
Appeal Decisions

Site visit made on 25 October 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2022

Appeal A ref: APP/Z2315/C/22/3302319

Land at Tattersalls Farm, Hurstwood Village, Worsthorne, Burnley BB10 3LG

- 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 Mrs L Worswick against an enforcement notice issued by Burnley Borough Council.
- The notice was issued on 31 May 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last four years, the material change of use of the land from agriculture to a hospitality venue, the erection of marquees and structures associated with the use, the creation of an access gravel track, parking area and external lighting.
- The requirements of the notice are:
 - (1) cease the unauthorised use as a hospitality venue.
 - (2) remove all unauthorised structures from the land.
 - (3) remove the access track and parking area including all surfacing materials and re-instate the land to its agricultural form.
 - (4) remove all external lighting.
- The period for compliance with the requirements are:
 - (1) cease the use of as a hospitality venue within 30 days from the date this notice takes effect.
 - (2) remove all unauthorised structures, hard surfacing and external lighting and reinstate the land to its agricultural form within 90 days from the date that this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/Z2315/W/22/3305056

Hurstwood Lane, Hurstwood, Burnley BB10 3LF

- 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 Mrs L Worswick of Simply Fields Weddings and Events Ltd against the decision of Burnley Borough Council.
 - The application Ref FUL/2022/0235, dated 27 April 2022, was refused by notice dated 18 July 2022.
 - The development proposed is the change of use of land from agriculture to hospitality venue, erection of temporary building, and creation of access track and parking area.
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Summary of Decisions

1. Appeals A and B are dismissed, and the enforcement notice subject of Appeal A is upheld with the corrections and variations set out under the Formal Decision.

Preliminary matters

2. As the planning application subject of Appeal B had yet to be determined by the Council when the enforcement notice was served, ground (a) and a deemed planning application in respect of Appeal A could not proceed. However,

before the site visit took place, Appeal B was lodged and I have been able to consider the appeals at the same time.

3. The addresses set out for Appeals A and B above have been taken from the enforcement notice and the planning application form. However, it is clear to me that they relate to the same site edged red relating to land off Hurstwood Lane and that there are no issues with considering the appeals on this basis.
4. The description of development for Appeal B refers to the 'erection of temporary building' however the submitted layout plans show a toilet block, main marquee and a building labelled as 'storage'. The latter is in fact a storage container. The marquee and toilet block were not present on the land when I visited, but the bare areas of soil indicating their layout and siting corresponded with the submitted layout plans. Based on the entirety of the submitted evidence, it seems appropriate to base my decision on the description of development found on part E of the appeal form. This states "change of use of land from agriculture to hospitality venue, erection of related structures, creation of access track and parking area." I have considered Appeal B on this basis.
5. The parking spaces shown on the Proposed Site Layout plan are not formalised on the ground. This land remains grassed here, so there is no hard surfacing. The appellant states that this will remain the case, and people will be helped to park. The extent of hard surfacing near to the main body of the site broadly corresponds with the area shown on the Roof Plan. This continues into the site and around the location of the marquee and to the toilet block. The hard surfacing extends in the other direction to the road from an access gate.

Application for costs

6. An application for costs was made by Burnley Borough Council against Mrs L Worswick in respect of Appeal B. This application is the subject of a separate decision.

Appeal B

7. The main issues in respect of Appeal B are: a) the effect of the proposal on the rural economy and the landscape character of the countryside; and b) the effect of the proposal on the living conditions of nearby residential occupiers, with particular regard to noise, disturbance and lighting.

Rural economy and landscape character of the countryside

8. The appeal site is located within the open countryside to the north of Hurstwood Lane. The site is associated with Tattersall Farm, which can be found in the village of Hurstwood to the south-east. Agricultural fields surround the site, which is set back from the road. Dry stone walls enclose the main part of the site, which is broadly level, but it sits within a context of land rising and falling to and from the appeal site and an undulating landscape more widely. Public Right of Way (PROW) No. 41 extends from the lane before passing next to, but behind a dry-stone wall to the appeal site, and onwards in a northerly direction to Worsthorne.
9. Policy EMP5 of Burnley's Local Plan (Local Plan) outlines that proposals for establish new businesses, tourist facilities including local retail uses in the open countryside will be supported where these meet the other relevant policy requirements of the Plan and subject to a number of criteria. Of these, criterion a), b), d) and e) are relevant to this issue.

10. Criterion b) requires proposals to comprise of uses and services appropriate to a rural area. The supporting text to the policy relates to the paragraph 84 of the current National Planning Policy Framework (the Framework) which says planning decisions should enable the development and diversification of agricultural and other land rural businesses; and sustainable rural tourism and leisure developments which respect the character of the countryside.
11. The proposal relates to a rural wedding and events venue that offers a unique experience based on its countryside location and the views that the site affords. These factors will help attract people to the venue to hold their special day.
12. The proposal is not a traditional rural business, but it is diversification of Tattersall Farm which has been a long-term part of the rural community. The proposal would be likely to aid the longevity of the farm. The venue would widen the choice of wedding venues in Burnley and bring with it associated spending in the local economy, particularly with the 'Burnley First' approach that has been adopted to secure economic benefits locally. The use would also provide direct jobs and indirectly support other jobs and businesses in the local economy. The venue could also be used for other events, including those within the local community. I therefore consider the proposal accords with Local Plan Policy EMP5 b) and Framework paragraph 84.
13. However, both the development plan and the Framework also place emphasis on landscape character and the beauty of the countryside. Local Plan Policies NE3 and EMP5 a), d) and e) seek, among other things, proposals to respect and where possible, enhance and restore landscape character, as appropriate to their nature and scale; and be located within or immediately adjacent to the Development Boundaries or are well related to an existing group of buildings.
14. The appeal site lies within the landscape character area of the Calder Valley. Both parties' comment on whether this is the correct landscape character area with reference also made to the Trawden Fringe character area which lies close to the site. However, on the ground, the appeal site and its surroundings sit within an open, rural and a largely undeveloped landscape characterised by upland pastures enclosed by stone walls. Agricultural activity, and typically grazing predominates. The site is elevated on the valley side between Wosthorne and Hurstwood. Tree cover in the immediate area is sparse, but there are small to medium sized woodlands more widely. Long distant panoramic views to Pendle to the north, Mellor Ridge to the north-west, Cliviger to the west and down into the more developed valley bottom and lower valley sides of the Calder Valley are available. The Hurstwood Conservation Area (HCA), is around 350 to 400 metres away to the south-east.
15. The site lies outside of, and not immediately adjacent to Hurstwood, nor is it well related to an existing group of buildings. The height of the marquee may be relatively low, but it is still a structure of considerable size and is development where there was none previously, and at a distance from any other development. Although there are dry-stone walls to assist with screening the lower parts of the marquee, it would extend well above them. The design and layout of the marquee is functional for the intended use, but it does not take any reference from its surroundings. Cladding the elevations and covering the roof with a similar coloured material would reduce its effect compared to an off-white finish and, to the naked eye, would be a jarring addition in the landscape, but neither means that the marquee respects the site's rural landscape character due to its scale, siting, layout and design.

16. The toilet block and storage container are limited in scale and positioned closer to the existing walls which would help screen them. Yet, their presence would not respect the site and the surrounding area's landscape character as they would be urban and utilitarian structures that are out of keeping with the area.
17. In this location where the landscape is dark once the sun sets, lighting could be a visible and a harmful detractor. Nevertheless, a planning condition could secure satisfactory external lighting details that are suitable for the landscape if I were minded to allow Appeal B.
18. Access to and within the site would be facilitated by a track which has been formed on site. The land was previously a grassed agricultural field. The length of access is significant and whilst it poses no issue for users of the PROW, it would not respect the landscape's character due to its length and function which would facilitate comings and goings in connection with the venue.
19. Vehicles may come and go, but the parking area would facilitate a concentration of vehicles at certain periods of time that would jar with the open, rural and a largely undeveloped landscape. The appellant has confirmed that it is to remain grassed, yet the Landscape Rebuttal indicates that a grass reinforcement system would be used. There are no details of the latter before me, and the appellant's case is unclear in this respect. As such, it would not be possible to precisely frame a planning condition.
20. The access within the main body of the site has been designed and laid out specifically to provide access to the marquee and toilet block. However, the proposal would not lead to capacity issues on the local highway network as any effect would be temporary and linked to the use.
21. The appellant wishes to use the site as a wedding venue due to its intrinsic character and beauty, and efforts have been made to minimise the proposal's impact. That said, the marquee and the other structures would be in situ for up to 6 months a year. The greatest effect would be felt during this seasonal period, and the structures could be annual features in the landscape, thereby causing harm to landscape character each year as they would be plainly visible from the road and the PROW next to the site and draw receptors' eyes. In any event, the access track would be a permanent feature in the landscape. The storage container in situ when I visited the site could easily be removed, but given that it remained in place after the other structures were removed this year, it is an indication that it could be a permanent fixture on the land.
22. The landscape may not be rare or distinctive, but it is sensitive to change due to its simple and open nature, and its open aspect within the wider landscape. It also holds local scenic value and recreational value due to the PROW. I note the conclusion of the appellant's Landscape and Visual Appraisal and Landscape Rebuttal. However, in my own view, the proposal has and would likely lead to a minor adverse effect on the landscape's character, even though I recognise the effect would reduce outside of the seasonal period of use.
23. Reseeding the access route out of season may lessen its effect when viewed from the south, but grass would need to quickly establish and there is no indication of how effective this measure may be. Planting a small woodland copse to the southeast of the appeal site could limit views of the structures from properties at Spencer Close, and help the scheme respond to the wider landscape. Over time this would develop, but it would not mitigate the harmful

visual impact that the proposal would cause from other viewpoints.

Fallback positions

24. Three fallback positions are put forward by the appellant concerning the access track and parking area, other agricultural permitted development and temporary buildings and uses of land. Each are principally related to the scheme's effect on the landscape character of the countryside.

Access track and parking area

25. According to the appellant, the agricultural unit is the area covering Simply Fields and not the wider detached farmstead. Having regard to Class B (d) or (e), Part 6 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), the access track and parking area would need to be reasonably necessary for the purposes of agriculture within the unit. The appellant submits that they are conducive to agricultural operations such as facilitating access and egress, keeping and parking farming vehicles and other agricultural paraphernalia.
26. Even if I were to consider the part of the access track between the road and the dry-stone walls around the main body of the appeal site had a real prospect of taking place, there is no distinction between it and the part within the main body of the appeal site. The access track within the dry-stone walls is laid out specifically for the proposed use and there is no evidence why the same layout would be reasonably necessary for the agricultural operations stated given its width and alignment. As they are a single entity, the access track would not accord with Class B (d) or (e), Part 6 of Schedule 2 of the GPDO. On this basis, there would not be a greater than a theoretical possibility that this fallback position might take place.
27. The proposed parking area is to remain grassed according to the appellant, though I note reference to a grass reinforcement system. Notwithstanding this, it is theoretically possible for the area to be hard surfaced under the stated class of the GPDO. However, my findings in respect of the access track mean that I consider that there is not a real prospect of the parking area being hard surfaced as it would be some way from the road and not near any buildings. Hence, this fallback position carries no weight.

Other agricultural development

28. Part 6 of Schedule 2 of the GPDO does permit the erection of a building under Class A subject to prior approval. Even if the appellant is incorrect insofar as their assessment of the 'agricultural unit' and Class A applies, a building needs to be reasonably necessary for the purposes of agriculture within that unit. However, the appellant does not indicate why a building on the land may be needed for agricultural purposes. The land around the appeal site is used for grazing and the farmstead is a short distance away. Both factors lead me to consider that there is not a greater than a theoretical possibility that development of a new building under the GPDO for agricultural purposes might take place. Thus, this fallback position carries no weight.

Temporary buildings and uses of land

29. There are two permitted uses in Class B, Part 4 of Schedule 2 of the GPDO, and a wedding venue is not either of them. The provision of moveable structures is therefore irrelevant as the use of the land on a temporary basis is not permitted by the GPDO. There is no real prospect of this development taking

place under this class of the GPDO, so I give it no weight.

Conclusion on first main issue

30. I conclude, on this issue, notwithstanding my finding in respect of the rural economy, lighting and traffic levels, that these matters are outweighed by the significant harm that the proposal causes and would cause to the landscape character of the countryside. The proposal therefore conflicts with Local Plan Policies NE3 and EMP5 a), d) and e) which seek, among other things, proposals to respect and where possible, enhance and restore landscape character, as appropriate to their nature and scale; and be located within or immediately adjacent to the Development Boundaries or are well related to an existing group of buildings. Conflict is also caused with Framework paragraph 174b) as the proposal would not contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. The fallback positions advanced do not carry any weight for the reasons set out and do not outweigh my conclusion on this issue.

Living conditions

31. Local Plan Policy EMP5 f) requires proposals to not have an unacceptably negative impact on residential amenity. A similar aim is outlined in Local Plan Policy SP5 g) and specific considerations relating to light and noise pollution can be found in Local Plan Policy NE5 4) and 5).
32. The nearest residential properties are roughly 200 and 300 metres away to the southeast and around 350 metres away to the north. The venue can typically hold between 60 and 100 persons, though the open space in front of the marquee is likely to be used as a spill out area, especially given the views available. The appellant proposes a guest limit of 100 persons.
33. Owing to the venue's operation over recent times, noise and disturbance concerns have been raised by residents. There is also general activity from comings and goings when events are held, with these extending into more sensitive night time hours. Whilst some of the concerns raised may not have been statutory nuisances, this does not mean that the proposal has not and may not cause a negative effect on residents' amenity.
34. Hurstwood is a popular spot for people from which to enjoy walks around the area, but such activity falls away during the evening hours, at which time the proposal could potentially have a greater effect.
35. The Council's Environmental Protection Team raised no objection to the proposal, regarding noise, light, dust or odour nuisance, subject to the imposition of planning conditions. The appellant has produced an Event Management and Operations Plan which outlines the: hours of operation; the seasonal use each year; a limitation on guest numbers; management measures around travel to and from the venue, staff, parking and the use of a wedding co-ordinator to run and manage the event. This, along with the suggested planning conditions in respect of: when the use can operate, when the associated structures can be on the land, music noise levels, the use of a noise control device, self-closing door mechanisms for the marquee, no reproduction of music or other sound outside of the marquee, and any external lighting, leads me to consider that the proposal would not have an unacceptably negative impact on residential amenity. These measures would provide adequate controls and I note residents' comments on the appellant's more recent management of the site.

36. Interested parties are concerned about potential conditions not being adhered to, but that is conjecture, and the Council does hold remedial powers in the face of such contraventions. Furthermore, I am aware that a premises licence has been granted. However, this has not had any bearing on my finding on this issue, which is based on planning merits alone.

Conclusion on second main issue

37. I conclude, on this issue, that the proposal would not, subject to planning conditions, have an unacceptably negative impact on the living conditions of nearby residential occupiers, with regards to noise, disturbance and lighting. In respect of this issue, the proposal would accord with Local Plan Policies EMP5 f), SP5 g) and NE5 4) and 5) together with Framework paragraph 85. Jointly, these seek, among other things, proposals to not have an unacceptably negative impact on residential amenity and are sensitive to the surroundings.

Other matters

38. There is no visual connection between the appeal site and the HCA or any listed buildings within it due to local topography and intervening built form. The HCA contains 16th and 17th century properties of historic and architectural merit that have largely remained unspoilt. The rural open countryside contributes to the village's setting. By using the site for up to 6 months of the year, there would be no change to that when the site is not in use. When the site is in use and all the structures are present, this would be harmful development in a rural landscape, but the setting afforded to the HCA and listed buildings would not change to the extent that it would harm the heritage assets and how they are experienced. As such, the proposal would have a neutral effect on them, but this is not, in itself, an identifiable benefit.
39. The appeal site lies just over a kilometre from the South Pennine Moors Special Protection Area (SPA). However, given the nature of the use as a venue and on a seasonal basis each year, it will not likely see an increase in recreational pressure to the SPA with visitors travelling to and from the venue to their home or other accommodation. The field is also amenity grassland not farmland. On this basis, there will be no likely significant effect on the SPA.

Overall conclusion on Appeal B

40. I have not found the scheme subject of Appeal B to be harmful in respect of nearby occupiers' living conditions, and it would support the rural economy through diversification of Tattersall Farm, but these matters do not alter or outweigh the landscape character harm that the proposal has and would cause. Hence, I conclude that the proposal would not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.

Appeal A on ground (f)

41. The appellant has confirmed that the parking area is to remain grassed as part of Appeal B. Consequently, I shall delete reference to the parking area from the requirements as there are no hard surfacing materials on the land.
42. Given this, along with the situation on the ground, I consider that the notice's reference to 'access track' is clear and precise as it facilitates both vehicular and pedestrian access, albeit the access track is only likely to be suitable for pedestrian use to the south of where the marquee would be sited and towards

the toilet block. I have also considered the appellant's fallback position in respect of the access track, but I have set out why this carries no weight.

43. Nevertheless, the notice requires the appellant to remove the access track, all surfacing materials and reinstate the land to its agricultural form. It is not clear what is meant by the term 'agricultural form' given the range of activities that fall within the scope of agriculture. The term could be interpreted to be different things by various people. The photographs before me show the condition of the land on which the access track has been formed. It would therefore be appropriate to vary the notice and its requirements so that the land is reinstated to its previous condition.
44. Therefore, for the reasons set out, the appeal succeeds on ground (f).

Appeal A on ground (g)

45. The time periods for compliance with the enforcement notice fall into two parts. The appellant does not raise issue with the time period of 30 days in respect of the use. I agree as the use could be ceased relatively quickly.
46. A longer time period is sought for compliance with the second part relating to the unauthorised structures, hard surfacing and external lighting. Six to nine months are sought by the appellant to reinstate the land to its agricultural form, given the likely inclement weather in an exposed part of the Pennines.
47. I have found the hard surfacing to be harmful and the fallback position advanced does not justify it remaining in situ as the appellant has not demonstrated that it is reasonably necessary for the purposes of agriculture. I am mindful that the structures on the site do not have foundations or would not need the ground to be broken to be fixed, and the marquee and toilet block were not on site at the time of my visit. However, the access track is of some length and returning the land to its previous condition would involve works that would be more than just scraping away the stone and allowing grass to seed naturally. Bearing this in mind, together with the time of year and the site's location, I consider a 6 month period is necessary so that the appellant has a reasonable opportunity to carry out the removal of the unauthorised structures, hard surfacing and external lighting and to reinstate the land to its previous condition. Hence, to this extent the appeal succeeds on ground (g).

Other matters

48. There have been several letters of support received in relation to the enforcement notice appeal. The points raised relate to the planning merits of the scheme and not the grounds (f) and (g) that are subject of Appeal A. Nevertheless, the points raised have also been raised in Appeal B, and I have already addressed these points in my assessment of Appeal B.

Formal Decisions

49. I have found that the scheme subject of Appeal B does not accord with the development plan, and there are no material considerations that indicate I should take a decision other than in accordance with this. Therefore, I conclude that Appeal B is dismissed.
50. In respect of Appeal A, the enforcement notice is corrected and varied by:
- Deleting the sentence under 5 (2) and replacing it with 'remove all unauthorised structures associated with the use.';

- Deleting the sentence under 5 (3) and replacing it with 'remove the access track and all surfacing materials and re-instate the land to its previous condition.'; and
- Deleting the sentence under 6 (2) and replacing it with remove all unauthorised structures associated with the use, hard surfacing and external lighting and reinstate the land to its previous condition within 6 months from the date that this notice takes effect.

51. For the reasons given above, subject to the corrections and variations set out above, Appeal A is dismissed, and the enforcement notice is upheld.

Andrew McGlone

INSPECTOR