



Appeal Decision

Site visit made on 7 April 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021

Appeal Ref: APP/E0915/C/20/3261107

Land at Field 2214, Corby Hill, Carlisle

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jeremy Paterson against an enforcement notice issued by Carlisle City Council.
 - The enforcement notice was issued on 14 September 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a Dutch Barn.
 - The requirements of the notice are:
 - (a) Remove the Dutch Barn and all associated materials from the land
 - (b) Return the land to agricultural use.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a variation.

Procedural matters

1. The breach of planning control alleged in the notice is, without planning permission, the erection of a Dutch Barn. The breach of planning control alleged therefore only relates to the carrying out of operational development. There is no associated allegation of a material change in use of the land.
2. The requirement at paragraph 5(b) of the notice is to return the land to agricultural use. However, in the absence of any allegation of a material change of use of the land, that requirement goes beyond what is necessary to remedy the breach of planning control. The appellant has not made an appeal under ground (f) as set out in section 174(2) of the 1990 Act to that effect. In any event, I am satisfied that I can vary the notice in this respect without causing injustice, given that it would not disadvantage the appellant and that it would be open to the Council to issue a separate enforcement notice alleging a material change of use of the land, should it be considered expedient to do so.

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

3. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice from which the main issue raised is whether the location of the building in the open countryside can be justified.

4. Policy SP2 of the Carlisle District Local Plan (Local Plan) provides, amongst other things, that within the open countryside development will be assessed against the need to be in the location specified. In relation to new agricultural buildings, Policy EC12 of the Local Plan indicates that, where practical, the building should be sited to integrate with existing agricultural buildings and/or take advantage of any natural screening (my emphasis). On my reading, these two policies are complementary and should be taken together.
5. The Dutch Barn erected on the appeal site stands in an isolated position in the north-west corner of the field. I noted during my site visit that the barn is sited so as to take advantage of the natural screening provided by the hedgerows and trees on the northern and western boundaries of the field. The barn does not integrate with any existing agricultural buildings but, as the appellant points out, there are no existing buildings with which the new barn could integrate. In any event, the construction of Policy EC12 is 'and/or' in relation to these elements. Consequently, insofar as the Dutch Barn is located in a position that is well screened, it satisfies the policy in that respect. On my reading of the policy, and with specific reference to the word 'or' in that policy, there is then no requirement for the barn to integrate with other buildings.
6. Policy EC12 is a criteria-based policy. The reason for issuing the notice does not allege any conflict with the other criteria set out in the policy in terms of the scale and form of the building, the design and materials or the impact on any adjacent land uses. I see no reason to take a different view. I therefore consider that the development complies with Policy EC12 of the Local Plan in these respects and, indeed, when read as a whole.
7. Turning then to Policy SP2 of the Local Plan, the reasons for issuing the enforcement notice allege that there is no overriding justification to outweigh the presumption against development in the open countryside. In response, the appellant explains that he owns and rents various blocks of land in the local area. These blocks of land, totalling some 16.4 acres, are widely dispersed. The field in which the barn has been erected itself covers some 3.2 acres and, like most of the other blocks of land owned by the appellant, is primarily grassland used for horse grazing and cropped for hay¹.
8. The appellant goes on to explain that the barn is used for the storage of machinery and other equipment/tools used in association with the maintenance and management of the land, as well as for the storage of hay. Indeed, the appellant lists the specific machinery held by the appellant, which include a tractor, a plough, a ridger/furrow and a rotavator. It is the appellant's evidence that there are no other agricultural buildings on the land owned by him suitable for the storage of machinery, equipment and produce.
9. The barn now subject to the enforcement notice was previously the subject of a retrospective planning application (Council Ref: 19/0081). The Recommendation Report for that application sets out the background to the proposal, in which it is explained that evidence gathered during the enforcement investigation suggested that the use of this barn was not for agricultural purposes. Specifically, it was suspected that the barn was being used in connection with a change of use of agricultural land to a storage yard for scrap metals, building materials and used domestic appliances. A site visit carried out by a Council officer in connection with the retrospective planning

¹ The appeal site itself is also used for cropping potatoes.

application confirmed that the site was filled with non-agricultural items at that time.

10. Although purportedly submitted in support of his case, the photographs appended to the appellant's Appeal Statement tend to support the Council's version of events. Whilst these photographs do ostensibly show machinery and equipment associated with agricultural uses, including some of the items listed by the appellant above, that equipment is generally in a poor state of repair and showing no evidence of recent use. As a matter of fact and degree, I am therefore far from convinced that the equipment visible in these photographs is being actively used as part of the appellant's agricultural holdings. Moreover, the photographs are somewhat selective and show only a very limited part of the inside of the barn and of the surrounding land. Furthermore, in at least one of those photographs, what appear to be building materials are visible².
11. Neither has the appellant substantiated his claim that the building is required in connection with the agricultural use of his land, and certainly not a building of this scale. No details have been provided in terms of the quantum of hay produced on the land, or the amount of hay required to be stored in the barn. Similarly, no evidence has been provided in terms of the quantity of potatoes that would need to be stored in the barn. No explanation is given as to how produce gathered from the appellant's other land holdings would be transported to the appeal site, the quantities involved, or how frequently this takes place. Likewise, no detail is given as to how the equipment stored in the barn is transported to/used at the other land holdings, or how frequently this happens.
12. I have given careful consideration as to whether the use of the barn could be limited to agricultural use by the imposition of suitable conditions, and thereby overcome the issues that give rise to the enforcement investigation in the first instance. However, I am not persuaded by the evidence before me that a barn, of any size or description, is genuinely required in relation to the agricultural use of the appellant's land holdings. In the absence of that justification, the Dutch Barn subject to the enforcement conflicts with Policy SP2 of the Local Plan.

Other matters

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the Dutch Barn subject to the enforcement notice fails to accord with the development plan when read as a whole. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan
14. The appellant points out that the Dutch Barn would, if it was a proposed structure, benefit from the provisions within Class A, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The appellant has not specifically developed the point as a 'fallback position', but nevertheless I must treat it as such.

² Window frames

15. In that context, the provisions of Class A are subject to the conditions set out in Class A.2. These conditions include the requirement that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to various matters. The Council has already questioned the intended use of the Dutch Barn. It follows that there can be no guarantee that the necessary prior approval would be forthcoming from the local planning authority.
16. In that context, it is relevant that development is only permitted by Class A for buildings which are reasonably necessary for the purposes of agriculture within that agricultural unit. For the reasons set out above, I am not satisfied that the Dutch Barn subject to the notice is genuinely required for the purposes of agriculture. It follows that the Dutch barn would not benefit from the provisions of Class A in any event.
17. Furthermore, in order to constitute a viable fallback position, there must be a realistic and not merely theoretical prospect of that fallback taking place. In this case, in order to benefit from the provisions within Class A, the enforcement notice would first have to be fully complied with. This would require the removal of (i.e: complete demolition of) the Dutch Barn and the removal of all associated materials from the land. There is no evidence before me to suggest that demolishing the existing Dutch Barn, removing from and then returning materials to the site, and then re-erecting the building would be a realistic proposition. This of course assumes that the necessary prior approval from the local planning authority is first secured which, for the reasons set out above, is not guaranteed. I therefore do not consider there to be a viable fallback position.

Conclusion on ground (a)

18. I have found that the development subject to the enforcement notice does not accord with the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan when read as a whole. I therefore conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeal on ground (g)

19. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
20. The appellant considers that a compliance period of six months would be reasonable, but gives no reasons or evidence to substantiate that view. For example, no detailed estimate is provided to explain how long would be required to dismantle the building and physically remove it from the land. In the absence of any such detailed justification, I am not persuaded that any extension to the period for compliance stated in the notice is necessary and am satisfied that the period of four months stated in the notice is a proportionate response to the breach of planning control that has occurred.
21. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Formal Decision

23. It is directed that the enforcement notice is varied by:
- in the paragraph 5 of the notice, delete requirement (b) in its entirety.
24. Subject to that variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR