
Appeal Decision

Inquiry held on 1 November 2022

Site visit made on 1 November 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/C1625/C/21/3286145

**Land at Ashen Plains, Waterley Bottom, North Nibley, Gloucestershire
GL11 6AD**

- 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 D Orchard against an enforcement notice issued by Stroud District Council.
- The enforcement notice was issued on 30 September 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of two agricultural buildings, denoted as 'Barn 2' and 'Barn 3' and shown outlined in black on the attached plans.
- The requirements of the notice are:
 - 1) Remove completely the unauthorised agricultural buildings, Barn 2 and Barn 3 from the land.
 - 2) Remove all resultant materials associated with the actions at (1) from the land and return the land to its form before the erection of the unauthorised buildings the subject of this action.
- The period for compliance with the requirements is 9 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 made on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

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

Application for costs

1. An application for costs was made by Mr D Orchard against Stroud District Council. This application is the subject of a separate Decision.

Preliminary Matters and the Notice

2. The appeal was initially made on grounds (a), (d) and (f). The appeal on ground (f) was subsequently withdrawn by the Appellant.
3. The appeal on ground (d) was made solely in relation to Barn 3. However, prior to the Inquiry the Council advised that they now accept that Barn 3 is immune from enforcement action and invited me to correct the notice to remove Barn 3 from the alleged breach of planning control. I am satisfied that removing Barn 3 from the allegation would not result in any injustice to the Appellant and their appeal on ground (d) thus falls away.

4. I have corrected the breach of control and the requirements of the notice to remove reference to Barn 3. The Inquiry proceeded on ground (a) only.

Appeal on ground (a), deemed planning application

Main Issues

5. The main issues are:

- Whether the development is required for the maintenance or enhancement of a sustainable farming enterprise; and
- The effect of the development on the character and scenic beauty of the landscape, having particular regard to the site's location within the Cotswolds Area of Outstanding Natural Beauty.

Reasons

Agricultural Need

6. Barn 2 has been constructed on land within the Appellant's 20 hectare (ha) agricultural holding. It is an open fronted steel portal framed agricultural building with a floor area of approximately 225sqm and constructed of a mix of concrete blockwork and timber boarding, with a corrugated concrete fibre sheet roof. At the time of my site visit it was being utilised to house cattle.
7. The Appellant's holding comprises approximately 17.5 ha of pastureland and 2.5ha of woodland. There are four agricultural related buildings on the land, including Barn 2, as well as a stable block, menage, and a utility building to support a camping field. The agricultural enterprise utilises the whole of the property for grazing and foraging to rear livestock which include sheep, cattle and pigs.
8. Part of the holding (4.5ha) has planning permission for mixed use of agriculture and equestrian, and a further 2ha has planning permission for mixed use of camping and agricultural. The camping field is managed throughout the year with the grazing of sheep and to produce hay for fodder. This diversified venture supports the agricultural enterprise and links to the pig element, which prior to the Covid-19 pandemic, included 2 sows and a boar for breeding of stock. Some were fattened for own use, killed for sausages, bacon and pork and then sold to campers and as meat boxes locally. The remainder are sold as weaners. Demand during the pandemic and restrictions associated with the camping has meant a reduction in the breeding stock in recent years and currently there are only two weaners. However, the process of re-establishing pig numbers to pre- pandemic has begun.
9. The remaining pastureland is utilised for the cattle (15 x weaned calves and 7 x stores) and sheep enterprise (24 x ewes and 1 x ram) throughout the year, including grazing and producing hay as fodder, which is solely used for the agricultural enterprise. Any haylage and bedding required for the equestrian use is bought in and stored within the stable block.
10. The Appellant's son runs the farming enterprise and his parents run the campsite and offer seasonal labour to the farm when required. It is a family run business and provides full time employment for the Appellant's son and some part time work for his parents. Income is generated from livestock sales, diversified enterprises, including camping and occasional events, and from

claiming the Basic Payment Scheme, with grants available for farmers for managing farmland in England.

11. In support of the appeal, agricultural appraisal reports¹ were undertaken by the Appellant's specialist agricultural advisor who also gave evidence at the Inquiry. The reports include details of the enterprise, including livestock numbers, an overview of the agricultural operations undertaken on a month-by-month basis, and an assessment of the agricultural need for the buildings and their use, including Barn 2. At the Inquiry this evidence was supported by tables and a field plan² to illustrate how each barn and field are utilised.
12. In summary, from the evidence before me and observations on my site visit, Barn 2 provides ventilated sheltered accommodation for the sheep, cattle and bedding. It has mains water and cameras for use during lambing. It is used for storage, sheep handling, lambing, and predominantly for the accommodation of store cattle and weaned calves. During the winter months it is necessary to ensure that calves are warm and dry. I also heard at the Inquiry that a well-ventilated barn is necessary to prevent pneumonia which is a common cause of death in young calves.
13. Barn 2 also provides accommodation for store cattle over the winter months. This is necessary to prevent poaching of the land which damages the soil structure and reduces its fertility. Resting the land over the winter months maximises yields from the grasses in the summer, whilst having the cattle inside enables feed to be controlled, minimises waste, and welfare checks are easier.
14. Barn 2 is also utilised for lambing. The enterprise lambs their flock earlier in the year to benefit from maximum trade at Easter. Lambing at this time of year needs to be inside to minimise mortalities. I heard that benefits also include resting pasture, artificial light, less labour intensive, easier fostering of orphan lambs and equipment to hand.
15. There are three other agricultural related buildings on the site. Barn 1 is a substantial steel portal frame building which is enclosed with blockwork and timber and corrugated metal and concrete fibre sheeting. It benefits from a small kitchen area, toilet, mains electricity and water. In addition, there is a mezzanine floor across part of the building. Observations on my site visit confirmed that the building is predominantly utilised for the storage of machinery, fodder and bedding. Barn 3 is a smaller secure steel portal frame building which is fitted out with shelf racking to the walls and utilised to store expensive power tools, quad bikes and batteries. Barn 4 comprises two loose boxes which house the pigs and has direct access to the woodland in the summer months for foraging.
16. An independent desktop appraisal³ of the agricultural need for Barn 2 was also undertaken on behalf of the Council to aid their consideration of a retrospective planning application for Barn 2. The appraisal considered the financial information provided and projections of output. It concluded that the proposed scale and enterprise mix could be managed and developed into a financially sustainable agricultural activity. It advised that Barn 2 was totally suited to

¹ The Agricultural Need for the Existing Agricultural Buildings, Prepared by TWH Pullin, dated 11 December 2019 and 30 September 2022.

² Document 2 handed up at the Inquiry.

³ Rural Planning Appraisal (2), Prepared by Fox Rural 30 October 2020.

livestock accommodation and for the storage of hay and straw. Moreover, considering the size of the holding, numbers of cattle, sheep and pigs, as well as a requirement for covered storage for hay and straw, the appraisal concluded the size and design of Barn 2 to be justified and necessary.

17. However, it is the Council's case that there is no justification for Barn 2. The Council's witness told the inquiry that Council Members were concerned that the appraisals had dismissed the use of Barn 1 and the stable block as an alternative to Barn 2. They believed the stable block was suitable for livestock use and that Barn 1 was being utilised for events when it could be utilised for livestock with some internal alterations. Furthermore, they were concerned the camping use conflicted with the agricultural/grazing use and that there was insufficient land available for grazing to justify the need for Barn 2.
18. The 'experts' both agree within their reports that the Appellant is developing and managing a sustainable agricultural activity. That activity is supported by the mixed equestrian/agricultural use and a small camping ground which has been approved on the holding, as well as some related events permitted as temporary uses of land by the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
19. The camping ground and events contribute financially to maintaining a sustainable farming enterprise. It was clear from observations on my site visit, and from the evidence given at the Inquiry by the Appellant's agricultural advisor, that the camping use is small scale and does not preclude the grazing of sheep and production of hay as part of the mixed use.
20. Barn 1 is not permitted to be used for events, albeit its toilets and cooking facilities are on occasion used to support educational visits and Duke of Edinburgh camping activities. Moreover, there is a demonstrable need to store fodder inside Barn 1 to minimise loss and maintain a sustainable livestock enterprise. Barn 1 is also providing security and covered storage for agricultural machinery. This reduces theft and the rate of deterioration of machinery thereby reducing costs to the business which would be incurred by more frequent replacement. Furthermore, Barn 1 is fully enclosed and therefore, even if there was space available within it, it is not suitable for the accommodation of livestock, and in particular calves.
21. The Appellant has at least ten horses and planning permission to stable them on the holding. The evidence presented is that it is a common agricultural practice to use sheep, alongside cattle and horses, as a mixed approach to grazing. This practise encourages a strong and even regrowth of grass across the whole area. Moreover, the pasture and land need to be allowed to rest. Allowing livestock to remain on fields over the wettest months can cause damage to the soil structure. Thus, the existing stable building is required to stable the horses and is not available for cattle as well.
22. Considering the evidence produced within the expert appraisals, given orally and cross examined at the Inquiry, and from observations on my site visit, I conclude that Barn 2 is demonstrably required for livestock accommodation and essential for the maintenance of this sustainable farming enterprise. There is therefore no conflict with Policy C15 of the Stroud District Local Plan, adopted 2015 (LP) which makes provision for new development in the countryside provided it is essential to the maintenance or enhancement of a sustainable farming or forestry enterprise within the District.

Character and scenic beauty

23. The appeal site lies within the Cotswold Area of Outstanding Natural Beauty (AONB) and within the Secluded Valleys Landscape Character Area identified by Stroud District Landscape Assessment (SDLA). The National Planning Policy Framework⁴ (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB which has the highest status of protection in relation to these issues. In accordance with the Framework, Policy ES7 of the LP requires priority to be given to the conservation and enhancement of the natural and scenic beauty of the landscape whilst taking account of biodiversity interest and the historic and cultural heritage. Furthermore, Policy ES7 requires consideration to be given to conserving or enhancing the special features and diversity of the different landscape types found within the District and will only permit development where the location, materials, scale and use are sympathetic and complement the landscape character, and natural features that contribute to the landscape character and setting of the development are retained and managed appropriately in the future.
24. The appeal site comprises many of the key characteristics identified within the SDLA for its character type, including, farmed pastoral landscape, enclosed, secluded character, and extensive bands of deciduous ancient woodland. Barn 2 is a modern agricultural building, and its scale, form and materials of construction are typical of agricultural buildings within the landscape and thus appropriate to its location. Furthermore, it has been positioned adjacent to existing barns and is not an isolated structure. There is no evidence that its siting has impacted on any of the natural features that contribute to the landscape character. The farmed pastoral landscape remains intact, and Barn 2 supports that farming activity and is thus sympathetic to the landscape character.
25. I have taken into consideration the Landscape and Visual Appraisal Report (LVA)⁵ prepared in support of the Appellant's appeal, and I concur that within the vicinity of Barn 2 views are very limited, with the woodland edge forming a visual barrier from the wider landscape. Furthermore, the barn is not visible from any public right of way in the vicinity of the site, and by reason of the site's topography, it is not visible to the public from the site's camping ground either. Considering the viewpoint locations (Appendix 1 of LVA), the only public view of the barn is from the top of the Tynedale Monument, approximately 34m above ground level. This is only a distant view of the barns roofscape with the view dominated by the rolling landform, thick hedges, trees and woodland.
26. In accordance with the provisions of Policy ES7 of the LP the Appellant has taken the opportunity to strengthen the landscape framework around Barn 2 and produced landscaping proposals to create a new northern hedgerow boundary on a low bund with stock proof fencing. Those proposals will reinforce the landscape's natural features and safeguard against encroachment into the woodland edge.
27. For the reasons given above, I conclude that Barn 2 is well located and sympathetic in use to the landscape. Nestled in the corner of the field, close to

⁴ Paragraph 175, National Planning Policy Framework.

⁵ LVA Report, prepared by Cambium Landscape Architects.

existing barns and screened by the neighbouring woodland edge, it conserves the landscape character and scenic beauty of the AONB. Consequently, there is no conflict with the development plan as a whole, including Policy ES7 of the LP, the aims of which are set out above. I also find no conflict with the Framework.

Other Matters

28. I have taken into consideration the concerns raised by North Nibley Parish Council and the planning history of the site. However, I have found that all the agricultural buildings on the site are essential to the maintenance of this sustainable farming enterprise. None of those buildings have been granted permission for a change of use to a non-agricultural activity and consequently Policy E15 of the LP is not relevant to the development the subject of this appeal case. I therefore give this consideration no weight.

Conditions

29. Considering advice in the Framework and Planning Practice Guidance, in the interest of landscape and biodiversity enhancement it is reasonable and necessary to impose a condition to secure a scheme of enhancement of biodiversity through the provision of bird and bat boxes and to require the proposed landscaping scheme to be implemented and maintained.
30. The purpose of condition 1 below is to require the Appellant to comply with a strict timetable for dealing with biodiversity enhancement which needs to be addressed to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the building would have to be removed.

Conclusion

31. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

Formal Decision

32. It is directed that the enforcement notice be corrected by:

- the deletion of the words "two agricultural buildings, denoted as 'Barn 2' and 'Barn 3' and substitution with the words "an agricultural building, denoted 'Barn 2' " in paragraph 3.
- the deletion of the words "buildings, Barn 2 and Barn 3" and substitution with the words "building, Barn 2" in paragraph 5.1).
- the deletion of the word "buildings" and substitution with the word "building" in paragraph 5.2).

33. Subject to these corrections the appeal is allowed, and the enforcement notice is quashed. 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 an agricultural building (Barn 2) on land at Ashen Plains, Waterley Bottom, North Nibley, Gloucestershire GL11 6AD, subject to the following conditions:

- 1) The agricultural building hereby permitted shall be demolished to ground level and all the materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within two months of the date of this decision a scheme for the enhancement of biodiversity through the provision of bird and bat boxes shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme 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) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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

- 2) All planting, seeding or turfing comprised in the approved details of landscaping, as detailed on Drawing Reference: 1500-01, dated September 2022 produced by Cambium Landscape Architects and included in the Appellant's appeal submissions, shall be carried out in the first planting and seeding seasons following the date of this decision; and any trees or plants which within a period of 5 years from the date of this decision die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Peter Wadsley of Counsel, instructed by Merrett & Co. Solicitors.

He called

Marcel Watkins, BA (Glos), CMLI, of Cambium Landscape Architects.

Tom Pullin, MRICS, FAAV, of Voyce Pullin, Rural Surveyors.

Ms Abigail Snook, MRTPI, of MSP Town Planning and Architecture.

FOR THE LOCAL PLANNING AUTHORITY

Jeremy Patterson, Solicitor, of One Legal.

He called

Martin Baxendale Councillor Stroud District Council.

DOCUMENTS submitted at the Inquiry

- 1) Tables and Field Plan illustrating field and barn use throughout the year.
- 2) Google Image of Camping Field.