



Appeal Decisions

Site visit made on 24 May 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Appeal A Ref: APP/W3005/C/21/3276700

Radfords Farm, Dawgates Lane, Skegby, Nottinghamshire, NG17 3DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr D Radford against an enforcement notice issued by Ashfield District Council.
- The notice, numbered E/2021/00002, was issued on 12 May 2021.
- The breach of planning control as alleged in the notice is without planning permission:
- (i) the erection of an extension in the location shown hatched blue on the attached plan ADC2 to two buildings on the land to create one large building used for the accommodation of livestock; and
- (ii) the erection of two silos on the land in the locations shown by black crosses on the attached plan ADC2 used to store feed in association with the pig farm business.
- The requirements of the notice are to:
 - (a) Cease the use of the extension referred to in paragraph.3(i) above and shown hatched blue on the plan ADC 2 for the accommodation of livestock;
 - (b) Cease the use of the building shown hatched green on the plan ADC2 for the accommodation of livestock;
 - (c) Remove the extension referred to in paragraph 3(i) above and shown hatched blue on plan ADC2 from the land including the base, elevations and roof and reinstate the land to its former appearance;
 - (d) Remove both silos, shown as black crosses on plan ADC2, from the land and reinstate the land to its former appearance;
 - (e) Remove all debris from the land which arises as a result of the works required to comply with 5(c) and 5(d).
- 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), (d), (f), (g) 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.

Appeal B Ref: APP/W3005/W/21/3274981

Radfords Farm, Dawgates Lane, SUTTON-IN-ASHFIELD, NG17 3DA

- 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 Dale Radford against the decision of Ashfield District Council.
- The application Ref V/2020/0346, dated 8 June 2020, was refused by notice dated 12 February 2021.
- The development proposed is Extension and Alterations to Existing Livestock Building.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the removal of requirement (b).

2. Subject to the correction Appeal A is allowed insofar as it relates to the silos and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the silos on the land at Radfords Farm, Dawgates Lane, Skegby, Nottinghamshire, NG17 3DA at the location shown as two black crosses on Plan ADC2.
3. Appeal A is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the land at Radfords Farm, Dawgates Lane, Skegby, Nottinghamshire, NG17 3DA where planning permission is refused in respect of the extension to the two buildings to make one large building used for the accommodation of livestock on the area shown hatched blue on Plan ADC2 on the applications deemed to have been made under section 177(5) of the 1990 Act as amended

Appeal B

4. The appeal is dismissed.

The notice

5. The area hatched green on plan ADC2 attached to the notice is not part of the matters which appear to the local planning authority to constitute the breach of planning control as stated in the notice. Therefore requirement (b), which refers to the use of this area, does not follow logically from the allegation and is excessive. The notice should be corrected to remove requirement (b), and this can be done without causing injustice to the parties as it would not remedy the breach of planning control or remedy any injury to amenity caused by the breach as alleged in the notice.

Ground (b)

6. An appeal on this ground is on the basis that the matters stated in the notice have not occurred. The appellant argues this ground in relation to part of the building shown hatched blue on the notice which they state is not used to house livestock, and more generally in relation to the overall structure as they say that the original large livestock shed remains as a separate unit which can be used independently of the new infill section and does not therefore create 'one large building'.
7. Building is defined in section 336(1) of the 1990 Act as 'any structure or erection, or any part of a building, as so defined, but does not include any plant or machinery comprised in a building'. A single building can contain separate self-contained parts and/or planning units (for example a block of flats). The extension in this case has connected two separate buildings and created one much larger building and I do not therefore accept the appellant's argument in relation to this ground. In addition, whilst it may be the case that the area at the rear highlighted by the appellant does not house livestock and cannot be accessed from the rest of the barn, it is part of the overall building which is predominantly used as such, and the appellant has not provided details regarding any other alternative use. The Council's case is that the rear element, although accessed separately is part and parcel of the pig rearing business. I agree that the appellant has not proven on a balance of probability that this is not the case. More importantly, this rear section is part of the overall structure of the building and its roof is attached to the main part of it (the area used for the livestock). It is therefore part of that larger building.

8. The appeal on this ground does not therefore succeed.

Ground (d)

9. This no longer falls to be considered as the appellant's case regarding this ground related only to the area shown hatched green on plan ADC2 and the notice has been corrected to remove the requirement in relation to that area.

Ground (a) and the deemed application for permission, and the Section 78 appeal

10. The deemed application for permission is for the development as described in the notice, i.e. the erection of an extension to two buildings on the land to create one large building used for the accommodation of livestock and the erection of two silos in the land used to store feed in association with the pig farm business. The development for which permission is sought under the section 78 appeal is described as 'the extension and roof alteration to existing livestock buildings to create additional floor space – retrospective'. Whilst there is a clear overlap between the two, the deemed application for permission is for a larger extension including the lean-to element at the rear of the building, and also includes the silos.

11. The main issue in both appeals is the effect of the development on the living conditions of the occupiers of nearby houses on Woodhouse Lane.

Extension

12. The planning unit of Radfords Farm has an agricultural use and some existing farm buildings. The appellant can lawfully raise livestock, including pigs, on the site but livestock husbandry necessitates buildings in which to house the animals (depending on the type of livestock and time of year) and planning permission is required for these structures. In this case the parties agree that the extension (and silos) did not benefit from permission pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015 and that express permission would be required to make this development lawful.

13. It is evident from the extent of the evidence and representations received from interested parties, as well as my own observations both on the appeal site and in the surrounding area, that the current number of pigs being kept in the extended building is causing unacceptable noise and odour when in such a close proximity to existing residential use. This is harming the living conditions of the nearby residents, and I do not accept that as a group they would have any reason to exaggerate or make up the effects that they have experienced due to the pig farming. There is simply no reason before me to suggest why this number of unrelated residents and interested parties would make these representations unless they truly felt that the residents were suffering harm to living conditions caused by the current level of pig farming in the appeal site.

14. The effects caused by the pig farming will vary even throughout a single day, and the perception of these impacts has a subjective element. As such, the Noise Impact Assessment and Odour Survey provide evidence of a 'snapshot in time' which reflects the precise point when the survey work was undertaken. However, the diaries kept by various residents provide evidence over many more days, and taken with the survey information, the other representations and my own observations, produces compelling evidence of the harmful effects

being caused by the current level of pig farming on the site as experienced by the residents.

15. Neither party has provided any evidence regarding the effect of the reduction in the number of pigs which could be raised in the reduced accommodation if the unauthorised extension were to be removed. However, there would be a significant reduction in the floor area and therefore the number of animals that could be raised at any one time. It is common sense to assume that this would also result in a reduction of noise and odour. The appellants have submitted that this would not be the case but have not provided any evidence to support this assertion.

Other matters

16. There is no evidence before me regarding the effect of the extension on the Teversal Pasture Site of Special Scientific Interest ('SSSI') and Natural England have not provided any comments due to this lack of information. I am therefore unable to assess the effect of the development on the SSSI, and whilst I note that the appellant has argued that other similar developments have been granted in the vicinity, each case has to be assessed on its own facts.
17. The National Planning Policy Framework 2021 ('the Framework'), which is a material consideration, advises that development on land within or outside an SSSI which is likely to have an adverse effect on it should not normally be permitted. If I were minded to grant permission, I would need to be satisfied that the development would not adversely affect the SSSI. However, as I am dismissing the appeal for another reason, I do not need to make a finding on this matter.

Conclusion on the extension

18. The extension to the buildings causes material harm to the living conditions of the occupiers of nearby houses. This is in conflict to Policy ST1 of the Ashfield Local Plan Review 2002, which forms part of the development plan for the area and which seeks, amongst other things, to ensure that development will not adversely affect the character of the area or conflict with an adjoining or nearby land use, and the National Planning Policy Framework 2021. As there are no other considerations which outweigh this conflict, the ground (a) and section 78 appeals in relation to the extension should be dismissed and the deemed application for permission should not be granted.

Silos

19. The silos are located to the north of the extension, and the appellant states that they are required even if the extension is not permitted as they support the livestock which will continue to be housed on site.
20. The silos are sited next to the existing cluster of buildings and yard area, and are not unduly prominent or obtrusive from outside of the appeal site as there are limited views. They are not inappropriate within the rural setting and are in keeping with the agricultural use of the land, and indeed there are examples of other silos within the vicinity.
21. The Council's submitted objection to the silos does not relate to their appearance or effect on the character of the site or area, but rather that the

silos support the rearing of pigs on the site by providing storage for the livestock feed. The silos do support the rearing of the increased number of pigs which are housed in the unauthorised extension, but as the notice requires the extension to be removed the silos alone will not be causing any harm to the residential amenity of the occupiers of Woodhouse Lane. The silos are not in conflict with the development plan and there are no other considerations of sufficient weight to indicate that permission should not be granted.

Conclusion on ground (a)

22. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant permission for the silos, but otherwise I will uphold the notice with the correction as set out above and refuse to grant planning permission in respect of the extension of the two barns. The requirements of the notice will cease to have effect as far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Ground (f)

23. An appeal on this ground is on the basis that the steps required by the notice exceed what is necessary to remedy any breach of planning control by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
24. I have set out above that requirement (b) should be removed from the notice so I do not need to consider this element any further.
25. The purpose of the notice is to remedy the breach of planning control. It is therefore not excessive to require that the extension is removed to restore the land to its condition before the breach took place. To allow the retention of the extension but to require that it not be used for the accommodation of livestock would also create potential difficulties in the future enforcement of the use of the building.
26. The appeal on ground (f) does not therefore succeed.

Ground (g)

27. The appellant is entitled to assume success in the appeal and is seeking that the compliance period be extended to 6 months to allow time to complete the rearing cycle underway at the date of the decision before undertaking the works to remove the development. The appellant has stated that the cycle lasts for 10 weeks, and has not provided any indication as to why the pigs could be rehoused part way through a cycle, or why the physical works would take more than the 28 days permitted by the notice.
28. I have found significant harm to the living conditions of the nearby residents, and this harm varies from day to day depending on many factors including the point in the rearing cycle, the time of year and weather conditions (and indeed the evidence from the residents is that the odour is generally worse during the summer months which is inevitably when they wish to spend more time in their gardens or have their windows open). Taking all of these factors into account, and including the welfare of the animals, it is in the public interest for the notice to be complied with expeditiously, and there is nothing before me to indicate that it would be reasonable in all of the circumstances to override this public interest.

29. The appeal on ground (g) therefore fails.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W3005/C/21/3276700	Mr D Radford
Appeal B	APP/W3005/W/21/3274981	Mr Dale Radford