
Appeal Decision

Site visit made on 17 May 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/J0405/C/21/3267581

**Land at Barn Adjacent to Millway, Winslow Road, Wingrave,
Buckinghamshire HP22 4PT**

- 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 Mr Etrur Albani against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice, was issued on 21 January 2021.
- The breach of planning control as alleged in the notice is Without planning permission the erection of an agricultural building together with the installation of a foul water disposal tank and the erection of a boundary fence.
- The requirements of the notice are 1) The demolition of the agricultural building (including but not limited to its foundations and slab) and the removal of all resulting material and debris from the land; 2) To remove the foul water tank and to fill the resulting hole with clean inert material and the removal of the tank and any other debris from the land; 3) The removal of the fence around the land and the removal from the land of all resulting material and debris; and 4) The reinstatement of the land to its previous condition as grass land, by the laying of top soil and the sowing of grass seed in accordance with the manufacturers instructions.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 23 June 2021.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matter

2. Both parties were given an opportunity to comment on the Court of Appeal judgment in *Williams v SSCLG & Chiltern DC*¹ since the Council had cited the High Court decision. Representations made have been taken into account.

The Appeal on ground (e)

¹ *Williams v SSCLG & Chiltern DC* [2013] EWCA Civ 958

3. The appeal on ground (e) is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 as amended (1990 Act).
4. The appellant under this ground refers to discrepancies in the date for compliance as stated on the Council's website, the covering letter sent with the notice, and in the enforcement notice itself.
5. However, it would appear that there is no defect in the effective date in the notice itself in the terms of s172, since the service of the notice took place not more than twenty-eight days after its date of issue and not less than twenty-eight days before the date specified in it as the date on which it was to take effect. Certainly, there has been no prejudice to the appellant in any event as they submitted a valid appeal in time. The appeal on ground (e) fails accordingly.

The Appeals on grounds (b) and (c)

6. These grounds of appeal are: (b) that the matters alleged have not occurred; and (c): that those matters (if they occurred) do not constitute a breach of planning control. Since a good deal of the argument related to these grounds overlaps in this case, I shall deal with them together, distinguishing between the two where required.
7. It should be noted that there are three matters alleged in the notice: erection of an agricultural building, installation of a foul water disposal tank, and erection of fencing. I deal with each in turn. The onus is on the appellant to make their case on the balance of probability.

Background

8. A derelict barn comprising essentially of a bare concrete frame previously stood on the appeal site. Planning permission² was sought for the recladding and reroofing of the then existing frame. The Council treated that proposal as for a new agricultural building, rather than for recladding, and refused permission. Permission was granted on appeal³ for 'recladding and reroofing' of the then existing frame, with the Inspector treating the proposal at 'face value' as for recladding, rather than for a new building.
9. Works commenced on site seeking to implement the permission granted pursuant to the 2019 Appeal Decision (2019 Permission), with brickwork and blockwork walls built. During the construction process, it became apparent that the concrete frame had become unstable. This was therefore removed on the basis of health and safety advice received. Concerns were raised that the structure on site was not being built in accordance with the 2019 Permission. A temporary stop notice was served and an enforcement notice later issued.

Erection of agricultural building

10. The Council's position is that the structure on site has not been built in accordance with the 2019 Permission and so is unlawful. The Council takes the view that, as the concrete frame no longer exists, the development cannot be considered to be recladding, since the frame which was to be reclad no longer exists. The Council also refers to discrepancies in the development as built as

² Application ref: 18/01997/APP

³ Ref: APP/J0405/W/18/3218124 (2019 Appeal Decision)

compared to the approved plans, including that the front elevation of the building as built has only one, rather than four roller shutter doors as was approved, and as to the extent of block and brick work on the elevations. For these reasons, the Council considers that the whole development is unlawful⁴.

11. The Council refers to the case of *Williams v SSCLG & Chiltern DC*⁵ in support of the proposition that, as the 2019 Permission only authorised recladding of a then existing frame, the removal of that frame means that development on site could not be authorised by that permission. The appellant, in contrast, relies upon the unreported case of *Basildon DC v SSE & Asplin*⁶. This is in support of the argument that, as the frame would not have been externally visible in the permitted building, the removal of that frame, in the absence of a condition requiring its retention, should not take the works outside of the permission.
12. Whilst it is unfortunate that the frame was found to be unsafe, this does not alter the fact that the 2019 Permission was for the recladding of that frame and not for a new building. To my mind, the term 'cladding' means an external covering or skin applied to a pre-existing structure. I find then as a matter of fact and degree and on the evidence before me, that removal of that pre-existing structure has the effect that the works undertaken do not constitute recladding but instead resulted in a new building.
13. To find otherwise would be to undermine the certainty of the clear wording of the 2019 Permission which third parties rely upon. I follow therefore the reasoning of Beatson LJ in *Williams* that apparent meaning of a permission (i.e. 'recladding') should not be altered by reference to what was not in the planning permission (i.e. a condition requiring the frame to be retained). Taking this approach does not in my view represent an implied condition, but rather simply relying upon the clear wording of the permission itself. The fact that there was no ground (a) appeal in the *Williams* case does not alter this principle related to the construction of a planning permission.
14. Whilst the appellant notes factual differences between *Williams* and the present case and similarities as between *Asplin* and the current case, these do not alter the fundamental principle set out in *Williams* in my view. In any event, in *Asplin*, it was commented that the framework of the building which was removed would not have contributed to the structural strength of the building, which contrasts with this case where permission was granted for recladding.
15. The appellant states that differences as compared to the approved plans regarding the number of roller shutters to the front elevation do not go to the 'heart' of the development approved and so should not render the entire development unlawful. The design as built might be similar to other agricultural buildings in the wider area, and I acknowledge that the changes are for practical/construction related reasons. However, the changes as compared to the approved plans including the amount of brick work and block work and changes to the openings to the front elevation, which are apparent from vantage points along the road, mean that I find as a matter of fact and degree that the changes are material. As such, overall, the building has not been constructed pursuant to the 2019 Permission.

⁵ *Williams v SSCLG & Chiltern DC* [2013] EWCA Civ 958

⁶ *Basildon DC v SSE & Asplin* (CO/1391/84. 28/6/1985. Unreported)

16. Demolition of part of a building can represent an alteration⁷ and it appears that demolition of the frame represented demolition of part of the building so far as it had been constructed. However, only once the building is properly completed can it benefit from the exemption from development in s55(2)(a) of the 1990 Act for maintenance/improvement/alteration.
17. Although the construction up to the point of removal of the frame might have been in accordance with the 2019 Permission, it does not follow that works undertaken up to that point remain authorised even following removal of the frame. The 2019 Permission authorised a single operation and the issue to be considered is whether, at the date of the enforcement notice, the development on site accorded with the 2019 Permission. I have found that it did not.
18. Finally, I acknowledge that the frame in question is not of historic importance and that the site is not in the Green Belt and that no change of use is proposed. However, these aspects do not alter my assessment above related to whether the development on site is in accordance with the 2019 Permission. I note reference to other appeal decisions which have followed the *Asplin* judgment. However, I do not have full details of the planning circumstances of those cases and in any event, each case is determined on its particular facts.
19. I find then as regards grounds (b) and (c) that the matters alleged have occurred – namely that the development represented a new agricultural building and that it is in breach of planning control since it does not accord with the 2019 Permission.

Foul water tank

20. The appellant accepts that a foul water disposal tank has been installed on the site but submits that this does not represent development requiring planning permission since the works are below ground level and do not materially alter the external appearance of a building. The Council's view is that the installation of the tank represents engineering operations under s55(1) of the 1990 Act.
21. The works entailed in installing the tank would usually involve some pre-planning and, given the relative complexity of the task, I would expect to be commonly be supervised by an engineer; the appellant provides no substantive evidence to the contrary. As such, I find as a matter of fact and degree that the installation works represent engineering operations, which did not benefit from planning permission, and so are in breach of planning control.

Fencing

22. Turning to the fencing which is the subject of the notice, an Article 4 direction⁸ has meant that the erection of fencing, or other means of enclosure on the site would not be permitted development and so would require a specific grant of planning permission.
23. Again there is no dispute that fencing has been erected. However, the appellant submits that there has been no breach of planning control on the basis that the fencing is not on land owned by him, but rather on farmland

⁷ Per *Shimizu v Westminster CC* [1997] 1 WLR 168

⁸ Dated 24 May 2010

adjoining the site and that it was erected by a farmer, rather than by the appellant.

24. However, the appellant produces no substantive evidence to demonstrate that the fence is on land not within his ownership. Indeed, the comment made that the fence is sited "in and around the shared boundary" suggests to me that it is more likely than not that the fencing is on land owned by the appellant.
25. Accordingly, I find that on the evidence before me, the erection of fencing represents a breach of planning control.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issues

26. The main issues are: whether the development is necessary for agriculture; and the effect on the character and appearance of the area.

Agricultural need

27. The site is outside the settlement boundary and the appellant does not put forward any argument as to any agricultural need for the development which is the subject of the notice, and I cannot make any inference of such need on the available evidence.
28. Accordingly, the development is not necessary for agriculture on the evidence before me. There is conflict in this way with Policy 1 of the Wingrave with Rowsham Parish Neighbourhood Plan 2013-2033 (November 2015) (NP) which states that development proposals will not be supported in the countryside unless necessary, amongst other things, for agriculture. It would also not accord with Policy E9 of the emerging Vale of Aylesbury Local Plan 2013-2033 (VALP) which indicate that the development of new agricultural buildings will be permitted where commensurate to the needs of the holding.

Character and appearance

29. The terms of the DPA are derived from the development which is enforced against. Thus, in this case, the DPA is for the erection of an agricultural building, installation of a foul water disposal tank and erection of a boundary fence.
30. The site is within an Area of Attractive Landscape (AAL). It is in a rural setting where the housing to the east gives way to the countryside. Tree and hedge boundaries and open fields create a strong sense of rural spaciousness. The building erected is a visually intrusive feature in this countryside setting. Its size, coupled with blockwork and brick walls create a harmfully bulky and dominant presence which draws the eye in views from the road. In this way it harmfully detracts from the character of the rural surroundings.
31. As to the fencing, the timber stock fencing is relatively low in height and of a fairly open design. However, it contrasts obviously with the hedge and tree boundaries that are characteristic of this part of the AAL, creating a harsh sense of enclosure at odds with the softer boundaries to other field enclosures. The foul water tank, in contrast, being positioned under ground does not result in any visual harm.

32. I note that the site is not within the Green Belt and that a change of use is not proposed but this does not alter my assessment above. The appellant refers to other buildings of similar design within the wider area but I do not have full details of those developments to make a proper comparative assessment with the appeal building, which I consider on its merits. I note that the Inspector in the 2019 Appeal Decision found that the development proposed would have no harmful effect. However, that was in the context of recladding an existing frame, with the then existing frame as a material consideration in the assessment.
33. Accordingly, the erected building and boundary fence have a harmful effect on the character and appearance of the area. They conflict in this way with Policy 5 of the NP, saved Policies GP35 and RA8 of the Aylesbury Vale District Local Plan (2004) (AVDLP) and Policies NE4 of the emerging VALP. These seek, amongst other things, to ensure that development respects its surroundings and that development within AALs respects landscape character. The foul water disposal tank does not, in contrast, result in any visual harm.

Balancing and Conclusion on ground (a) and the DPA

34. The appellant requests that I grant planning permission to enable the completion of the building of the same external appearance as permitted by the 2019 Permission. However, whilst this would not result in visual harm, it would not overcome the planning difficulties identified as regards the in principle objection to the development in the absence of evidence of agricultural need.
35. Thus, I find that the erected building and fencing have been given no justification in terms of agricultural need, and result in harm to the character and appearance of the area. The foul water disposal tank does not result in any visual harm but is objectionable in principle in the absence of any agricultural need justification. These items therefore conflict with the development plan, read as a whole and no material considerations are advanced such as to indicate a decision other than in accordance with the development plan.
36. The ground (a) appeal fails and planning permission should not be granted on the DPA.

The appeal on ground (f)

37. This ground of appeal is that the requirements of the notice exceed what is necessary.
38. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach.
39. Requirement 1 of the notice stipulates removal of the building and removal of resultant debris from the land. This therefore is directed at remedying the breach of planning control resulting from the erection of the building. Steps 2 and 3 similarly provide for removal of the water tank and fencing, along with materials and debris. Once again, these therefore are directed at remedying the breach of planning control arising from the installation of the tank and erection of fencing.

40. Requirement 4 of the notice stipulates the 'reinstatement of the land to its previous condition as grassland'. Photographic evidence shows that, prior to the works to erect the building, the concrete frame was on site with grass on the ground beneath it. This requirement is also therefore directed at remedying the breach of planning control by stipulating reinstatement of the land itself as grassland.
41. As I understand it, the Appellant's case on this ground is essentially that, since the Council's view is that the breach stems from the removal of the pre-existing frame, the 'previous condition' of the land is that immediately before removal of the frame i.e. with the walls as built up to that point.
42. However, my view is that the breach of planning control attacked by the notice was the erection of a building without planning permission. The removal of the frame was not an act of development in breach of planning control of itself. The erection of the building now on site, inclusive of the removal of the frame, represents a single operation carried out without planning permission. As such, restoring the land to its previous condition would be to remove the building constructed in breach of planning control.
43. The appellant requests planning permission to be able to complete construction of the building with an external appearance as per the 2019 Permission. However, per my assessment on ground (a), since the concrete frame no longer exists and in the absence of any evidence of agricultural need, I find as a matter of fact and degree that no other option offered would overcome the planning difficulties identified at less cost and inconvenience.
44. I find then that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control, and the appeal on ground (f) should therefore fail.

Overall Conclusion

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

Formal Decision

46. 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.

V Bond
INSPECTOR