



Appeal Decision

Site visit made on 9 November 2022

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/J1860/C/21/3279785

Land at (OS 8001 6771) Astley, Stourport on Severn shown for identification purposes only edged red on the attached plan ("the Land")

- 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 Mrs Gaynor Arnold against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice was issued on 30 June 2021.
 - The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised material change of use of land from agricultural to equestrian, and the erection of a timber building comprising of 3 stables, feed storage and tack room for private equestrian use as approximately marked blue.*
 - The requirements of the notice are 1. Cease the use of the land for equestrian purposes and remove any and all equestrian related equipment and paraphernalia from the Land. 2. Demolish the timber building comprising of 3 stables, feed storage and tack room as approximately marked blue, including the removal of the hardstanding base it is built on. 3. Lawfully remove the materials/equipment resulting from compliance with 1 and 2 from the Land and restore the Land to its original condition before the breach took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended (the 1990 Act).
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Decision

1. The appeal is allowed insofar as it relates to the "material change of use of the land" and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for *"material change of use from agricultural to equestrian on Land at (OS 8001 6771) Astley, Stourport on Severn"* subject to the schedule of conditions at the end of this decision.
2. 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 for the *erection of a timber building comprising of 3 stables, feed storage and tack room for private equestrian use.*

The appeal on ground (d)

3. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning

control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving a change of use, it is ten years and for operational development, it is four years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the material change of use of the land from agriculture to equestrian had taken place at least 10 years before the date the notice was issued, that is 30 June 2011.

4. The appellant refers to their Tree Survey which notes the damage to the lower stem of the tree being both recent and historic. The historic damage is said to be more than 20 years old and more recent damage is evident higher up the stem and at the base. The damage is said to be both old and new is likely to be horse related. This is said to reinforce the view that the land has been used for equestrian use for a period in excess of 10-years and supports the appellant's claim made under Ground (d).
5. The Tree Survey suggested that it was "likely" to be horse related. Horses may have been "kept" on the land and it still remain in an agricultural use. Without evidence to support this, I am not convinced that the damage to the tree may not have been caused by other animals.
6. Furthermore, in the absence of any further evidence, which may have been provided by photographs or statutory declarations, it has not been demonstrated that on the balance of probability, the land has been used for equestrian purposes for at least 10 years before 30 June 2021.
7. Accordingly, the appeal on ground (d) fails.

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

Main Issues

8. These are the effect of the development on: i. the landscape character and the setting of nearby listed buildings; ii. the Oak tree within the paddock and iii. the living conditions of neighbouring occupants and the health of the Oak tree with regard to the storage of manure.

Reasons

Landscape character and heritage assets

9. The appeal site comprises a purpose built block of timber clad stables, tack room and feed room (the stables) constructed in a wide V shape with openings which face away from Astley Hall and towards Astley Hall Lodge (the Lodge), both Grade II listed buildings. There is a wide concrete apron to the front of the openings and post and rail fencing separating it from the grassed area which would be used for grazing. Within the site is a large mature Oak tree.
10. The site falls within the 'Principal Timbered Farmlands character area. This is described in the Worcestershire Landscape Character Assessment as 'A small to medium-scale wooded, agricultural landscape characterised by filtered views through densely scattered hedgerow trees. This is a complex, in places intimate, landscape of irregularly shaped woodlands, winding lanes and frequent wayside dwellings and farmsteads. It is a landscape of great interest and exception, yet also one of balance.' At a more intimate level, the site is

situated within the Parkland associated with Astley Hall and is land that is part of the setting of the heritage asset.

11. As such, the appeal site shares a close relationship with designated heritage assets, Astley Hall and the former Astley Hall Lodge. In 1837, when advertised to let, the house was described as "A substantial modern-built mansion-house, called Astley Hall, in the Parish of Astley, and about 20 acres of rich pasture land; Walled and Kitchen Gardens, small compact Vinery, and ornamental Plantations. The House is situate in the centre of the Land, commands beautiful, rare and distant Views of the surrounding Country; (adjoins the Turnpike Road leading from Worcester to Bewdley, 10 miles from the former, and 5 miles from the latter.) A spacious Coach-House, Stables &c., altogether fit for the residence of a respectable Family"¹.
12. From the evidence before me, the significance of these buildings and structures is largely derived from their historic, architectural and aesthetic interest. Although separated from Astley Hall and the Lodge in terms of ownership, the Parkland, which surrounds the Hall, remains an important part of the setting of the listed buildings through its visual and historical relationship. The Hall's most famous occupant was Stanley Baldwin (1867-1947), the Conservative Prime Minister who dominated English politics between the two World Wars. He took a lease of the Hall in 1902 and acquired the freehold in 1912. Over time, Astley Hall was extended and altered, becoming more rambling and irregular than the neat and compact original. Upon Baldwin's death it was bequeathed to Birmingham City Council for use as a school, later being sold and converted to a care home, which it remains. The former lodge to the east of the appeal site is separately Grade II Listed. The wider setting of Astley Hall comprised the former Lodge and the Parkland which surrounded the Hall, all of which are listed together within the Worcestershire Historic Environment Record.
13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The effect of the proposal on the setting and its contribution to the special interest and significance of the designated heritage assets is recognised within the National Planning Policy Framework (the Framework) and is given considerable importance.
14. I am mindful of the Framework's definition of 'setting' as being the surroundings in which a heritage asset is experienced, the extent of which is not fixed and may change over time. In this case the stable block is largely hidden from views from the public domain and in my opinion, has limited effect on the wider landscape. Nevertheless, the duty to have special regard to the desirability to preserving the building or its setting applies with equal force whether or not the works are in public view. Given the location of the appeal site within the Parkland which forms part of the historic context to Astley Hall and the former Lodge, both Grade II listed buildings, special attention must be paid to the desirability of preserving or enhancing the setting of the historic assets.
15. There are other buildings, some of which have limited architectural merit, which appear to be more integrated and occupy an area that would/would have facilitated the service of the Hall. Since the break-up of the ownership of the

¹ Worcester Journal 23/2/1837 – Provided by the appellant's Heritage Statement

Hall and Parkland this seems to have led to un-coordinated development which has clearly damaged the setting of the listed buildings and its Parkland. I note the appellant suggests the sheds to the south of the Hall which intrude on the pastoral setting have added to the damage and I would concur. Nevertheless, the Parkland is of undisputed importance to the setting of the Hall and Lodge and although I agree with the appellant that change over time has altered the development pattern, negative changes that have occurred within the setting of the listed buildings and its Parkland should not allow for a continued decline within this important historical landscape.

16. The appeal site, together with the adjoining parkland, provides a contribution to the visual quality of and to the landscape setting of the heritage assets. The stable building development is not well-related to the existing pattern of enclosure and its modern form does not integrate with the important historic setting, extending the built form into and compromising the sense of space and openness within the parkland. Although this is exacerbated by the additional temporary and permanent fencing required for further sub-division of grazing land for the horses, it is acknowledged that the fencing may not require planning permission.
17. The character and siting of the stable building is inappropriate to the Parkland setting in this location and clear and convincing justification has not been provided for the development which compromises the setting of heritage assets to an unacceptable degree and does not conserve them in a manner appropriate to their significance. The harm would not in my view be sufficiently resolved by the suggested planting of a hedge to the rear of the stable block which would have a limited effect on the building within its wider setting.
18. Paragraph 199 of the Framework requires that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm² to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
19. The harm that would be caused by the proposal would be, in the parlance of the Framework, less than substantial. Paragraph 202 of the Framework confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The stable building would undoubtedly provide benefits for the appellant. However, I am not aware of any public benefits to outweigh the less than substantial harm arising from the development.
20. Overall, I find that the stable block fails to preserve the special interest and the landscape character of the Parkland and the setting of the heritage assets. Even though I have found that the harm is less than substantial, it is not to be treated as a less than substantial objection. Consequently, there is harm to the significance of the designated heritage asset and the building fails to satisfy the requirements of the 1990 Act and Paragraph 197 of the Framework. Furthermore, I find the stable building to conflict with Policies SWDP6,

² National planning Policy Framework paragraph 200

SWDP21, SWDP24 and SWDP25 of the South Worcestershire Development Plan (the DP) which requires proposals to be of high design quality, integrate with the character of the landscape setting, conserve and enhance heritage assets and sustain environmental quality.

21. Turning to the change of use of the land, the Council's reason for issuing the notice refers to the development resulting in the extensive subdivision of fields for horses. It considered that contrary to policies SWDP6, SWDP21 and SWDP24 of the DP this, and any future additional subdivision would result in visual harm due to the temporary fencing, the small scale of the paddocks, the need for water troughs and other paraphernalia, which would not be sympathetic to the parkland character and therefore the setting of the heritage assets.
22. The notice covers the small parcel of land directly associated with the stables. I observed fields throughout the Parkland being used for keeping horses and much of the land was subdivided by both permanent and elements of moveable electric fencing. Although I have found against the appellant in their appeal on ground (d), I do not consider that the equestrian use of the land would be inappropriate considering the use of the wider Parkland. In this respect, I find that the use would not cause harm to the openness of the Parkland and would not conflict with the requirements for development to conserve and enhance its setting contained within Policies SWDP6, SWDP21 and SWDP24 of the DP.

The effect of the development on the Oak tree

23. There is reference to trees and hedgerow that were removed to facilitate the development and that the development has had and is having a detrimental impact on trees. I am not aware of the full circumstances of the removal of trees or hedgerows or whether these were protected. Nevertheless, part of the reason for issuing the notice is because of the effect of the development on the large Turkey Oak positioned in the middle of the site. The tree is significant with a height of approximately 28m and an average crown spread of 20m and is considered to be c180 years old.
24. SWDP22 of the DP seeks environmental protection and enhancement for, amongst other things, important trees. The appellant's Tree Survey concludes that, regarding root protection, it is unlikely, given the distance between the stable area and the tree, that any long-term damage has been done to the rooting mass of the tree. Given the distances, and with no evidence to the contrary, I have no reason to disagree with these findings.
25. However, because of an absence of protection, grazing damage has occurred to the tree over 20 years. The new damage is said not to have increased the likelihood of any long-term harm to the tree, as the grazing animals have not removed large areas of phloem and exposed the xylem. The Tree Survey suggests combatting further damage by installing a lightweight electric fence set 2m back from the stem. However, the Council suggest a sufficiently robust run of timber fencing would be more appropriate and in these circumstances I concur. To that extent, and without protection in place, the development would conflict with the aims of Policy SWDP22 of the DP.

Storage of manure

26. Due to the small scale of the site and its proximity to residential dwellings, it is not considered that manure storage associated with the stables can be managed in a way which would avoid adverse impacts to neighbouring properties from odour and possibly vermin. This would also likely compromise the health of the Oak tree from a concentration of manure within this limited area. The Tree Survey suggests that if this is kept at least 15m away from the tree and downhill from the tree then no negative impact is likely to occur. I note from the plan³ that it is proposed that the manure heap is relocated further away from both the tree and the neighbouring properties outside of the appeal site.
27. However, I am not aware of a management plan for the dispersal of manure from the appeal site and therefore cannot be sure that this would not have a negative impact on residential amenity. Accordingly, I cannot be sure that the development would not conflict with Policy SWDP21 of the DP which expects all new development to, amongst other things, not compromise the favourable condition of an important individual tree and Policy SWDP31 of the DP which protects human health and wellbeing by avoiding any significant adverse impacts from pollution.

Conclusion on ground (a) and the deemed planning application

28. As I do not consider that the equestrian use of the land would be in conflict with the development plan, I will issue a split decision to allow for the material change of use of land from agricultural to equestrian use. However, for the reasons given above, I consider the remaining development to be contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. The appeal on this ground is therefore dismissed and planning permission is refused for the stable building.

Conditions

29. I have had regard to the conditions suggested by the Council and considered them in light of the advice set out in both the Framework and the Planning Practice Guidance.
30. To ensure that the rural landscape and residential amenity is protected a condition to control external lighting is necessary. In the interests of both residential amenity and highway safety, a condition limiting the use of the land to a private use is deemed necessary. It is necessary to include the condition to protect the Oak tree in the interests of the historic landscape and environmental quality. I have not imposed further conditions suggested by the Council as these relate to the stable building.

Overall Conclusion

31. For the reasons given above, I conclude that the appeal on ground (a) should be allowed in part and planning permission should be granted, subject to conditions, for the material change of use of land from agricultural to equestrian use.

³ Drawing no 02B

32. However, the appeal on ground (a) does not succeed for the operational development that has occurred in the form of the stable building. Accordingly, this part of the notice is upheld, and I shall refuse to grant planning permission on the deemed application.
33. Instead of varying the requirements of the notice, Section 180 (1) of the 1990 Act provides that: "Where, after the service of an enforcement notice, planning 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". The appellant is therefore able to rely on the provisions of Section 180 (1).

S A Hanson

INSPECTOR

Schedule of conditions

1. The use of the land hereby permitted shall be limited solely to the private keeping and exercising of horses and shall not be used for any commercial or public equestrian enterprise or business (including livery) without permission being granted by the Local Planning Authority obtained through the means of a full planning application.
2. No lighting or floodlighting shall be erected or installed on the perimeters of the land or on the stable building hereby approved.
3. Within 1 month of the date of this decision, details of fencing to protect the Oak tree within the paddock area shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented within 2 months of approval and thereafter retained.

End of schedule of conditions