



Appeal Decision

Site visit made on 8 September 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Appeal Ref: APP/F0114/C/21/3275385 & 3275386

Land at Parcel 4481, Ramscombe Lane, Batheaston, shown edged in bold on the attached plan ("Land")

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Debbie Mansbridge and Mr David Mansbridge against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice was issued on 14 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of two detached buildings.
 - The requirements of the notice are:
 - Requirement 1:** Demolish or dismantle the buildings marked in their approximate location as 'A' and 'B' on the attached plan and marked as 'A' and 'B' on the attached photo and remove all resultant materials from the land.
 - Requirement 2:** Re-seed the land with grass seed
 - The period for compliance with the requirements is:
 - Requirement 1:** Six months from the date on which this Notice takes effect.
 - Requirement 2:** Twelve months from the date on which this Notice takes effect
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:

Deletion at section 3 of the notice (under the heading The matters which appear to constitute the breach of planning control) of the words "without planning permission the erection of two detached buildings" and their replacement with:-

- Without planning permission, the erection of a detached building in the approximate location indicated by 'A' on the attached plan.

Deletion of the plan attached to the notice and its replacement with the plan attached at the end of this decision.

Deletion at section 5 of the notice (under the heading What you are required to do) of the words "Requirement 1: Demolish or dismantle the buildings marked in their approximate location as 'A' and 'B' on the attached plan and marked as 'A' and 'B' on the attached photo and remove all resultant materials from the land" and their replacement with:-

- Requirement 1: Demolish or dismantle the building marked in the approximate location as 'A' on the attached plan and as marked 'A' on the attached photo and remove all resultant materials from the land.

Subject to the corrections the appeals are 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.

Preliminary Matters

2. The notice alleges the construction of 2 buildings. The allegation in section 3, does not cross refer to the annotations 'A' and 'B' that have been used to help identify the buildings to be removed at section 5 (the requirements). When I carried out my site visit, I noted 2 other outbuildings and sought clarification about them and it is clear that they are also within the land to which the notice relates.
3. The allegation needs to be very specific matching the requirements to avoid any potential confusion. I also have a duty to ensure, notwithstanding what matters are explicitly raised, that the notice is in order. I have broad powers under the provisions of s176(1)(a) of the Act to correct any defect, error or misdescription if it would not cause injustice to the appellant or the Council.
4. There is no confusion on the part of the appellants who have made their representations with respect to the buildings in the north-west part of the site. The plan along with the photographs attached to the notice make it very clear what buildings the notice relates to. The location marked 'A' is sufficiently accurate to represent the location of the larger of the 2 buildings at which the notice is directed. I am satisfied that I can correct the notice by making the allegation more precise by adding reference to that building. This would not cause injustice to the appellants.
5. However, the smaller building at 'B' appears to be located outside of the land outlined on the notice plan. The evidence submitted, mainly with reference to the appeal on ground (e), shows that building 'B' is on land owned by Wessex Water and which is also subject to a separate agricultural tenancy with a third party. In turn, the appellants have an informal licence to use the land with that third party. This was not pointed out to the Council when the appellants completed and returned the Planning Contravention Notice (PCN) however, it appears to be undisputed.
6. If I were to extend the area of the plan to cover the location of building 'B', that would broaden the scope of the notice affecting land in different ownership. To do that, if I were to uphold the notice even with such a correction, it would give the adjoining landowner responsibility for securing compliance and a potentially complex legal situation could arise. The lack of clarity about subsequent criminal liability for non-compliance could potentially cause injustice to the Council and the appellants. I do not therefore consider that I can utilise my s176(1)(a) powers to broaden the notice in that respect.
7. Reducing the scope of the notice to remove reference to building 'B' including the deletion of it on the plan, would have no impact upon the adjoining landowners and would make compliance with the notice more straightforward. It would not prevent the Council from reconsidering further enforcement action with respect to that building. Correcting the notice in this respect would not cause injustice to either main party. The grounds of appeal will need to be considered with respect to the notice as corrected.

The Appeal on ground (e)

8. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) requires a copy of an enforcement notice to be served on (a) the owner and on the occupier of the land and (b) any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
9. The appellants' case relates to the smaller building marked 'B' on the notice being located on land that they do not own. Given the correction that I have made, the notice will now only affects land in their ownership. There is no suggestion that the appellants were incorrectly served with copies of the notice and now that the correction has been made, nobody else needed to be served with copies. Nobody has therefore been substantially prejudiced by any failures that may have occurred with the issuing and service of the notice in its original form.
10. The appeal on ground (e) therefore fails.

The Appeal on ground (b)

11. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact.
12. The appellant confirms and I saw for myself when I visited, that the building as alleged has been erected. This ground of appeal can however be used to argue that the breach in the form as alleged has not taken place. The appellants do not question the Council's allegation that operational development as defined by s55(1) of the Act took place in creating the building.
13. The appellants' concerns in this instance relate to the wording of the reasons for issuing the notice which refer to the use of the buildings and whether their presence on the site is justified. There is no obligation upon the Council to allege a material change of use. Stating that the buildings are not justified in terms of their apparent purpose is not the same as alleging that a material change in use of the land has occurred. Whether such a change of use has occurred or not, is not a matter before me in this appeal.
14. The development has taken place as alleged and the appeal on ground (b) therefore fails.

The Appeal on ground (a)

Preliminary Matters

15. I have to consider whether planning permission should be given for what is alleged on the enforcement notice as corrected. I am dealing with a building and no allegation has been made that a material change of use has occurred. I do however need to consider the purpose the building has been put to and will be guided by the submitted evidence.
16. The Council has referred to its policies CP8 of their Core Strategy¹ (CS) and

¹ Bath and North East Somerset Core Strategy, adopted July 2014

RE2 of their Placemaking Plan² (PMP). CS Policy CP8 is the main policy which refers to the extent of the Green Belt and it also requires that its openness will be protected from inappropriate development in accordance with national planning policy. It is generally consistent therefore with national policy contained within the National Planning Policy Framework (the Framework). PMP Policy RE2 relates to agricultural development more generally.

Main Issues

17. The main issues are:-

- 1) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies.
- 2) The effect on the openness of the Green Belt.
- 3) If I do find that there would be harm by reason of inappropriateness and openness, would that be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development?

18. The building has a basic timber stud-work frame with walls that are clad on the outside with sawn timber boarding. This building has been erected on land that appears to have been levelled-off by cutting into the hillside. There are paved and gravel surfaced pathways around the building and a decked veranda as well as a further levelled off area to the front. I saw garden chairs outside and the immediate setting of the building is manicured with the character akin to a domestic garden rather than a more functional agricultural structure.
19. Inside the building, the walls are lined with a membrane and there is some plaster-board there as well as on the ceiling. The windows and doors are of domestic quality and appearance. At one end, inside the building there is a log-burner and at the time of my visit there was some rudimentary equipment to enable some food or at least refreshment preparation. There was also a sofa and some garden chairs inside the building as well as some straw bails, horse-tack and what appeared to be a mobile gas hob.
20. The appellants say that the building is used for agricultural purposes for rearing animals. Photographs have been submitted showing lambs inside part of the building on a bed of hay or straw. I did also see various livestock pens and animals in the adjoining fields as well as other buildings which included some basic horticultural equipment and some horse tack. It is clear that the site and the building are used at least in part for agricultural activities. This includes use of the adjoining land outside of the appellants' ownership.
21. The building is constructed to a higher standard than, in my experience, is normally the case for basic agricultural shelters or even a welfare hut ancillary to agricultural use. Such structures are often of a very basic construction to do what is essentially necessary whilst keeping construction costs low. I did note that there were electric sockets and light fittings in the building although the appellants' appeal statement says that there are no mains utilities connected to the structure.

² District-Wide Strategy and Policies, Placemaking Plan, adopted July 2017

22. The secure doors and lack of obvious other openings prevent access by animals unless people are there to let them in. That appears to be a significant hinderance to, for example, chickens using the building as a shelter to roost at night-time and the building does not appear to be set-up for such use, given there are no connected runs, internal perches or nesting boxes. The high specification of the construction would appear to have been undertaken to keep the elements out with little prospect of natural ventilation. I note that the appellants say that they keep windows open when it is used by chickens, to regulate the temperature. That alone however is insufficient to convince me, as a matter of fact and degree, that the building is primarily normally used for that or other agricultural purposes.
23. Whilst there may have been avian flu restrictions limiting the number of livestock on the land when the Council visited the site, the appellants have not provided general or average stock numbers to explain what they consider is a more representative situation. The appellants' own photographs show a maximum of 4 lambs within the building at that snap-shot in time but that is insufficient to indicate that the primary use of the building is for that purpose.
24. The appellants state that the scale of the building is commensurate with the current scale of the agricultural activity. However, I am not provided with evidence to help me ascertain what the scale or frequency of any agricultural use of the building has been since 2004 when the appellants started to work the land. Although I accept that there will be peaks and troughs with the amount of such activity, I would expect that a general level of use could be more effectively demonstrated. I have no explanation either of whether horses are kept on the land for agricultural purposes or for recreation.
25. The appellants have also made it clear in correspondence including their completed PCN of 28 November 2020 that the use of the building is as a "place to rest, eat and socialise, when we are growing our produce and tending to our animals". Reference by the appellants in the letter sent with the PCN explains that the building replaced a caravan which was also used for "tack, rest, eating and socialising." This and the reference to the use of the land for "socialising with family and friends" are simple and honest responses. This is to the credit of the appellants. The basic questions did not require the input of a specialist or a professional agent in order to be understood and be responded to. Furthermore, the comments support the impression that I got whilst on the site that there is some agricultural use of the building but that it appears on the balance of probabilities to be used to a substantial degree for social and leisure purposes.
26. The Framework states that the construction of new buildings is inappropriate development in the Green Belt. Whilst buildings for agriculture and forestry are exceptions to this, the building in this case is not, for the above reasons, used entirely for agricultural purposes and would therefore be inappropriate development. The Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and for this reason the development is not supported by CS Policy CP8.
27. My conclusion on this main issue does not require the consideration of its impact upon openness which I will turn to next to decide whether there is any additional harm caused by the development. The Lee Valley Court of Appeal

case referred to by the appellants³ in this respect is not comparable. That case related to what were clearly agricultural buildings and which by definition, did not require an analysis of their effects upon openness in order to determine whether or not they were inappropriate.

Effect on openness

28. The building is of a modest scale and is single storey. Nevertheless, it does take up a volume of space that would otherwise be more open without the building in situ. Whilst the visual impact of the building is limited, it can be seen from adjoining land. Both in terms of the volume of space and visual impact, the building does therefore cause additional harm to the openness of the site.
29. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of Green Belts being their openness and their permanence. Although the building in this case is of limited size and volume, it does cause a small but nevertheless noticeable degree of harm to the openness of the area with a development that encroaches into the otherwise undeveloped countryside. This results in further non-compliance with CS Policy CP8.

Other considerations

30. Given the submitted evidence, a building of this nature would not clearly be permitted development under the terms of Article 3, Schedule 2, Part 6, Class A, of the GPDO⁴ even if the prior approval requirements had been implemented and if the holding can be considered large enough (over 5 hectares) which is not clearly the case. Such rights are only available where the development is reasonably necessary for the purposes of agriculture and given my conclusions about the use of the building above, I do not consider that such circumstances exist here. This is not a matter therefore that can have much weight as it appears to be an unlikely fallback option.
31. I have considered whether planning conditions could be imposed to overcome the harm caused by the building. I can only consider the building as set out in the allegation or part of it. The evidence does not lead me to a conclusion that there would be away of retaining the building or part of it and overcome the harm identified. Taking parts of the building out such as windows and doors would give the structure a different, cruder character but would not create a need for purely agricultural use where it does not clearly exist given present circumstances. The appellants have also suggested that I could restrict the building to agricultural use. Even if that could be achieved with a planning condition, on the basis of the evidence submitted, again I am not persuaded that such a building would be justified on the basis of the present limited agricultural use of the site. In reaching that view, I have taken account of the substantial area of adjoining land that the appellants also have access to. The development in this respect is not supported by PMP Policy RE2.
32. I agree with the view of the appellants that the building is not harmful visually within the setting in terms of the impact upon the character and appearance of

³ R. (on the application of Lee Valley Regional Park Authority) Appellant and Epping Forest District Council Respondent and Valley Grown Nurseries Ltd; 2016 EWCA Civ 404

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015

the area. This is however a neutral matter than neither weighs in favour or against the retention of the development.

33. Other cases within the Council area have been referred to by the appellants but they relate to developments clearly proposed for agricultural purposes. In those cases, the Planning Inspectors reached the view that the development would not be inappropriate development within the Green Belt. Those circumstances were therefore very different.

Very special circumstances

34. According to the Framework very special circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. I am required as well by the Framework to give substantial weight to the harm due to inappropriateness and further substantial harm due to the impacts upon the openness of the Green Belt. Furthermore, the development does not comply with CS Policy CP8 and PMP Policy RE2 or therefore the development plan as a whole.
35. On the other side of the balance, there are no other considerations that individually or collectively have any significant weight and do not therefore clearly outweigh the harms that I have identified. Therefore, very special circumstances necessary to justify the development do not exist.

Conclusion on ground (a)

36. The appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (f)

37. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. It appears from the face of the notice that the purpose was to remedy the breach by restoring the land to its condition before the breach took place. Given that ground (a) was also pleaded, I have considered the planning merits of the case and can therefore consider ground (f) in a flexible manner. I can consider solutions put to me that may be short of complete remedying of the breach.
38. I have considered whether the development could be altered to make it acceptable under the appeal on ground (a). Given the nature of the development and the substantial weight I have had to give to the harms, there were no solutions that would make the development acceptable that could be conditionally controlled or therefore any that could be achieved by reducing the steps required on the notice. From the evidence submitted, I was also not persuaded that a building of this nature on the land would comply with the permitted development allowances within the GPDO for agricultural development.
39. The appellants have provided a photograph of the approximate position of the building prior to its construction. The land was part of a grassed hillside which has been levelled off to provide a base. The one-off sowing the land with grass seed following the dismantling of the building would provide a kick-start towards the site being restored to its previous condition. I do not think that this is an unreasonable step to require and would help achieve the purpose of the notice.

40. The appeal on ground (f) fails.

The Appeal on ground (g)

41. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
42. The notice requires the dismantling of the building within 6 months. The appellants request a year which would match the period for carrying out the second requirement for the sowing of the grass seed.
43. For reasons explained above, there would seem to be little prospect in current circumstances, for the erection of a replacement structure. In any case, even if the Council were minded to approve something else or were convinced with additional evidence that permitted development rights for an alternative structure could be achieved, this ground of appeal relates to the reasonableness of the period for compliance with the steps set out in the notice and not for a further development to be approved.
44. The uncertainty of the Covid-19 pandemic may make the securing of contractors to carry out the work more difficult than in normal circumstances. However, the building has a simple form and the existing period of 6 months gives scope for those sorts of difficulties to be overcome. It has not been demonstrated by any evidence that it would be difficult to find a contractor or that the work would require specialists rather than being done by the appellants themselves. In my view the dismantling and removal of a building like this and the resultant materials, is far more straightforward and quicker than its initial construction would have been.
45. I consider that 6 months for the first requirement seems to strike a reasonable and proportionate balance between overcoming harm that the development causes but whilst allowing sufficient time to comply.
46. Consequently, the appeal on ground (g) fails.

Conclusion

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

A Harwood

INSPECTOR



Plan

This is the plan referred to in my decision dated: 1 October 2021

by Andy Harwood CMS MSc MRTPI

Land at Parcel 4481, Ramscombe Lane, Batheaston, shown edged in bold on the attached plan ("Land")

Reference: Appeal Refs: APP/F0114/C/21/3275385 & 3275386

Scale: Not to scale

