



Appeal Decision

Site visit made on 19 May 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 June 2021

Appeal Ref: APP/E3715/C/21/3266487

The land at Broadwell Turn, Broadwell, Rugby (known as Maan Farm, Southam Road, Broadwell, Rugby CV23 8HM) O.S. Reference 444595 266478

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by M Bali Mann against an enforcement notice issued by Rugby Borough Council.
 - The enforcement notice, numbered 2020/07, was issued on 9 December 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of a barn identified by blue edging on the attached plan and dwelling house identified by blue hatching blue edging on the attached plan¹
 - The requirements of the notice are:
 - (i) *Demolish the unauthorised barn and dwelling house identified by blue edging and blue hatching on the attached plan*
 - (ii) *Remove from the land the material resulting from compliance with "i"*
 - (iii) *Reinstate the land to its condition prior the erection of the unauthorised barn and dwelling house*
 - The period for compliance with the requirements is 28 Days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - i) Deleting the words, 'blue hatching blue edging' in section 3 (The breach of planning control alleged) and replacing them with the words 'blue hatching and blue edging'; and
 - ii) Inserting the word 'to' after the word 'prior' in requirement 5(iii).
2. The appeal is allowed insofar as it relates to the erection of a barn and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of a barn, subject to the following condition:
 - 2) No external lighting shall be erected unless and until full details of the type, design and location have been submitted to and approved in writing by the local planning authority. Any lighting shall only be erected in accordance with the approved details.

¹ The plan referred to is the plan attached to the Enforcement Notice

3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the dwelling house, and planning permission is refused in respect of the erection of a dwellinghouse on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

4. The dwelling house is identified by blue hatching and blue edging on the plan attached to the enforcement notice. However, the word 'and' is missing in section 3 of the notice, so that it refers to 'blue hatching blue edging'. Additionally, the word 'to' is missing from requirement 5(iii). Both omissions can be corrected without any possibility of injustice, and I shall change the notice accordingly.
5. I have noted references to national and local Green Belt policies. However, the questionnaire provided by the Council indicates that the site is not within the Green Belt and so such policies are not relevant.

The appeal on ground (b)

6. Appeals on ground (b) are made on the basis that the matters stated in the notice have not occurred. Although the appeal form indicates a ground (b) appeal, this is not pursued in the appellant's statement. It is an uncontroversial matter of fact that the buildings targeted by the notice have been constructed on the site. From my inspection of the buildings I regard the descriptions of 'barn' and 'dwelling house' as accurate. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

The Barn

7. Appeals on ground (c) are made on the basis that the matters stated in the notice do not constitute a breach of planning control. In this instance it is argued that the barn is development permitted by Part 6 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 1995* (as amended) (the GPDO). In September 2010, the Council issued a decision confirming that prior approval was not required for the erection of a building for agricultural storage. The details submitted with the application showed a building with a footprint of roughly 12m x 18m and about 5.6m high (according to the drawings, slightly different figures are given on the application form). The walls were partially clad with steel sheeting. It was said to be for storing crops and machinery. The appellant's claim is that the barn targeted by the notice is the building permitted in 2010.
8. However, the provisions of Part 6 are subject to a time limit on the commencement of the development, and this is reflected in the 5 year period specified in the Council's determination of September 2010. Yet it is clear that work on the building now on the site did not start within that time frame. This is demonstrated by a Google Earth image from 2017 in which there is no sign of the building. Consequently, the benefit of the Council's determination had lapsed by the time the building was constructed. I have no indication of any subsequent application for a prior approval determination, either under the 1995 GPDO or the 2015 version that replaced it. Since the permitted development provisions under Part 6 of the GPDO are conditional upon

following the prior approval procedure, it follows that they cannot have permitted the building now on the site.

The Dwelling

9. The appellant does not pursue the appeal on ground (c) in relation to the dwelling. He suggests that it 'would have been permissible under Class A of Schedule 2 to the GDPO 2015, being reasonably required to provide shelter and accommodation to the Appellant', which appears to be a reference to Class A of Part 6, which is concerned with agriculture and forestry. However, he goes on to point out that the requirements relating to prior approval were not carried out. In any event, as paragraph A.1(c) makes clear, Class A does not permit development if it would consist of, or include, the erection, extension or alteration of a dwelling.

Conclusion

10. For the reasons set out above, the appeal on ground (c) fails.

The appeal on ground (a) – the dwelling

Main issues

11. The main issues are:

- The effect of the development on the character and appearance of the area;
- Whether the location is an appropriate one for a dwelling, having regard to local and national policies which seek to avoid dwellings in isolated locations, and whether the occupiers of the dwelling would be over-reliant on the private car in order to access day-to-day services; and
- Whether any harm arising from the development is outweighed by other material considerations.

Character and appearance

12. Although the external cladding had not been added to the building when I viewed it, the main structure was in place. It is a fairly narrow, 2 storey, pitched roofed building. It features a range of white uPVC windows and has an overtly domestic appearance. As a consequence, irrespective of the final finish (the appellant states that it would be finished in brick and tile), it appears out of place in the rural field in which it is located.
13. Although there is a hedge along the site boundary, the height of the building is such that it is in plain view from the road. Even with further landscaping, the dwelling would have an urbanising effect which is harmful to the rural character of the area. Consequently, it is at odds with Paragraph 127 of the Framework, which advises that planning decisions should ensure that developments are sympathetic to local character.

Location

14. Policy GP2 of the *Rugby Borough Council Local Plan 2011-2031* sets out a settlement hierarchy for the borough. The supporting text explains that this has been designed to ensure a sustainable pattern of development ensuring good access to services. To that end, development in the countryside is generally resisted.

15. The appeal site is in a clearly rural location. Although there are some houses and rural businesses in the general area, the site is not within any settlement and is therefore 'countryside' for the purposes of Policy GP2. It is clear that anyone living at the site would need to travel in order to access day-to-day services such as shops. While I understand there are bus services operating in the locality, I do not know how frequently these run. Given the rural nature of the site it appears to me that the occupiers of the dwelling would be highly dependent on private transport – in all probability a car. Excessive reliance on private motorised transport is undesirable for well-understood environmental reasons and this is no doubt part of the reason for the emphasis on directing development to established settlements in GP2. Consequently, allowing a dwelling in this location would undermine the aims of the policy.
16. Moreover, Paragraph 79 of the *National Planning Policy Framework* (the Framework) advises that planning decisions should avoid the development of isolated homes in the countryside, other than in certain, specified circumstances. Although there are other dwellings in the general area, this particular dwelling is sited on its own, unrelated to any other dwelling, in a field in the countryside. Accordingly, while close to the appellant's barn, it is an isolated home and Paragraph 79 applies. The exceptions listed in Paragraph 79 include the situation where there is an essential need for a rural worker to live at the site, a matter I address later.
17. I conclude that the development is in an isolated location such that there would be an over-reliance on the private car in order to access day-to-day services, contrary to Policy GP2. As discussed below, it does not appear that the Council can demonstrate a 5 year housing land supply. Even so, I attach significant weight to the conflict with GP2 in this instance, since it seems to me that any shortfall in the housing land supply would not be appropriately tackled by permitting individual dwellings in countryside locations.

Other material considerations

18. Policy H3 of the Local Plan makes provision for housing for rural businesses where there is a clearly established essential need for a dwelling. The appellant argues that the house is needed in connection with the breeding of miniature cattle. It is said that having a dwelling on the site will help ensure the welfare of the cattle. A constant site presence allows an improved feeding regime which can save on feed and reduce the production of methane (a greenhouse gas) from the herd. The appellant also believes that having accommodation close to the site will enable him to reduce his carbon footprint.
19. However, there is little detailed information to support the appellant's case. He has provided photographs of cows at the site, a copy of a certificate showing membership of the Hereford Cattle Society and other paperwork to do with the cattle. However, I do not know the number of cattle in the appellant's herd and there is no business plan to show how the business will evolve. The appellant says that 2021 is, 'the year he hopes to move from hobbyist farmer to a more professional supplier of meat from his herd' but the evidence before me does not show that this has occurred or the need for a dwelling to support the enterprise.
20. In these circumstances I attach little weight to the need claimed for the dwelling. Because of this, I also attach little weight to the economic benefits the appellant claims as a result of the dwelling supporting the farm business.

Since there is no justification based on the need for a rural worker to live at the site, there is conflict with Paragraph 79 of the Framework, as outlined above.

21. The appellant says the house is of an environmentally-friendly design, using materials with good thermal and carbon-capture properties. Local and national policies support good, energy efficient design. Yet I have no technical evidence to back up these claims. In any event, many modern dwellings are designed with these considerations in mind and compliance with the Building Regulations ensures good general standards. Accordingly, on the information before me I do not see that these matters weigh in favour of this particular building.
22. The appellant refers to a range of developments, including dwellings, in the area. It is argued that these have a greater impact than the small dwelling built at the appeal site and that they represent a move away from agriculture to residential use. However, I do not have sufficient detail of these other developments and the circumstances of their being permitted to allow a proper comparison with the appeal building.
23. The appellant argues that his culture and beliefs should be recognised in a planning context, and draws a comparison with the recognition given to gypsies and travellers. Nevertheless, from the information before me I cannot see any justification to take a decision contrary to the planning policies that apply in this locality on the basis of the appellant's claims regarding his cultural background and the 'micronation' he says exists at the appeal site.
24. The appellant states that the Council is unable to demonstrate a 5 year housing land supply. I have not been provided with detailed information to support this claim. However, if correct (and the Council makes no comment on the matter) then in accordance with Paragraph 11 of the Framework, the policies most relevant to determining the application should be regarded as out of date. In such circumstances, paragraph 11 d) advises that planning permission should be granted unless:
 - i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. Additionally, the Framework emphasises the importance of boosting the supply of housing. I have approached the appeal insofar as it relates to the dwelling with this guidance in mind. There are no protected areas or assets relevant to paragraph 11 d)(ii) in this instance.
26. The appellant argues that the site is previously developed (brownfield) land. However, the only significant development at the site are the unauthorised buildings under consideration. Consequently, and since the appellant says he is farming the land, I am not persuaded that it should be regarded as a brownfield site. Nor do I consider that permitted development rights relating to barn conversions give any indication of Government support for the very different proposal before me.
27. I accept that there is a benefit arising from the provision of a new home. The benefit is limited, given that it is a single dwelling only, remote from services,

but it nevertheless weighs in favour of the development. Any economic benefits arising from completing the dwelling and additional spending in the area by its occupants are likely to be very limited.

28. The appellant raises various matters relating to his occupation of the site and interaction with his neighbours, but none alter my view of the planning merits of the development before me.

Conclusion

29. My findings above lead me to conclude that there is conflict with the development plan as a whole. The benefits of the development are limited. I have noted the planning conditions suggested but these would not adequately overcome the harm I have found.
30. I do not have details of the Council's housing land supply situation. However, even if there is a shortfall as suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. Consequently, the dwellinghouse is not sustainable development and planning permission should not be granted.

The appeal on ground (a) – the barn

The deemed planning application

31. The basis of the deemed planning application arising from the ground (a) appeal is the matter alleged in the notice. While the drawings for the previous prior approval application showed cladding to the sides, the barn present on the site when I saw it was open-sided. The building appeared to be complete and was being used to store various agricultural items. I have no indication from the appellant that the building is incomplete or of any intention to add cladding to it as the Council has speculated he might. I have therefore approached the appeal on ground (a) on the basis that the deemed planning application is for the open-sided building that was on the site when I saw it.
32. I do not have any agreed dimensions for the barn and the figures provided by the appellant vary. However, the precise dimensions are not critical to my decision.

Main issues

33. The main issues are:

- the effect of the development on the character and appearance of the area; and
- whether the erection of the barn conflicts with local and national policies aimed at protecting the countryside.

Character and appearance

34. The barn is a steel-framed structure with a profiled sheet roof. It has the appearance of a typical contemporary agricultural building. Consequently, it does not look out of place in this rural setting. Although it can be clearly seen from the road, views of it are broken up by the hedgerow that runs along the boundary. The Council has suggested that it would have been better located on

a lower part of the appellant's land holding, but the siting is satisfactory and not unduly prominent in my view. Accordingly, I conclude that there is no harm to the character or appearance of the area.

35. The Council argues that the lack of clarity regarding the dimensions of the building and the appellant's intentions regarding how it will ultimately be finished mean that there is uncertainty regarding what is proposed. However, for the reasons I have already given I have considered the building in its current form, which is the basis of the deemed planning application. The uncertainty regarding the dimensions of the building did not hinder me in assessing the visual impact of the building on the site.

Policies protecting the countryside

36. The Council says that it would have wished to see details of the appellant's farm business in order to justify the building. However, I have not been referred to any local or national policy which sets out any such requirement. Local Plan Policy GP1 is a general policy relating to sustainable development. Policy GP2 seeks to apply national policy in respect of development in the countryside. There is no indication in the Policy that agricultural buildings will be resisted and the Council confirms in its statement that the principle of agricultural buildings in countryside locations is broadly acceptable.
37. The Council also refers to Policy NE1, which is concerned with protecting designated biodiversity and geodiversity assets, but the evidence before me does not show conflict with the policy.
38. I have noted the references the Council has made to various chapters of the Framework, but see nothing to support the Council's position in respect of the barn.

Conclusion and conditions

39. For these reasons I can see no good planning reason to withhold planning permission for the barn. Accordingly, I will grant planning permission for this element of the appeal. To that extent, the appeal on ground (a) succeeds.
40. I have attached a condition to control external lighting to protect the character and appearance of the area. I have not imposed the other conditions suggested by the Council for the reasons set out below. The numbers in brackets relate to the number of each condition suggested by the Council.
41. I am not persuaded that linking the barn to Maan Farm or the appellant (1 and 2) would serve any planning purpose. Conditions 3 and 5 relate specifically to the dwelling and are not relevant to the barn. I can see no justification arising from the development for removing permitted development rights relating to boundary treatment (4). Existing planning controls are sufficient to control external storage (7). There is no need to control contamination during future works (8) since the permission granted relates to the barn as already constructed. The site is already served by an access which is not targeted by the enforcement notice and I have no technical evidence to show a need to upgrade it as a result of the barn. Accordingly, I am not persuaded of the need for conditions designed to improve access to the site (9-13, 15-16). Nor does it appear to me that a condition relating to space for parking and turning vehicles (14) is needed, given the ample space available within the site when I saw it.

The appeal on ground (f)

42. Since I will grant planning permission in respect of the barn, the appeal on ground (f) is only relevant to the dwelling. Although the notice will retain the requirements relating to the barn, they will be rendered ineffective by s180 of the Act, which provides that, where, after the service of an enforcement notice permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
43. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case the Council has not stated specifically which of these purposes it seeks to achieve. However, since the notice requires the removal of both of the buildings referred to in the notice, the purpose must be to remedy the breach of planning control in accordance with (s173(4)(a)).
44. The question is therefore whether the requirements of the notice exceed what is necessary to remedy the breach of planning control. I cannot see that any lesser steps would achieve that purpose and the appellant has not suggested any. Accordingly, the appeal on ground (f) fails.

Other matter

45. The Council has indicated that it is willing to relax the period for compliance with the notice. While it is open to me to change the compliance period, there is no appeal on ground (g) (that the compliance period is too short) and the Council has not given a reason for changing it. Should the Council consider a longer period to be more appropriate, it has the power under s173A(1) of the Act to waive or relax any requirement of a notice, including the period for compliance. With these matters in mind, I have left the compliance period unchanged.

Overall conclusion

46. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice (the barn), but otherwise I will uphold the notice (as corrected) and refuse to grant planning permission on the other part (the dwellinghouse). The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Peter Willows

INSPECTOR