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## Appeal Decisions

Site visit made on 2 June 2021

**by JP Roberts BSc(Hons) LLB(Hons)**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 February 2022**

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### **Appeal A Ref: APP/C1760/C/20/3264879**

#### **Yew Tree Barn, Yew Tree Lane, West Tytherley, Salisbury SP5 1LR**

- 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 Ben Pearce against an enforcement notice issued by Test Valley Borough Council.
  - The enforcement notice was issued on 28 October 2020.
  - The breach of planning control as alleged in the notice is:  
*Without planning permission the construction of a new dwelling.*
  - The requirements of the notice are:
    - 1) *To demolish the said dwelling house; and*
    - 2) *To remove from the land all materials resulting from the demolition.*
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B Ref: APP/C1760//W/20/3264874**

#### **Yew Tree Barn, Yew Tree Lane, West Tytherley, Salisbury SP5 1LR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ben Pearce against the decision of Test Valley Borough Council.
  - The application Ref 20/00522/FULLS, dated 28 February 2020, was refused by notice dated 3 September 2020.
  - The development proposed is the conversion and change of use of an agricultural barn to provide a single dwelling (c3), designed to Passiv Haus principles, the demolition of the second agricultural building and landscape enhancements.
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## **Decisions**

### **Appeal A**

1. It is directed that the enforcement notice is corrected by the deletion of the words "new dwelling house" in the description of the breach of planning control, and the words "dwelling house" in requirement 1) and their substitution with the word "building". It is also directed that the period for compliance in the enforcement notice is varied by the deletion of the word and numeral "six (6)" and their substitution with a period of 9 months.
2. Subject to the corrections and 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.

## Appeal B

3. The appeal is dismissed.

### Procedural matters

4. The owner of the land has submitted a planning obligation under Section 106 of the Act which deals with mitigation measures to address the need for nitrate neutrality. I shall refer to this below.
5. An appeal has been made on ground (b), but the arguments put forward include the case that the development is not in breach of planning control, a matter covered under ground (c). Although no appeal has been made under ground (c), as both parties have addressed the matter, I shall deal with the two matters together. No prejudice would arise from my doing so.
6. Although not specifically pleaded, the appellant has argued that the period for compliance is too short, a matter which falls under ground (g). The Council has had the opportunity to comment on this, and therefore I shall deal with it below.

*Appeal on ground (b) – that the matters alleged in the notice have not occurred and ground (c) that the matters alleged do not constitute a breach of planning control*

7. The notice alleges the erection of a new dwelling. The Council has subsequently accepted that the allegation is incorrect and argues that it should refer to “the partial erection of a building”. Whilst it is the intention that the development should result in the creation of a dwelling house, the building as it stands is not a dwelling house, being incapable of providing the facilities needed to cater for day-to-day living.
8. The appellant claims that the allegation that it the “partial erection of a building” is prejudicial. I consider that little turns on this; the structure is recognisably a building, albeit clearly unfinished. No further “erection” is required, although further works including the provision of windows, doors and external treatment are required, as well as considerable internal works. I therefore consider it reasonable to describe the matter enforced against as being “the erection of a building”. I consider that no prejudice would arise if I were to correct the notice accordingly.
9. To this limited extent the appeal on ground (b) succeeds and I shall correct the allegation and the requirements accordingly.

*Appeal on ground (c) – that the matters alleged do not constitute a breach of planning control*

10. The enforcement notice alleges that the development is the erection of a new building. There is no dispute that the works undertaken constitute development for which planning permission is required under Section 55 of the Act, or that it is a building; the only matter at issue under this ground is whether the works are permitted by virtue of the deemed permission granted under Article 3 and Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
11. A Notification for Prior Approval under Class Q for the “Conversion of two barns into dwellings” was determined by the Council under reference 16/01627/PDQS

on 1 September 2016, with the Council deciding that prior approval was not required. Work was carried out on the site which was not in accordance with the details shown on the prior approval application. Class Q permits the erection of new walls, a roof and windows necessary to achieve the conversion. However, it is implicit in this deemed permission that there is a building which is capable of being used as a dwelling.

12. A structural survey undertaken for the appellant by a qualified structural engineer in 2020 concluded that "the barn is in excellent condition and it would be straightforward to convert the dwelling. All compliant door and window openings are in place, the concrete slab is adequate and the block walls are built to modern building regulations standards. The proposed method of conversion will not jeopardise the existing structure, the original structure of the agricultural barn or retained elements including the main steel frame, slab, roof configuration and concrete walls".
13. However, those findings are at odds with the work that has been undertaken. This is extensive, comprised of new internal and external blockwork walls, the latter replacing the original concrete walls. A new concrete slab in part of the building and a new roof have also been provided. New openings for windows have been formed in the new walls, and window frames were present within the building, but had not been fitted at the time of my visit. Structurally, the main supports are provided by new walls and steel joists and new wooden trusses supported on the new walls. There is little left of the original agricultural building, and the remaining steel members are vestigial, contributing little or nothing in the overall structural integrity of the building.
14. The Planning Practice Guidance notes (at ID: 13-105-20180615) that "...the right assumes that the agricultural building is capable of functioning as a dwelling...It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right".
15. I consider that that the development does not comply with this guidance and as a matter of fact and degree, I conclude that the works carried are not consistent with the use of a building, and the development is not one permitted under the Order.

16. Accordingly, the appeal on ground (c) fails.

*The appeal on ground (a) and the S78 appeal*

### **Preliminary matter**

17. I shall deal with the s.78 appeal first, as the deemed application for the enforcement notice is not the same as that of the s.78 appeal.

### **Main Issues**

18. The main issues are:

- i) The effect of the development on the Council's development strategy;
- ii) The effect of the development on the character and appearance of the countryside;

- iii) Whether occupiers of the dwelling would have satisfactory access to services and facilities

## **Reasons**

### *Development strategy*

19. The site lies in the open countryside, amongst a patchwork of open fields and woodlands. It is remote from any settlements, and it is not close to other buildings. Policy COM2 of the Test Valley Local Plan (LP) sets out the settlement hierarchy for the district, where most new development is to be directed. It provides that development outside the settlement boundaries will only be permitted where it is appropriate in the countryside as set out in specified LP policies or where a countryside location is essential.
20. Of the policies specified in Policy COM2, the only one which is of some relevance is Policy LE16 which deals with the re-use of buildings in the countryside. The first criterion of the policy is that the building must be structurally sound and suitable for conversion without substantial extension or rebuilding. For the reasons explained above, I find that the development does not constitute a re-use of a building but amounts to substantial rebuilding. Accordingly, the development falls outside the scope of the policy, and in any event, fails its first criterion. It is therefore unnecessary to examine the other criteria.
21. I therefore conclude on the first main issue that the development conflicts with the Council's development strategy, its aim to restrict development and re-development outside of identified settlements and with Policy COM2.

### *Character and appearance*

22. I recognise that had the barn been converted as originally proposed, it would have similar impacts on its surroundings as the dwelling proposed. However, the underlying premise of the limited permitted development class is that the benefit of providing additional housing through the re-use of an existing building outweighed harm to character and appearance.
23. LP Policy E2 deals with the protection of landscape character and amongst other things requires that development does not have a detrimental impact on the appearance of the immediate area and the landscape character of the area in which it is located. The site is not an undeveloped one; the previous barn was larger than the building now erected. However, it was readily recognisable as an agricultural building which, even in its somewhat tired condition, was compatible with the agricultural landscape in which it was situated.
24. The proposed dwelling would be at odds with that agricultural character. The design of the building with numerous window openings and a large proportion of glass would be unlike any agricultural building, and light from the openings would be incongruous in a location devoid of any significant light pollution. The provision of a drive, a parking area and the residential paraphernalia and garden planting that would inevitably result from use as a dwelling would exacerbate the difference between residential use and that of an agricultural field.
25. Even accounting for the removal of the adjacent barn and part of the original barn and having regard to the potential that the site offers to carry out

mitigatory planting, the proposal would have a harmful impact on the landscape character and would conflict with Policy E2.

### *Accessibility*

26. The rationale for restricting development to the locations identified in Policy COM2 is to locate development in the most sustainable locations, which is based upon the settlements' current characteristics, population, and access to a range of services and facilities.
27. The appeal site is remote from settlements which provide shops, services, employment, schools, entertainment, leisure and health facilities. There are no footpaths or cycle paths which serve the site, or nearby public transport facilities and thus occupiers would be heavily reliant on travel by car to meet their everyday needs.
28. Accordingly the proposal would not provide satisfactory accessibility to services and facilities, and would conflict with LP Policy COM2.

### **Other matters**

29. The Council has been advised by Natural England that all applications which could adversely affect nutrient deposition on the River Avon catchment, a protected European Site, should be refused unless adequate mitigation can be provided. The appellant has submitted a Section 106 obligation which commits to providing mitigation in the form of adjacent land set aside in perpetuity to enable the development to be phosphate neutral. The Council accepts that this obligation would overcome their concerns on this matter.
30. As the appeal is to be dismissed, it is unnecessary for me, as the competent authority, to carry out an appropriate assessment. If the appeal were to have been allowed, such an assessment would have been required, but on the evidence before me, I am satisfied that the development would not have an adverse effect on the integrity of the River Avon catchment.
31. The appellant argues that there is a legitimate fallback in that the rights to convert the barn under Class Q remain. I disagree; the remaining elements of the original barn are vestigial and cannot form the basis of a change of use under Class Q. Although I have not been provided with the details of the scheme which the appellant suggests is similar (Ref: 18/02819/FULLS), it would appear that the two cases are not comparable, not least because a fallback existed in that case.
32. I recognise that the Council determined the prior approval application without requesting a full structural survey, and there is some strength in the appellant's argument that the Council must have accepted that the barn was capable of being converted. Be that as it may, the development was not carried out in accordance with the details provided and the extent of demolition and rebuild exceeded what was put before the Council. The extent of demolition and rebuilding work carried out materially altered the nature of the development, and therefore I place little weight on the prior approval decision.
33. The appellant has put forward a number of benefits of the proposal which need to be balanced against the harm I have found. The proposed dwelling would be highly energy-efficient, being built along Passiv-Haus principles, and in excess of current Building Regulations requirements. There would also be a net

biodiversity gain as a result of planting and other measures. The proposal would add to the supply of housing and as a self-build house, would assist the Council in meeting its requirements to provide for such housing.

34. All of these matters are positive benefits, which cumulatively carry modest weight, but this is insufficient to outweigh the harm that I have found and the clear conflict with the development plan as a whole.

### **Conclusion on the s78 appeal**

35. There is no suggestion that the Council cannot demonstrate an up-to-date 5 year supply of housing land, and therefore there are no reasons not to determine the appeal in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

#### *The ground (a) appeal*

36. The scope of the deemed application for planning permission under this ground is for the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. Accordingly, I cannot grant planning permission for the erection of a dwelling, and if the appeal were to be allowed, a further grant of planning permission would be required to complete the dwelling.
37. The Council's reasons for issuing the notice are aimed at the erection of a dwelling, rather than an incomplete building. However, two aspects of the Council's reasons are applicable to the deemed application, and I shall deal with them accordingly.

### **Main issues**

38. The main issues are therefore:

- i) the effect of the development on the Council's development strategy,
- ii) the effect of the development on the character and appearance of the area.

### **Reasons**

#### *Development strategy*

39. The proposal conflicts with Policy COM2 for the reasons given in respect of the s.73 appeal above, and there is no need to repeat them. There are no exceptions which apply to this development, and therefore it conflicts with development strategy and with Policy COM2.

#### *Character and appearance*

40. In terms of character and appearance, I have described the rural character of the surrounding area in the s73 appeal above. The incomplete building appears as a dwelling in the course of erection, and the bare blockwork walls and the unfinished nature of the building have a poor visual appearance which is incongruous in a pastoral context. It does not represent good design, and is harmful to the rural appearance of the area.

41. I therefore conclude on this issue that the development causes material harm to the character and appearance of the area and conflicts with LP Policy LE2.

### **Other matters**

42. Of the benefits put forward in respect of the s78 appeal, only the potential to achieve net biodiversity benefits is of relevance here, and this does not outweigh the harm that I have found.

### **Conclusion on the ground (a) appeal**

43. For the reasons given above, I conclude that the development conflicts with the development plan as a whole and that planning permission on the deemed should be refused.

#### *Appeal on ground (f) that the requirements of the notice are excessive*

44. The appellant accepts that if the appeal were to fail, the requirement to demolish the building would not be excessive. However, the appellant argues that the previous agricultural use of the land would be reinstated, and the materials could be utilised for agricultural buildings.
45. However, there can be no certainty that such an intention would be carried out within a reasonable period after demolition, or that if planning permission is required, that it would be granted. Any planning permission for a new building could seek to use the materials on site, in which case the provisions of s.180(1) would have effect. There would be adequate time to obtain planning permission before the requirements take effect.
46. Accordingly, the appeal on ground (f) fails.

#### *Appeal on ground (g) – that the period for compliance is too short*

47. The notice allows a period of 6 months for compliance. Whilst this is long enough to physically carry out the works, I am mindful of the suggestion that the materials used in the construction of the building might be utilised for agricultural purposes, in which case particular care would need to be taken in the dismantling of the building. The Covid pandemic has caused widespread delays in numerous sectors, including the building industry, and I therefore consider it reasonable in the circumstances to extend the period for compliance to 9 months. To this limited extent, this ground of appeal succeeds.

### **Overall conclusion on the s174 appeal**

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

*JP Roberts*

INSPECTOR