



Appeal Decisions

Site visit made on 6 September 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Appeal A Ref: APP/G1630/C/22/3298078

Overton Farm, Maisemore, Gloucester GL2 8HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Chaplin against an enforcement notice issued by Tewkesbury Borough Council.
 - The notice, numbered 20/00026/ENFC, was issued on 13 April 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey steel framed portal building ("the development").
 - The requirements of the notice are to: Demolish the building (shown in the approximate position marked X on the plan) and remove from the Land the resultant debris.
 - The period for compliance with the requirement is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (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.
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Appeal B Ref: APP/G1630/W/22/3298544

Overton Farm, Maisemore, Gloucester GL2 8HR

- 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 Stephen Chaplin against the decision of Tewkesbury Borough Council.
 - The application Ref 20/00287/FUL, dated 23 March 2020, was refused by notice dated 16 February 2022.
 - The development proposed is retention of agricultural building to house machinery.
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Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey steel framed portal building on land at Overton Farm, Maisemore, Gloucester GL2 8HR referred to in the notice.

Appeal B

2. The appeal is allowed and planning permission is granted for an agricultural building to house machinery on land at Overton Farm, Maisemore, Gloucester GL2 8HR in accordance with the terms of the application Ref 20/00287/FUL dated 23 March 2020.

Application for costs

3. An application for costs was made by Mr Stephen Chaplin against Tewkesbury Borough Council. This is the subject of a separate decision.

Preliminary matters

4. In a letter dated 25 August 2022 which accompanies the appeal statement, the council confirms that since the refusal of application ref 20/00287/FUL, the Tewkesbury Borough Plan 2011-2031 (TBP) has been formally adopted¹. Accordingly, 'saved policies' which include Policy AGR5 of the Tewkesbury Borough Local Plan to 2011- Adopted March 2006 have been revoked. The current Development Plan policies referred to by the council regarding the appeals are Policies SD4 and SD6 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) - Adopted 11 December 2017 and Policy AGR1 of the TBP. Both parties have referred to policies within the JCS and the recently adopted TBP which are relevant to this appeal.

Matters concerning the notice

5. The appellant has raised issues concerning the validity of the notice under their ground (e) appeal. As some of these matters are more relevant to validity rather than service of the notice, I shall consider those matters here.
6. The appellant claims that the notice is flawed in several ways. These are that the breach is not accurately described to enable the recipient of the notice to know exactly what the breach is and the reason for issuing the notice. They claim: the reasons are muddled and defective because they do not support the council's allegation that there is no agricultural need or justification; unnecessary photographs have been appended; a Farm Business Plan was professionally prepared; and incorrect reference is made to the Development Plan.
7. The notice clearly describes the breach and the steps required to comply with the notice and from reading the submissions, it is apparent to the appellant what the alleged breach refers to and its requirements. Whilst I concur that part of the reasons for issuing the notice appear superfluous, the council states its case that it considers that the building has been erected without an agricultural need or justification. The content of the appellant's Farm Business Plan, having been requested by the council, were responded to accordingly and the decision made alongside the recommendation of the council's rural consultant.
8. While there is a drafting error regarding the correct Development Plan policies as saved policy AGR5 is contained in the Tewkesbury Local Plan to 2011 and does not feature in the Main Modifications to, what was, the emerging Tewkesbury Borough Plan 2011 – 2031. Nevertheless, Policy AGR1 of the now adopted plan was cited in the reason for issuing the notice and this policy is similar to revoked Policy AGR5 of the Tewkesbury Local Plan to 2011 with the addition of the requirement for proposals for new agricultural development to meet the needs of the agricultural business and be reasonably necessary and designed for the purposes of agriculture. The council had considered that due

¹ 8 June 2022

to the progress of the emerging plan², at least moderate weight could be given to Policy AGR1. Furthermore, the appellant has drawn on the relevant policy and has been able to make a case for their appeal. Accordingly, I consider that the allegation and requirements are clearly structured to reflect the development being alleged and the notice complies with s173 of the Town and Country Planning Act 1990 (the Act).

Appeal A – Ground (e)

9. This ground of appeal is that copies of the notice were not served as required by s172 of the Act. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the council, is materially affected. The onus is on the appellant to prove their case.
10. The appellant alleges defects in the notice as follows. It is considered that the notice was incorrectly served on Mr Stephen J. Chaplin instead of Mr Steven J. Chaplin and that it does not provide the council's address. The appellant states that these drafting errors diminish the legal integrity of the notice, pointing towards nullification. Firstly, the error in the spelling of the appellant's name is a common error which does not nullify the notice. The appellant has clearly received the notice and a valid appeal has been received in time.
11. Furthermore, I note the application for costs and the planning appeal has been submitted by Mr Stephen Chaplin, thereby demonstrating the ease at which one can misspell a name. Finally, the notice is accompanied by a covering letter and the requisite explanatory note which complies with Regulation 5 – Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002. These provide the contact address for the council and list the persons on whom copies of the notice had been served. I note the spelling of the appellant's name is correct on the list. Overall, I am content that a copy of the notice was served on the appellant in accordance with the requirements of s172 of the Act.
12. From the evidence before me, it appears that the council served the notice correctly but even if they did not, the appellant has submitted their appeal against the notice within the timeframe and has had an opportunity to argue their case fully during the appeal proceedings. It cannot, therefore, be said that the appellant has suffered any substantial prejudice.
13. The ground (e) appeal therefore fails.

Appeal A – Ground (a) and the deemed planning application, and Appeal B

Main Issue

14. While the reason for issuing the notice refers to Policies SD4 and SD6 of the JCS, these are policies which concern design requirements and landscape. Neither the reasons for issuing the notice or the reason for refusal of the application for planning permission consider these matters. Consequently, I

² The Pre-Submission Tewkesbury Borough plan was submitted to the Secretary of State for Housing, Communities and Local Government on 18 May 2020 for examination. The date of the officer's report for application ref 20/00287/FUL is 17 February 2022.

consider that the main issue with both appeals is whether there is a justified need for the agricultural storage building.

Reasons

15. The surrounding land use is primarily agricultural. However, to the north and west is a commercial utilities yard with buildings and to the northeast is an office complex consisting of converted former agricultural buildings. Both sites are owned by the appellant. The appeal building is sited close to the existing built form and the appellant's residential property, Overton Farmhouse.
16. The appeal building is an open fronted 3-bay steel portal frame structure which has a concrete floor, is clad with box profile composite panel sheeting and has roller shutter doors to provide security. The building measures 6.4m in height and has a floor area of 168sqm. It provides secure storage for equipment such as tractors, toppers, trailers, mowers and hedge cutters to maintain the agricultural land and for storage of fencing equipment and feed racks. At the time of my visit, the building was occupied by agricultural machinery and equipment. I have no reason to dispute the equipment would be capable of being utilised for agricultural purposes on the land.
17. The council considers that there is no current justification for any new agricultural buildings at the site as there were only 4 Gloucestershire heifers and most of the agricultural land was rented out. It argues that there is therefore no 'agricultural business' being undertaken and there is no clear agricultural unit to which the building in question relates. It also considers there could be other buildings at Overton Farm that may be suitable for the proposed use.
18. Policy AGR1 of the TBP allows for agricultural development, to meet the needs of the agricultural business, subject to certain criteria. In the first instance, the proposal must be reasonably necessary and designed for the purposes of agriculture. The policy along with national policy expresses no requirement for a viability test. Nevertheless, the appellant submitted a Farm Business Plan (FBP) dated September 2021³ with the application for planning permission, which provided that the appellant's land holding with Overton Farm extends to 70 acres, of which some 27 acres are in hand. The remainder being let to Hartpury College on a Farm Business Tenancy. Of the 70 acres, approximately 3.2 acres are not in agricultural use, this includes the farmhouse and gardens together with the office complex and utilities yard, the latter two non-agricultural uses have existed for some years and benefit from planning permission.
19. The FBP provides that the appellant proposes to increase the livestock numbers over the next four years and to take back rented land as cattle numbers increase. Indeed, the number of Gloucester cattle has since increased and 4 heifers and 3 calves currently graze the fields at Overton Farm. As part of the ongoing proposal, the appellant aims to keep heifer calves as replacement breeding animals with the surplus sold as breeding stock. Bull calves are to be reared and finished and sold direct to suppliers for rare breed meat. In year 1 it is proposed to keep 16 heifers and breed replacements until a herd of c30 cows is established by year 4. The cattle would be grazed in the spring and through

³ Incorporating a proposed budget for 2022-2025

to the autumn and housed during winter months and hay and silage crops would be cut for fodder.

20. The council's submissions question the need for the building where there is currently no agricultural business being undertaken and therefore no clear agricultural unit to which the building relates. Concerns were also expressed about the financial viability or the sustainability of the farming enterprise. The council did, however, acknowledge that with the plan to take back all the land and create a livestock enterprise, an agricultural unit would be created and thus, 'at some point in the future', the storage building would be on agricultural land as part of an agricultural unit and there would likely be a viable farming business as put forward by the FBP.
21. These matters form the submissions from the council and shaped the reason for refusal of the planning application. However, my attention has been brought to email correspondence between the parties immediately prior to issuing the decision notice. This states that the council's agricultural consultant's only concern raised in the assessment of the reasonable necessity for the building was the potential availability of other buildings for the storage of machinery, particularly since Complete Utilities Ltd ceased trading from the adjacent utilities yard.
22. While this may be the case regarding one of the companies, at the time of my visit, the yard was operating in what appeared to be a commercial manner. Nevertheless, regardless of the possibility of alternative buildings, there is no requirement under Policy AGR1 of the TBP or in the National Planning Policy Framework (the Framework) to explore the option of utilising or adapting existing buildings. Furthermore, the Framework, in supporting economic growth in rural areas to create jobs and prosperity seeks to support the sustainable growth and expansion of all types of business and enterprise in rural areas, including through well designed new buildings. It also seeks to promote the development and diversification of agricultural and other land based rural businesses.
23. I have taken into account that there is limited agricultural activity on the agricultural land at present. However, I am aware that the appellant has recently submitted a planning application⁴ for a livestock building and, in my view, this supports the appellant's aspirations to establish a farming enterprise as set out in the FBP. Furthermore, while it is likely that it is the appellant's aim to create a financially viable business, neither local or national policy require this to justify the development of agricultural storage buildings on agricultural land.
24. Overall, I find the building is of a design that is consistent with its intended use, and it is likely that it would support the development of the agricultural use of the land. Moreover, I consider that the appeal proposal would be reasonably necessary for the purposes of agriculture on the unit and would accord with Policy ARG1 of the TBP. This states that new agricultural development to meet the needs of the agricultural business will be permitted provided that, where appropriate, the proposed development is reasonably necessary and designed for the purposes of agriculture.

⁴ 22/00334/FUL

Planning Conditions

25. No conditions have been suggested by either party. As the building has already been completed, there is no need for a condition to ensure the building is constructed in accordance with the submitted plans in respect of Appeal B.

Appeals A and B - Overall Conclusion

26. For the reasons given above I conclude that the appeal should succeed on ground (a) and against the refusal of planning permission and therefore planning permission will be granted. As the enforcement notice will be quashed, the appeal on ground (g) does not need to be considered and so I need not take any further action in respect of Appeal A.

S A Hanson

INSPECTOR