



Appeal Decisions

Site visit made on 17 August 2022

by Grahame Kean BA (Hons) Solicitor HCA

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 30 August 2022

Appeal A Ref : APP/V3310/C/17/3180090 Land at Labourham Drove, Cheddar, Somerset BS27 3RP

- 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 S Chard against an enforcement notice issued by Sedgemoor District Council.
- The enforcement notice numbered ENF/17/00484, was issued on 21 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of agricultural building, in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are:
 1. Demolish and completely remove the agricultural building.
 2. Break up and remove the hardstanding and restore the land to its previous 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) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/V3310/W/17/3178836 Land at Labourham Drove, Cheddar, Somerset BS27 3RP

- 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 S Chard against the decision of Sedgemoor District Council.
- The application Ref 17/17/00009, dated 2 February 2017, was refused by notice dated 19 May 2017.
- The development proposed is erection of general purpose agricultural building.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C Ref: APP/V3310/C/17/3188711 Land at Labourham Drove, Cheddar, Somerset BS27 3RP

- 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 S Chard against an enforcement notice issued by Sedgemoor District Council.
- The enforcement notice numbered ENF/17/00484A, was issued on 24 October 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of steel framed buildings, in the approximate position outlined in red on the attached plan.
- The requirements of the notice are:
 1. Demolish and completely remove the steel framed buildings.
 2. Break up and remove the hardstanding and restore the land to its previous 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) (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: No further action is taken.

Appeal Ref D: APP/V3310/W/17/3188739 Land at Labourham Drove, Cheddar, Somerset BS27 3RP

- 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 S Chard against the decision of Sedgemoor District Council.
- The application Ref 17/17/00062, dated 2 August 2017, was refused by notice dated 27 September 2017.
- The development proposed is erection of general purpose agricultural building.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set below in the formal decision.

Appeal Ref E: APP/V3310/W/18/3197242 Land at Labourham Drove, Cheddar, Somerset BS27 3RP

- 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 Sam Chard against the decision of Sedgemoor District Council.
- The application Ref 17/17/00087, dated 9 November 2017, was refused by notice dated 9 February 2018.
- The development proposed is retention of agricultural livestock buildings.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set below in the formal decision.

Procedural Matters

1. The Decisions are made following a successful High Court challenge to the decision letter of the Inspector dated 5 December 2018, and the subsequent Court Order dated 5 June 2019 under which Appeals B, D and E were quashed
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and remitted for redetermination, and Appeals A and C were remitted for redetermination.

2. In her decision the Inspector refused planning permission for the development comprising existing agricultural buildings, on the basis of there being an unacceptable flood risk. The Secretary of State accepted that the Inspector erred in not considering the application of the sequential test in considering Policy D1 Sedgemoor District Core Strategy, which policy requires such a test.

Appeal A on ground (a) and Appeals B, D and E (s78)

Background and Main Issues

4. Agricultural buildings were erected in three phases. Appeals A and B concern Phase 1, the construction of a steel superstructure with a dark grey cement roof. The building is approximately 800m² in size.
5. Appeal D concerns Phase II, a steel superstructure 'wing' comprising eight bays constructed on the north elevation of the Phase I building. This 'wing' is approximately 960m² in size.
6. Appeal E concerns Phase III, the two remaining bays on the rear (west side) of the bays subject of the Phase II building and a steel superstructure 'wing' on the southern elevation of the Phase I building. Both parts of Phase III cover approximately 1487m² (shown on submitted application plans as 1428m²) in total. Appeal C (the second enforcement notice) covers the development erected in Phases I, II and III (Appeals A, B, D and E).
7. Yorkshire boarding was added to the appeal development in 2018. The appellant states that the whole built development amounts to just over 3,240m². In addition, the level of the land has been raised by approximately 300mm.
8. The main issues before the previous Inspector were i) the effect of the development on the character and appearance of the surrounding area and ii) whether the development complies with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Character and appearance

13. Having inspected the site and surroundings I see no reason to disagree with the previous Inspector's view that the agricultural buildings have no significant adverse effect on the character and appearance of the area, or on the enjoyment of views over the Somerset Levels and Moors to an unacceptable degree.
14. I therefore agree that the buildings are not harmful to the character and appearance of the area. Accordingly, there is no conflict with the objectives of Policies P6 and D14 of the Council's Core Strategy (CS) which amongst other things seek to ensure that the form, bulk and design of buildings are contextually appropriate to the immediate setting and characteristics of the wider local area, and ensure wherever possible that there is no significant adverse impact on local landscape character, scenic quality and distinctive landscape features.

Flood Risk

19. A key issue in the previous appeal decisions was that the Environment Agency (EA) concluded that the development should not have been permitted in Flood Zone 3. However since then the EA undertook further modelling work in the Cheddar area, from which it appeared, and it is now undisputed that the appeal site is in Flood Zone 2. Therefore the EA has withdrawn its objection to the development.
20. Having regard to the updated information related to flood risk and sequential test, and in light of the evidence provided with the appeals, including the originally provided sequential test, alternative sites posited, the EA's withdrawal of its objections (to which I attach significant weight), and the fact that the Council no longer pursues the matter, I find there is no good reason to conclude that any of the alternative sites has a materially lower risk of flooding.
21. Policy D14 of the CS states that all development proposals in Flood Zones 2 and 3 as defined by the EA's Flood Map will only be permitted where the sequential test is passed, unless the Framework makes specific exception for the type of development proposed, or the site is allocated or identified for development of the same type, scale and character in this CS or any subsequent document of the Local Development Framework as that proposed.
22. For the purpose of assessing flood risk, the PPG defines 'land and buildings used for agriculture and forestry' as 'less vulnerable'¹. Therefore the exception test is not applicable in this instance. However, the Framework advises more generally that, considering site-specific assessments and sequential tests, development should only be allowed in areas at risk of flooding where among other things, it is appropriately flood resistant and resilient, and any residual risk can be safely managed. These matters could in my view be the subject of appropriate conditions such as those proposed by the Council. I also note that the s106 obligation submitted provides for off-site floodwater compensation storage.
23. I therefore consider that subject to appropriately worded conditions, the development would comply with national planning policy including the National Planning Policy Framework, which seeks to steer new development away from areas at the highest risk of flooding, and with Policy D1 of the CS.

Conditions

24. The proposed conditions have been considered. A plans condition is necessary to ensure the development is maintained in accordance with the applications in the s78 appeals.
25. A condition is appropriate to provide for a waste management scheme to deal with large quantities of manure in an area of flood risk. It is suggested that the flood evacuation condition proposed is not necessary as the site is not in flood zone 3. However the site is still in an area at some risk of flooding. In my judgement such a condition, as well one to ensure provision of a surface water

¹ Planning Practice Guidance Flood risk vulnerability classification

drainage scheme for the site, is necessary to ensure the development is appropriately flood resilient and resistant and that it would manage residual risk safely in line with the Framework guidance.

26. A condition is appropriate to ensure that external lighting accommodates a lighting design for bats, including amenity and security lighting. A condition is also required to ensure a landscape planting scheme is put in place and maintained. In light of development having commenced already these conditions, save for the plans conditions, need to be retrospective in form to ensure that effective provision is made. A period of 3 months would be reasonable within which the parties should aim to achieve approval of these matters.

Other matter: Appeal B

27. It is common ground that the submitted plans do not accurately reflect the building as erected. Although this appeal should be decided on the basis of those plans, Appeal A is allowed on ground (a) and planning permission will be granted that would allow the retention of the building as built.

Conclusion on Appeal A on ground (a) and Appeals B, D and E (s78)

34. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted, and that Appeals B, D and E should be allowed.

Appeal C on ground (g)

36. Since planning permission is granted in respect of each of the other appeals, ground (g) does not fall to be considered and no further action is taken in relation to Appeal C. Under s180 of the 1990 Act the notice shall cease to have effect so far as inconsistent with those permissions.

Formal Decisions

Appeal A Ref: APP/V3310/C/17/3180090

37. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an agricultural building on land at Labourham Drove, Cheddar, Somerset BS27 3RP referred to in the notice subject to the following conditions:
- 1) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision schemes for each of the following matters shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation;
 - A a detailed surface water drainage scheme for the site;

- B a "lighting design for bats", including amenity and security lighting that will: identify areas and features particularly sensitive for causing disturbance in or around their resting places or along important routes used to access key areas of their territory, for example, for foraging; and show how and where external lighting will be installed (including through the provision of a lighting and contour plan and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places;
- C a detailed waste management scheme for the site;
- D a detailed landscape planting scheme designed to be completed within six months from the date of approval of the scheme including details of how the trees or shrubs shall be protected and maintained, and any dead or dying trees or shrubs shall be replaced to the satisfaction of the local planning authority for a period of five years following their planting.
- E a flood evacuation plan including details of any early warning systems, rescue and evacuation routes, and methodology to make all users of the building for the time being aware of the plan details and what action is required;

ii) If within 4 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) All the approved schemes shall have been carried out and completed in accordance with the approved timetable and the locations and specifications set out in the schemes.

- 2) Upon implementation of each of the approved schemes A, B, C, D and E specified in condition 1) each of those schemes shall thereafter be maintained in accordance with the approved details.
- 3) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in condition 1), the operation of the time limits specified in condition 1) will be suspended until that legal challenge has been finally determined.

Appeal B Ref: APP/V3310/W/17/3178836

- 38. The appeal is allowed and planning permission is granted for erection of general purpose agricultural building on land at Labourham Drove, Cheddar, Somerset BS27 3RP in accordance with the terms of the application, Ref 17/17/00009, dated 2 February 2017.

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 4073/001; 4073/002; 4073/004; 4073/010.
- 2) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision schemes for each of the following matters shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation;
 - A a detailed surface water drainage scheme for the site;
 - B a "lighting design for bats", including amenity and security lighting that will: identify areas and features particularly sensitive for causing disturbance in or around their resting places or along important routes used to access key areas of their territory, for example, for foraging; and show how and where external lighting will be installed (including through the provision of a lighting and contour plan and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places;
 - C a detailed waste management scheme for the site;
 - D a detailed landscape planting scheme designed to be completed within six months from the date of approval of the scheme including details of how the trees or shrubs shall be protected and maintained, and any dead or dying trees or shrubs shall be replaced to the satisfaction of the local planning authority for a period of five years following their planting.
 - E a flood evacuation plan including details of any early warning systems, rescue and evacuation routes, and methodology to make all users of the building for the time being aware of the plan details and what action is required;
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) All the approved schemes shall have been carried out and completed in accordance with the approved timetable and the locations and specifications set out in the schemes.
- 3) Upon implementation of each of the approved schemes A, B, C, D and E specified in condition 2) each of those schemes shall thereafter be maintained in accordance with the approved details.

- 4) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in condition 2), the operation of the time limits specified in condition 2) will be suspended until that legal challenge has been finally determined.

Appeal C Ref: APP/V3310/C/17/3188711

39. No further action is taken.

Appeal D Ref: APP/V3310/W/17/3188739

40. The appeal is allowed and planning permission is granted for general purpose agricultural building on land at Labourham Drove, Cheddar, Somerset BS27 3RP in accordance with the terms of the application, Ref 17/17/00062, dated 2 August 2017.
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: PL3840/1; PL3840/No2; PL3840/No3; PL3840/No4; PL3840/No5; PL3840/No6.
- 2) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 3 months of the date of this decision schemes for each of the following matters shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation;
- A a detailed surface water drainage scheme for the site;
- B a "lighting design for bats", including amenity and security lighting that will: identify areas and features particularly sensitive for causing disturbance in or around their resting places or along important routes used to access key areas of their territory, for example, for foraging; and show how and where external lighting will be installed (including through the provision of a lighting and contour plan and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places;
- C a detailed waste management scheme for the site;
- D a detailed landscape planting scheme designed to be completed within six months from the date of approval of the scheme including details of how the trees or shrubs shall be protected and maintained, and any dead or dying trees or shrubs shall be replaced to the satisfaction of the local planning authority for a period of five years following their planting.
- E a flood evacuation plan including details of any early warning systems, rescue and evacuation routes, and methodology to make all users of the building for the time being aware of the plan details and what action is required;

ii) If within 4 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) All the approved schemes shall have been carried out and completed in accordance with the approved timetable and the locations and specifications set out in the schemes.

3) Upon implementation of each of the approved schemes A, B, C, D and E specified in condition 2) each of those schemes shall thereafter be maintained in accordance with the approved details.

4) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in condition 2), the operation of the time limits specified in condition 2) will be suspended until that legal challenge has been finally determined.

Appeal E Ref: APP/V3310/W/18/3197242

41. The appeal is allowed and planning permission is granted for agricultural livestock buildings on land at Labourham Drove, Cheddar, Somerset BS27 3RP in accordance with the terms of the application, Ref 17/17/00087, dated 9 November 2017.

1) The development hereby permitted shall be carried out in accordance with the following approved plans: PL3840/12; PL3840/13; PL3840/14; PL3840/15; PL3840/16; PL3840/17; PL3840/18.

2) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 3 months of the date of this decision schemes for each of the following matters shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation;

A a detailed surface water drainage scheme for the site;

B a "lighting design for bats", including amenity and security lighting that will: identify areas and features particularly sensitive for causing disturbance in or around their resting places or along important routes used to access key areas of their territory, for example, for foraging; and show how and where external lighting will be installed (including through the provision of a lighting and contour plan and technical specifications) so that it can be clearly demonstrated that areas

- to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places;
 - C a detailed waste management scheme for the site;
 - D a detailed landscape planting scheme designed to be completed within six months from the date of approval of the scheme including details of how the trees or shrubs shall be protected and maintained, and any dead or dying trees or shrubs shall be replaced to the satisfaction of the local planning authority for a period of five years following their planting.
 - E a flood evacuation plan including details of any early warning systems, rescue and evacuation routes, and methodology to make all users of the building for the time being aware of the plan details and what action is required;
- ii) If within 4 months of the date of this decision the local planning authority refuse to approve any of the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) All the approved schemes shall have been carried out and completed in accordance with the approved timetable and the locations and specifications set out in the schemes.
- 3) Upon implementation of each of the approved schemes A, B, C, D and E specified in condition 2) each of those schemes shall thereafter be maintained in accordance with the approved details.
- 4) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in condition 2), the operation of the time limits specified in condition 2) will be suspended until that legal challenge has been finally determined.

Grahame Kean

INSPECTOR