) of the 1990 Act. However, I also find that neither the appellants nor any other persons have been substantially prejudiced by this failure of service. Section 176(5) permits me of a discretion to disregard the

failure of service in such circumstances, and I shall exercise that discretion accordingly. Therefore the appeals on ground (e) do not succeed.

The appeals on grounds (b) and (c): the timber outbuilding, aviary and hardstanding

Main Issues

21. The first main issues in respect of these structures are whether their erection as alleged in the Notice has occurred at all; whether, if so, their erection constitutes the breach of planning control alleged in the (corrected) Notice; and, if not, whether their erection constitutes any other breach of planning control. This is to take grounds (b) and (c) together insofar as each ground of appeal arises in respect of each of these three structures.

Reasons

The timber outbuilding

22. Referred to as a timber outbuilding or enclosure, this structure lies close to the eastern side of the dwellinghouse. Although shown in a slightly different alignment on the appellant's Appendix 6 plan where it appears as structure 2, at the Hearing the parties agreed that this structure is the one marked as "existing stable shed indicated with broken line to be demolished" on the Demolition Plan.
23. Although the appeal is made on ground (b) in relation to this structure, namely that the matters stated in the Notice have not occurred, the appellants' substantive case is not that the building does not exist. It is that it has not been erected in breach of condition 7, because it already existed prior to the grant of planning permission in 2012. This is to deny that the breach of planning control alleged in the Notice has occurred. However even if considered under ground (c), the relevant question is whether 'a' breach of planning control is constituted by the matters stated in the Notice, even if that amounts to a different breach of planning control from the one that is actually alleged. Given the parties' agreement on the matter, it is abundantly clear that the building is required to be demolished by condition 12 of the 2012 planning permission, and that the failure to so demolish it prior to first occupation of the dwelling has amounted to a breach of planning control.
24. Therefore the appeals on ground (b), and the 'hidden' appeals on ground (c), fail in respect of this outbuilding, although I shall correct the allegation. I shall uphold the corrected Notice as it relates to the timber outbuilding.

The polytunnel

25. The polytunnel is not shown on the appellants' Appendix 6 plan for the simple reason that it no longer exists. The parties agreed that it had been demolished (or was at least moved elsewhere on the land) some months prior to the issue of the Notice, at least by May 2019. Mr Edmonds stated that to his recollection it had been removed before Christmas 2018. At the Hearing the Council were not in a position to disagree with that.
26. The appellants do not deny that a polytunnel has existed at all, and an appeal on ground (b) is that the matters stated in the Notice 'have not occurred'. The appellants say it was an historic breach long since remedied by the time the

Notice was issued. Whilst I accept that a breach of planning control need not be apparent on the exact date on which an enforcement notice is issued, I would normally expect at least some reasonably proximate relationship between the Council's observance of an apparent breach and the subsequent service of a notice. Here the apparent breach was observed nearly 18 months prior to the issuing of the Notice, and the polytunnel was dismantled at least some five months prior to it.

27. The difficulty is compounded here because there *is* a polytunnel on the land to which the Notice relates, not shown on the appellants' Appendix 6, and the Council has not identified the various structures by reference to a plan. The common understanding of those present at the Hearing is that the polytunnel now on the land is not the same one (or is at least not constructed in the same position) as the one to which the Notice is intended to refer. The polytunnel against which the Notice is directed has been removed, but it could not have been removed in compliance with the Notice which was not issued until at least some five months after it had already gone. However, this understanding would not necessarily be shared by any person seeking to ascertain whether there has been compliance with the Notice or whether the provisions of section 181 of the 1990 Act concerning works of reinstatement or restoration have become relevant.
28. Given this potential for uncertainty resulting from the considerable time lag between the observance of the apparent breach and the service of the Notice, and that the polytunnel shown on photograph C had been removed several months prior to the issuing of the Notice, I shall allow the appeals on ground (b) as they relate to the polytunnel. At the time the Notice was issued, the polytunnel was not present and the matters alleged in the Notice concerning it had not occurred. Reference to a 'polytunnel' as opposed to the more general description of 'outbuilding' is not expressly made in the allegation or the requirements (although no argument is made that the polytunnel was not adequately so described) but I shall correct the Notice to omit reference to photograph C in requirement 5(ii).

The aviary

29. The appellants' case in respect of the aviary is that it is a structure so insubstantial as to say it does not amount to development for which permission is required. The parties agreed at the Hearing that the principal factors in determining whether the resulting structure is a building are its size, permanence and degree of physical attachment to the land, although none of these is necessarily decisive.
30. It was explained at the Hearing that the aviary was put up shortly after the appellants had moved into the property some three years ago, and has not moved since. The appellants say it is capable of being moved around, with no services attached, no foundations or masonry, and that it sits on an area of grass. It was said at the Hearing that it was built from scratch at the site, by Mr Edmonds himself in a process that took approximately two days.
31. I saw that the structure was around 8m wide, 4m deep and 2.5m high and thus appeared to be capable of road transportation as a normal cargo load without requiring dismantlement. It contained three owls, one of whom demonstrated taking flight from one end of the structure to the other. I could not move it by pushing on it, and it appears to rest on its own weight but would be difficult if

not impossible to move without mechanical assistance. It consists of a series of solid wooden posts both vertical and horizontal, reinforced at the corners, and covered with sturdy netting.

32. Although not physically attached to the ground, the construction of the aviary took place on the site and was the result of two days' manual labour which is not insignificant. Although it may physically be moveable without dismantlement, it has in fact remained in its present position for a significant period of time. The lack of physical attachment to the land is insufficient to disturb my otherwise overwhelming impression that the structure is a building of consequential size and permanence. The appeals on ground (c) (and on ground (b), inasmuch as there are 'hidden' appeals on that ground) therefore fail, because I find that the construction of the aviary amounted to building operations and thus development falling within the definition found in section 55(1) of the 1990 Act and for which permission was required by section 57(1) but not obtained. A breach of planning control has therefore occurred.

The appeals on ground (a): the Barn, the aviary and the hardstanding

Main Issues

33. Deemed planning applications arise and are pursued in respect of these 3 structures. As explained above, the Barn allegation concerns a different kind of alleged breach (a failure to comply with a planning condition) from the aviary and hardstanding (without planning permission) in the Notice as I shall correct it, and I shall deal with them accordingly in turn. The site lies in the Green Belt and the Council's reasons for issuing the Notice in respect of all the allegations were that the structures amount to inappropriate development in the Green Belt and cause harm to the openness and purposes of the Green Belt contrary to both local and national policy.
34. In relation to the Barn, the main issue in the appeal on ground (a) is whether the requirement of condition 12 to demolish it is necessary and reasonable having regard to the impacts on the Green Belt, by reason of inappropriateness and/or the effects on the openness and purposes of the Green Belt, having regard to the National Planning Policy Framework ('the Framework') and any relevant development plan policies.
35. In relation to the aviary and hardstanding, the main issues in the appeal on ground (a) are whether the structures amount to inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; if applicable the effect on the openness and the purposes of the Green Belt; and whether any other harm arises. Then, if the proposals under consideration, or either of them, are inappropriate development in the Green Belt, the question then arises whether any harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations such that very special circumstances necessary to justify the proposals are found to exist.

Reasons

36. The development plan policy cited in the Notice is Policy CG7AP of the Council's Allocations Plan, which is a Local Plan document that was adopted in December 2014. The reasoned justification to the policy states that it reflects the Framework, although there are now some differences arising from more recent

iterations of the Framework. The parties at the Hearing agreed that the development plan and the Framework are broadly consistent.

The Barn

37. Planning permission was granted for a replacement dwelling on the land in 2012 as part of which a number of structures including the Barn were earmarked for demolition. In the event the appellants have purchased several hectares of adjoining agricultural land and seek to retain the Barn in order to facilitate what they say is their agricultural use of that land.
38. The replacement dwelling, permitted on the grounds that it would not be inappropriate in the Green Belt, is more than double the size of the derelict roofless former dwelling that it replaced. The 2012 application was for the redevelopment of Aldreds Farm involving the demolition of the then existing former farmhouse and barn to facilitate the construction of a replacement dwelling with attached garage. The site was described in the applicant's planning statement as a former farmstead associated with a larger agricultural landholding, but it was also said that the site had not been used for agriculture for several years whilst opencast coal mining proposals (since abandoned) had been in prospect. A photograph of the Barn, described as an 'Agricultural Building', shows it to have been then, as now, a building of substantial and permanent construction with a typical agricultural appearance.
39. It appears that at the time of the 2012 application the then-applicant was living on the site in a mobile home. The contemporaneous photograph of the Barn shows there to have been items kept within it, but it is not possible to discern exactly what. The 2012 Officer's Report described the site as "... not a working farm and thus is for all intense (*sic*) purposes domestic curtilage".
40. Although in 2012 the Barn was a purpose-built agricultural building, apparently last used as such, found on an agricultural landholding, the 2012 Officer's Report treated it as a building capable of contributing to the Green Belt assessment of the redevelopment proposal. The Council found that, subject to requiring the demolition of the Barn, the new dwellinghouse was not inappropriate development in the Green Belt.
41. On the evidence before me, however, the Barn was not a building in the same use as the former farmhouse and, as an agricultural building without any planning history indicating any alternative use, did not amount to previously-developed land. Whilst the Council suggest that in 2012 the agricultural use had been abandoned, there is no record of any other use of the Barn having taken place, or of any permission having been granted for any change of use of it prior to 2012 whether for domestic or any other use (or any lawful development certificate to the same effect).
42. That being the case, the Barn was not an inappropriate form of development in the Green Belt. Since the Council's determination of the 2012 application, the Court of Appeal has clarified² that if a building is not inappropriate in the Green Belt then it should not be regarded as harmful to the openness or the purposes of the Green Belt. The demolition or otherwise of the Barn, although not necessarily irrelevant to the overall planning merits of the proposal, would not

² In *Lee Valley Regional Park Authority, R (oao) Epping Forest DC & Anor* [2016] EWCA Civ 404 at paragraph 17

have been germane to the analysis of whether the proposed replacement dwelling was inappropriate in the Green Belt.

43. The Council intimated at the Hearing that condition 12 was nonetheless required so as to tidy up the site, and although Green Belt is not a landscape designation the Council's reason for imposing the condition referred to safeguarding 'the character and visual appearance of the green belt'. However, neither the visual appearance of the Barn nor its effects on the area's character forms any part of the Council's reasons for issuing the enforcement notice.
44. The 2012 planning permission was for the demolition of buildings and the erection of a dwelling, with the application site plan drawn around all of those buildings. The intention appears to have been to create a new planning chapter for the former farmstead, by demolishing all the buildings, erecting a replacement dwelling and with all the 'red line' land to be associated with the new residential use. The Barn lies on land within that 'red line' and which condition 9 of the 2012 permission refers to as the curtilage of the new dwelling. However, the site does not appear to have been developed in quite the way envisaged. Instead, the appellants' acquisition of additional agricultural land surrounding the site has engendered the continuation (or resumption) of the agricultural use of part of the site, with a discernible 'farmyard' area to the north of the new dwellinghouse, and upon which the Barn is located.
45. Since the occupation of the dwelling the Council says that the Barn has been used for the storage of non-agricultural items, and that the appellants' proposed uses of the land, and of the building, do not amount to an agricultural use meeting the section 336(1) definition. This is because, says the Council, there is no trade or business involved, and because the animals kept at the site are not livestock kept for agricultural production or for the purpose of their use in the farming of the land.
46. At the time of my site visit there were few animals on the land. Some horses were being kept in the westernmost field, with a stable block and horse trailer observed to the north of the site. A couple of ewes were being kept in pens in the Barn. A variety of ducks and geese were seen on and around the pond. A miniature pig was observed in a pen to the north west of the site, and various hens wandered freely. The Barn itself, as well as containing the sheep pens, contained various items of agricultural feed, a tractor and other agricultural vehicles, a number of items of agricultural machinery as well as some non-agricultural items such as a filing cabinet and fridge-freezer.
47. At the Hearing Mr Edmonds described his intention to breed healthy animals and to farm the land as a hobby, with some mixed success thus far. Accepting that he takes in 'rescue' animals, he nonetheless denies that the land is merely an animal sanctuary. The Barn is said to be required for housing livestock in adverse weather or over-wintering, storing equipment, and storing the livestock feed and bedding. On behalf of Mr Edmonds it is contended that, although the livestock numbers are small, what is taking place is the breeding and keeping of livestock consistent with the Act's definition of agriculture. ADAS, who advised the Council on an earlier application to retain the building, say that there is no need for this building on the site but do not deny that an agricultural building of some sort is required.
48. The ADAS report concludes that the Barn is not required in connection with a commercial and viable agricultural enterprise and that there is no commercial

agricultural need for the building, but this is to conclude upon a question it is unnecessary for me to decide. The deemed application does not concern permitted development rights, applying to narrower agricultural concerns than those comprised in the statutory (s. 336) definition, and the Council's only reason for issuing the Notice concerns the effects of the development on the Green Belt which requires no consideration of agricultural need (as distinct from purpose) at all.

49. Notwithstanding the small scale of the agricultural activities taking place on the land, I accept the contentions made on behalf of Mr Edmonds. In considering the merits of removing or enforcing the planning condition I find that the Barn is overwhelmingly in the agricultural use for which it was constructed and hence continues to constitute appropriate development in the Green Belt. I therefore find that the Council's objectives when imposing the condition, and later when issuing the enforcement notice, would not now be achieved by the retention or enforcement of the condition as it applies to the Barn. As an agricultural building, it does not harm the Green Belt.
50. Therefore, insofar as it relates to the Barn and the conditions imposed on the 2012 permission, the deemed planning application constituted by the appeal on ground (a) will be granted, subject to the imposition of alternative conditions.

Conditions – the Barn

51. The deemed planning application is to carry out the development originally permitted in 2012 without complying with condition 12. As discussed at the Hearing, the replacement dwelling was constructed some time ago and thus there is no need to reimpose many of the conditions requiring certain works to be carried out or schemes to be approved at early stages of the development. The Council have also confirmed that the landscaping scheme has been approved. Consequently, there is no need to reimpose conditions 1 – 6 or 10 – 11 in their present form. The requirement of condition 3 to require replacement planting within five years will be reimposed. Although I am conscious that a landscaping scheme has been agreed under the 2012 permission, I shall reimpose a condition requiring a scheme of landscaping approval within three months in order that a scheme is tied to the permission that I shall grant. The requirements of conditions 7 and 8 removing certain permitted development rights will also be reimposed. Save for its application to the Barn, condition 12 will also be reimposed in similar terms because I have heard that it applies to the timber outbuilding and I have heard no argument that the timber outbuilding (or any other structure to which the condition may apply) is not inappropriate in the Green Belt or should benefit from the same analysis that I have applied to the Barn. I shall however delete the discretionary 'tailpiece' from the condition so to ensure that any future changes are considered by way of a formal application.
52. Existing condition 9 contains no stipulation, so is not really a condition at all, but states that the curtilage of the property is being treated as constituting the land within the 'red line' plan referred to in that condition. This appears to be contrary to the need to apply the *Stephenson* factors³ in any particular case depending on the facts then pertaining, and consequently serves no planning purpose. However to avoid any doubt I shall impose a condition prohibiting the use of the Barn for anything but agriculture.

³ *Attorney-General ex rel Sutcliffe & Ors v Calderdale Borough Council* (1983) 46 P&CR 399 per Stephenson LJ

53. Because of the relative proximity of the Barn to the replacement dwelling, the parties suggest that the occupation of the structure be made personal to the appellants, or rather to the occupants of the replacement dwellinghouse. I find a planning condition to be unnecessary because this question of occupation is within the control of the appellants and there is no evidence before me of any prospect of the buildings becoming separately occupied.
54. To conclude on the Barn, the appeal should succeed on ground (a) and planning permission will be granted subject to the imposition of conditions relating to the matters discussed above. There is no need to make any consequential variations to the Notice, given the provisions of section 180 of the 1990 Act. The appeal on ground (g) does not therefore need to be considered in relation to the Barn.

The aviary and the hardstanding

55. The same arguments are advanced in relation to both of these structures so I shall take them together.

Whether inappropriate and effects on openness and purposes

56. In both cases the appellant contends that these are buildings constituting the provision of appropriate facilities for outdoor recreation, thus capable of falling within paragraph 145(b) of the Framework as exceptions to the requirement to regard the construction of new buildings as inappropriate in the Green Belt. However, and here the Framework differs in its wording (although not in its effect in this case) from Policy CG7AP of the Allocations Plan, the exception only arises in connection with the existing use of land or a change of use. There is no proposal to change the use of the land upon which the aviary or the hardstanding sits to use for outdoor recreation, and there is no allegation in the Notice that any such change has been made. As the land is not in use for the purpose of outdoor recreation I find that the paragraph 145(b) exception, or the relevant Policy CG7AP exception, cannot arise in relation to the buildings.
57. As far as the hardstanding is concerned this is not a 'building' to which paragraph 145(b) could anyway apply. As an engineering operation it potentially falls within the paragraph 146(b) exception. As with any buildings that *are* appropriate facilities for outdoor recreation in connection with such a use, such an exception can only arise where the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
58. The hardstanding is a sizeable area (said to be some 100 m² including the kennel area) noticeably raised above the surrounding land by several inches. Although modest in the context of the site as a whole, I find that the hardstanding does not preserve the openness of the Green Belt by reason of its constituting a visible and spatial incursion into the land, distinct from the gravelled or soft landscaping surrounding it and considerably at odds with the agricultural field behind it to the east. By encroaching into the countryside it is also incompatible with Green Belt purposes. I therefore find the hardstanding to be inappropriate development in the Green Belt because it does not preserve openness and conflicts with the purposes of including land within the Green Belt and thus does not constitute an engineering operation meeting the Framework's paragraph 146(b) exception.

59. The actual harm to the openness of the Green Belt is modest. Although the hardstanding is raised, it is of a relatively low profile and is in close proximity to the dwellinghouse where further hard landscaping is found and thus its impacts are limited. Nonetheless I give this harm to the Green Belt both by reason of inappropriateness and by the modest loss of openness substantial weight.
60. As a new building to which none of the exceptions of paragraph 145 of the Framework applies, I find that the aviary is necessarily inappropriate development in the Green Belt. Again however I find that the harm to the openness and purposes of the Green Belt is modest. The aviary is sited to the north west of the site away from the dwellinghouse, beyond the 'farmyard' area and close to the hedgerow forming the property's boundary with Jacks Lane. It is constructed mainly of natural materials that blend in with their surroundings, it is transparent through the netting, and its floor area of earth and grass is visible too. Nonetheless I give this harm to the Green Belt substantial weight.

Other considerations

61. No other harm is alleged by the Council to arise from either structure. The appellant has advanced a number of matters in support of his case that the structures are appropriate facilities for outdoor recreation. I do not accept that case, but nonetheless have considered whether any of these (or any other) matters might outweigh the harm to the Green Belt such as to amount to the very special circumstances required to justify either development.
62. For the hardstanding, the concrete base is said to be essential to enable the dog kennel to be cleaned effectively. Whilst I accept that this is an advantage, it does not explain why the whole of the dog run should need to be constructed of concrete or why it should need to protrude above the surface of the surrounding land. I therefore give this benefit only a small amount of weight because I am not satisfied that the benefit could not be achieved in some other less harmful way. The justifications put forward concerning the design, size and siting within the site of the animal housing facilities are not benefits in themselves but weigh neutrally.
63. The appellant seeks to support both developments on animal welfare grounds and in furtherance of the 'five freedoms' as provided by the Farm Animal Welfare Council. Safe and secure housing for animals is said to be fundamental to achieving these five freedoms. Whilst recognising the personal benefits to the appellant and his family of the canine and avian housing facilities, as a matter of public interest I give the provision of these facilities at this site only moderate weight because I am not satisfied that the animal welfare benefits cannot be achieved elsewhere.

Conclusion on the aviary and hardstanding

64. Consequently I find that the other considerations in each case do not clearly outweigh the harm to the Green Belt that I have identified in respect of both structures. As a result I am unable to find that the very special circumstances necessary to justify either development exist. The developments are contrary to Policy CG7AP and to the Framework. I therefore conclude that the appeal on ground (a) should not succeed in relation to these elements of the Notice.

The appeals on ground (g)

65. The appeals on ground (g) rested on the difficulties of removing the Barn within the stipulated 90 days, for reasons relating to potential asbestos removal and to the potential presence of protected species. As permission is to be granted to allow the retention of the Barn, those difficulties need not arise. Consequently I do not find the period specified in the Notice for compliance with its requirements to fall short of what should reasonably be allowed. The appeals on ground (g) do not succeed.

Conclusion

66. For the reasons given above I conclude that the appeals succeed in part. I shall correct the Notice so to correct the 'condition 7' allegations to allege the erection of outbuildings, an aviary, timber enclosures and a concrete hardstanding as constituting development without planning permission instead of in breach of condition. I shall vary the Notice so as to omit the requirement to remove the polytunnel (photograph C) because of the success of the appeals on ground (b) in relation to that outbuilding.
67. Subject to those corrections and variations the Appeal B appeal should not otherwise succeed and the enforcement notice will be upheld.
68. Additionally, the Appeal A appeal on ground (a) succeeds in part only. In relation to the corrected allegations concerning development without planning permission I shall uphold the Notice with corrections and variations and refuse to grant planning permission.
69. In relation to the 'condition 12' allegation, as I am upholding the Notice, I shall not exercise my power under section 177(1)(b) and its related statutory provisions to discharge condition 12 and to impose other conditions on the original 2012 permission. This is because any changes to that permission, which pre-dates the Notice, would not benefit from the provisions of section 180 of the 1990 Act so as to supersede the requirements of the Notice. Instead I shall grant a fresh planning permission pursuant to section 177(1)(a) on the application deemed to have been made under section 177(5) for the demolition of all buildings and erection of dwelling together with landscaping and erection of boundary fence, subject to new conditions that reflect my findings above.
70. These conditions are limited in number because, following completion of the works to construct the dwellinghouse, several of the 2012 conditions are now otiose and do not need to be reimposed. Aside from the conditions that do require reimposing because of their ongoing effects, the conditions I am imposing give effect to my findings in relation to the Barn, allowing its retention but only for agricultural use, and do not change the scope of the enforcement notice.

Formal Decision

71. It is directed that the enforcement notice is corrected as follows:

- (i) Omit "BREACH OF CONDITION" from the headnote;
- (ii) Substitute "Sections 171A(1)(a) and (b)" for "Section 171A(1)(b)" in paragraph 1;

- (iii) Delete from paragraph 3: "It appears to the Council that Condition 7 has been breached in that outbuildings, an aviary, timber enclosures and a concrete hardstanding have been erected." from paragraph 3. Replace it with: "It appears to the Council that outbuildings, an aviary, timber enclosures and a concrete hardstanding have been erected without planning permission."; and
- (iv) Delete also from paragraph 3: "In addition, condition 12 has been breached in that structures indicated on drawing ref: 1119-PL-005 have been retained." Replace it with: "In addition, there has been a failure to comply with condition No. 12 subject to which planning permission was granted on 18 October 2012 under reference 88690/12, constituting the failure, prior to first occupation of the approved dwelling, to demolish the structures shown in photographs A and B attached to this notice and indicated as 'existing barn to be demolished' and 'existing stable shed indicated with broken line to be demolished' on drawing ref: 1119-PL-05 dated May 2011 referred to in the condition."

72. It is directed that the enforcement notice is varied by deleting "C," from paragraph 5(ii) of the Notice.
73. Subject to those corrections and variations Appeal B is dismissed and the enforcement notice is upheld. Subject to the same corrections and variations Appeal A is dismissed in part and the enforcement notice is upheld and planning permission is refused in respect of the erection without planning permission of the outbuildings, an aviary, timber enclosures and concrete hardstanding on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
74. Planning permission is however granted on the application deemed to have been made on Appeal A under section 177(5) of the 1990 Act as amended for the demolition of all buildings and erection of dwelling together with landscaping and erection of boundary fence without complying with conditions attached to the permission granted on 18 October 2012 under reference 88690/12 on land at Aldreds Farm, Jacks Lane, Westhoughton, Bolton BL5 2DJ, subject to the following conditions:
- (1) Trees and shrubs shall be planted on the site in accordance with a landscape scheme to be submitted to and approved by the Local Planning Authority within 3 months of the date of this decision. Such scheme shall be carried out within the following planting season of in accordance with phasing details included as part of the scheme and approved by the Local Planning Authority. Any trees or shrubs that die or are removed within 5 years of planting shall be replaced in the next planting season with others of similar size and species.
 - (2) Notwithstanding the provisions of article 3 and Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order amending or replacing that Order) no extensions, porches, garages, outbuildings, sheds, greenhouses, oil tanks or hardstandings shall be erected within the curtilage of the dwellinghouse.

- (3) Notwithstanding the provisions of article 3 and Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order amending or replacing that Order) no dormers shall be constructed or other alterations to the roof carried out on the approved dwellinghouse other than those expressly authorised by this permission.
- (4) With the exception of the building marked 'existing barn to be demolished' located to the north of the dwellinghouse, the dwellinghouse shall not be occupied before all structures as indicated on drawing ref: 1119-PL-05 Rev C dated May 2011 drawn to scale 1:200@A1 have been demolished and the land returned to an open and undeveloped state (inclusive of hardstandings).
- (5) Notwithstanding section 55(1)(d) of the 1990 Act as amended or any other statutory provision, the building marked 'existing barn to be demolished' referred to in condition (4) above shall not be used otherwise than for agriculture.

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Robert Harrison BSc(Hons) MRICS FAAV	Agent
Stephen Edmonds	Appellant (Appeal A)

FOR THE LOCAL PLANNING AUTHORITY:

Monika Dubacka MPlan MRTPI	Principal Development Officer
Graeme Mitchell MA MRTPI	Development Manager (Enforcement & Technical)
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