



Appeal Decisions

Inquiry held on 6 September 2022 and 1 and 2 December 2022

Site visit made on 2 December 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

Appeal A Ref: APP/R1038/C/21/3288613

Land at Brindwood House, Millthorpe Lane, Holmesfield, Derbyshire, S18 7SA

- The appeal was made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal was made by Mr Robert Hadfield against an enforcement notice issued by North East Derbyshire District Council.
- The notice, numbered 21/00020/EN_COU, was issued on 1 November 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a building to a use as a single dwellinghouse (use class C3), in the location shown filled purple on the attached plan¹ (hereinafter referred to as "the Building").
- The requirements of the notice are to: (a) Cease the use of the Building as a dwellinghouse; and (b) Remove from the Land all fixtures and fittings installed inside the Building to facilitate its use as a single dwellinghouse.
- The periods for compliance with the requirements are: 3 months in respect of requirement (a) and 4 months in respect of requirement (b).
- The appeal was made on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/R1038/C/21/3288771

Land at Brindwood House, Millthorpe Lane, Holmesfield, Derbyshire, S18 7SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Hadfield against an enforcement notice issued by North East Derbyshire District Council.
- The enforcement notice, numbered 21/00020/EN_OD, was issued on 1 November 2021.
- The development to which the permission relates is: (1) Without planning permission, building operations comprising the erection of an L-shaped garage building, in the approximate position shown filled blue on the attached plan; and (2) Without planning permission building operations, comprising the erection of a building in the approximate position shown filled green on the attached plan hereinafter referred together [*sic*] as "the Unauthorised Buildings".
- The requirements of the notice are to (a) demolish the Unauthorised Buildings, including any hardstanding, foul drainage connections and/or buried tanks and remove all materials arising from their demolition from the Land; and (b) Reseed the ground following compliance with step (a) above, with a general agricultural grass seed mix (Emorsgate EM1 or similar).
- The periods for compliance with the requirements are: 3 months in respect of requirement (a) and 4 months in respect of requirement (b).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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.

¹ References to the attached plan are to the plan attached to the enforcement notice.

Decisions

Appeal A Ref: APP/R1038/C/21/3288613

1. Appeal A was withdrawn on resumption of the inquiry on 1 December 2022. Accordingly, no further action will be taken in connection with it, save in relation to the Council's costs application.

Appeal B Ref: APP/R1038/C/21/3288771

2. It is directed that the enforcement notice is corrected and varied by:
 - (i) inserting "to" between "referred" and "together" in section 3;
 - (ii) deleting from the requirement in section 5(a) the words, "including any hardstanding, foul drainage connections and/or buried tanks and";
 - (iii) deleting the requirement in section 5(b), and substituting, "(b) restore the Land to its condition before the breach took place"; and
 - (iv) substituting 6 months as the period for compliance with requirement (a), and 8 months as the period for compliance with requirement (b).
3. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

4. Costs applications were made by the Council in relation to both appeals. Those costs applications will be the subject of a separate decision document.

Preliminary Matters

5. The inquiry was opened in a virtual format on 6 September 2022. It was adjourned that day, at the request of the appellant's agent, for reasons relating to his personal circumstances.
6. Appeal B was initially made on grounds (a), (c) and (f). However, ground (c) was withdrawn by email on 5 October 2022 and, without objection from the Council, ground (g) was added when the inquiry resumed on 1 December 2022. I am satisfied that no one was prejudiced by that addition.
7. My labelling of the appeals as 'A' and 'B' reflects the fact that the now withdrawn appeal concerning the change of use of a building to a dwelling was seen as having significant consequences for the other appeal. It was more naturally considered the 'lead appeal', and therefore I and the parties have referred to it as appeal A.
8. Although both appeals were following the inquiry procedure, this was necessitated by the fact that ground (d) was cited in appeal A; the facts were in dispute and cross examination under oath was considered necessary. However, when I adjourned the inquiry on 6 September 2022, I confirmed that the issues on appeal B could be addressed through a 'round table' discussion in the inquiry.

9. Appeal A being withdrawn, the inquiry consisted primarily of a round table discussion, without formal examination in chief, cross-examination and no witnesses were under oath. Indeed, the appellant did not attend and relied on the evidence of his agent and submissions from counsel. However, formal opening and closing submissions were made and I conducted an accompanied site inspection, during which the merits of the appeal were not discussed.
10. Before resuming the inquiry, I also carried out an unaccompanied inspection of the area on 30 November 2022, during which I walked public footpath NE11/26/2 to the north-east and north of the appeal site and viewed from New Road to the south. Before the accompanied site visit on 2 December, I also viewed the site unaccompanied from Johnnygate Lane to the south-east.

APPEAL B (the remaining appeal)

The Notice

11. There is a minor typographical error in section 3 of the notice the subject of appeal B and I shall correct this, being satisfied that no injustice will be caused.

Ground (a)/the deemed application for planning permission

Main Issues

12. The appeal site lies in the Green Belt (GB). As confirmed in the Statement of Common Ground (SOCG), the parties agree that both the unauthorised buildings referred to in the notice constitute inappropriate development in the GB, having regard to the National Planning Policy Framework (the Framework) and Policy SS10 of the North East Derbyshire Local Plan (LP) 2014 – 2034, adopted November 2021. Accordingly, the main issues on ground (a) are:
 - the effect of the buildings on the openness of the GB;
 - the effect of the buildings on the character and appearance of the landscape; and
 - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

13. As I could grant planning permission for one or both buildings, I need to assess the effect of each.

Openness

14. The concept of openness has both spatial and visual aspects. The SOCG says the building shown filled green on the notice plan ('the Green Building') is 5.9m high to the ridge, and the appellant's drawings indicate it has a footprint of just over 19m by 6.5m. The Council's oral evidence that its volume is approximately 600m³ was not contested, though this was stated more specifically in the Council's closing as 587m³. In any event, it represents a substantial mass of new built development and, even if it could not be seen from any public vantage points, it significantly reduces the openness of the GB in spatial terms.

15. However, the Green Building can be seen from significant sections of New Road, near the bottom of the valley to the south. From here, notwithstanding an element of filtering by hedgerows and trees, and despite the backdrop of more vegetation and rising land to the north, the Green Building is a prominent and substantial new structure.
16. That building can also be seen from the rising section of Johnnygate Lane to the southeast, on the opposite valley slope. At these distances, given its overall scale and its design, which incorporates large windows, including gabled dormers, it looks like a sizeable additional dwelling, next to Brindwood House. I was able to compare the current view with a Google Street View image² from before the development was carried out, and the change is significant. I note the appellant's claim that the building's materials will weather over time, but this could only marginally reduce its prominence.
17. From the appeal site, I could see a farmstead and some housing towards the top of the hillside to the south, above the wooded areas. The Green Building will be visible from those private properties, and much of the private open land in between. In all the circumstances, it significantly reduces openness in visual, as well as spatial terms and, given the amount of glazing, that visual impact would be exacerbated, if the windows were lit at night.
18. Although the Green Building is seen in the context of others, namely Brindwood House and Brindwood Lodge and, in some views, other buildings further up the slope to the north, it adds to the impression of urban sprawl. The National Planning Policy Framework (the Framework) indicates that the fundamental aim of GB policy is to prevent urban sprawl, by keeping land permanently open.
19. The building shown filled blue on the notice plan ('the Blue Building') is an L-shaped structure. According to the SOCG it measures 4.9m to the ridge and the appellant's drawings indicate it has a footprint nearly 14m wide, with a maximum depth of just over 10m, and a minimum of nearly 6.5m. The Council's uncontested oral evidence was that it has a volume of 387m³. Though smaller than the Green Building, it is nevertheless a substantial structure which also significantly reduces the openness of the GB in spatial terms.
20. Visually, the Blue Building is less prominent than the Green Building. It is in the north-eastern corner of the appeal site, with hedges to the north and east. Furthermore, though its timber cladding is not consistent with the vernacular stone, its appearance from a distance is a little more akin to an agricultural or equestrian building than the markedly domestic appearance of the Green Building. To that extent it is a little more appropriate to a rural setting, and this may slightly reduce its impact on openness, in visual terms.
21. Nevertheless, like the Green Building, the Blue Building can be seen from New Road, Johnnygate Lane and large tracts of private open land to the south. It also lacks an intimate relationship with Brindwood House, extending development markedly further to the east and adding to the impression of urban sprawl.
22. Individually, and taken together, notwithstanding the extent of hard surfacing before the buildings were constructed, the Green Building and the Blue Building

² Inquiry Document (ID) 11.

are substantial, permanent structures which significantly reduce the openness of the GB, and add to urban sprawl, contrary to the fundamental aim of GB policy. Even though it is likely that vehicles would have been parked on the hard surface, their impact would have been less significant than these large, permanent buildings. Furthermore, even with the buildings in place, vehicles could still be parked in the open as well.

Character and appearance

23. LP Policy SDC3 says that, among other things, proposals will only be permitted where they would not cause significant harm to the character, quality, distinctiveness, or sensitivity of the landscape. Furthermore, they should be informed by and be sympathetic to the distinctive landscape areas identified in the Derbyshire Landscape Character Assessment and the Areas of Multiple Environmental Sensitivity. They should also contribute to the conservation and enhancement, or restoration and re-creation of the local landscape, taking into account its wider landscape character type.
24. The site lies within a Primary Landscape Area, the category with the highest sensitivity, and which is most likely to be affected by change or development. It is in the Derbyshire Peak Fringe & Lower Derwent character area and within the Wooded Slopes and Valleys character type.
25. The 'Part One: Landscape Character Descriptions'³ identifies the key characteristics of the built environment in this character type. It says the "majority of historic buildings are constructed of local sandstone traditionally roofed with stone slates. Farmsteads are dispersed throughout the landscape, though there are occasionally clusters of farmsteads and cottages."
26. The Green Building is oak framed, and whilst its lower sections are faced with stone, and its roof is of natural slate, the upper sections are timber clad. This building does not conform to the local vernacular. Being entirely timber clad, with timber doors, the Blue Building is similarly out of character, though I accept this is true of other buildings in the locality.
27. More importantly however, prior to this development, Brindwood House and Brindwood Lodge together formed the eastern limit of the dwellings in Millthorpe. The new buildings are laid out in a linear arrangement across the contours of the site. Notwithstanding the prior existence of hardstanding and parked vehicles, and the location of other buildings further to the north, individually and together, these new buildings significantly extend substantial built development out into the open rural landscape. This linear intrusion by large domestic buildings is at odds with the identified pattern of "clusters of farmsteads and cottages." It is clearly visible from public and private vantage points to the south and southwest.
28. For the reasons given, each of the Green Building and the Blue Building causes significant harm to the character of the landscape and does not pay proper regard to the distinctive characteristics and sensitivity of the Derbyshire Peak Fringe & Lower Derwent character area, which is one with the highest sensitivity. Both developments therefore conflict with LP Policy SDC3.
29. The developments also conflict with LP Policy SS9. This indicates that development proposals in countryside locations outside settlement

³ ID5

development limits will only be approved where they fall within specified categories. These include the limited infilling or redevelopment of previously developed land. The Council accepted during the hearing that this site could be considered previously developed land. However, SS9 requires that the new development should not have a greater impact on the character of the countryside than the existing development and, in any event, it must respect the form, scale and character of the landscape, through careful siting, scale, design and use of materials. Both buildings fail in those respects.

30. In addition, the appellant accepted that the site lies within a "valued landscape", for the purposes of paragraph 174(a) of the Framework. Both buildings therefore conflict with the Framework as, for the reasons given, they do not protect and enhance that valued landscape.

Very special circumstances

31. Consistent with the Framework, LP Policy SS10 indicates that inappropriate development in the GB will not be approved except in very special circumstances. The Framework states that inappropriate development is, by definition, harmful to the GB and that substantial weight should be given to any harm to the GB.
32. In addition to that harm by reason of inappropriateness, I have found that both the Green Building and the Blue Building significantly reduce the openness of the GB, and add to urban sprawl, contrary to the fundamental aim of GB policy. Furthermore, they harm the character and appearance of a valued landscape, contrary to local and national policy. These factors add further substantial weight against the appeal.
33. The other considerations which the appellant asks me to weigh against the harm are the likelihood of vehicles being parked in the open, if the unauthorised buildings are removed, and a fallback position; namely the ability to exercise permitted development (PD) rights.
34. I accept that vehicles probably will be parked on this part of the appeal site if the unauthorised buildings are removed. Without providing a copy, reference or many details, the appellant referred to another appeal concerning a site in the Lancashire. He says that, in that case, when granting planning permission for a garage in the GB, the inspector attached significant weight to a fallback position. This consisted of an extant planning permission for an open parking area in the same location and covering a similar footprint.
35. However, the proposed garage in that Lancashire appeal was to be partially subterranean, with a 'green roof', and would facilitate the removal of prominent retaining walls, while only increasing built form on site to a modest extent. Whilst open parking on the appeal site would have some detrimental impact in terms of openness and its effect on character and appearance, that harm would be much less than that caused by these substantial, permanent structures. I am not persuaded that the circumstances of the Lancashire appeal are equivalent.
36. Among other things, Class E, Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development)(England) Order 2015 permits the provision within the curtilage of a dwellinghouse of any building for a purpose incidental to the enjoyment of the dwellinghouse as such. The appellant says

that, if he must demolish these buildings, he will exercise those PD rights. Having regard to *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314, I accept there is a real prospect he will do so and that there is no requirement for him to say precisely how those PD rights would be utilised. This fallback position is therefore a material consideration, but I must assess its weight.

37. Taking account of *Emin v SSE and Mid Sussex DC* [1989] JPL 909, the buildings would have to be provided for purposes reasonably incidental to the enjoyment of the dwellinghouse as such. The appellant says the existing unauthorised buildings are to be used for purposes including garaging, digital golf, and digital clay shooting. Alternative buildings for similar purposes could be considered as being for incidental purposes, though their physical size could have a bearing on the assessment of reasonableness.
38. Given that Class E would not permit buildings on land forward of a wall forming the principal elevation of the original dwellinghouse, any replacement buildings would also have to be constructed further to the south than the existing unauthorised buildings. There is scope for that, before the land falls away sharply, such that significant engineering operations need not necessarily be required to level the land.
39. The buildings would also have to be within the curtilage of Brindwood House, the extent of which was the subject of dispute in the context of the withdrawn ground (c). Both parties said it was not necessary for me to formally rule on the extent of the curtilage, when determining the appeal on ground (a). Whilst contending that the curtilage is the whole area edged red on the notice plan, the appellant's counsel said he would advise the appellant to apply for a certificate of lawfulness of proposed use or development, to ensure the lawfulness of any proposed replacement buildings. In any event, he suggested Brindwood House would have a curtilage of sufficient size to accommodate substantial buildings within PD limits.
40. Whilst making no finding to this effect, I am content to consider the appellant's fallback position on the assumption that the curtilage is the entire area edged red on the notice plan. That is the position most favourable to the appellant but, even on that basis, I am not persuaded that any replacement buildings are likely to be in a location resulting in greater visual impact than the existing unauthorised buildings.
41. Furthermore, the Green Building is 1.9m higher than Class E would permit, and the Blue Building is 0.9m higher. The appellant says the materials used in their construction are so valuable that they would be re-used in any replacement buildings. I have no reason to doubt that, but I do not accept the appellant's suggestion that the existing buildings could simply be modified by reducing their height by the requisite amount. In the absence of expert evidence to the contrary, it was clear from my site inspection that it would be impossible to reduce the height of either building by the necessary amount without a substantial redesign and rebuild. It would not just be a case of reducing the height of the framework uprights; the roof structures would have to be altered, and the resulting buildings would be very different from those currently on site.
42. Given that they could not be as tall as the existing unauthorised buildings, in the absence of any proposals illustrating, however sketchily, the design, scale and siting of possible Class E buildings, I am not persuaded on the balance of probability that their impact would be as detrimental as the existing

unauthorised buildings, let alone worse. In these circumstances, I attach only limited weight to the fallback position, represented by Class E PD rights. For reasons already given, I also attach limited weight to the fact that, without the unauthorised buildings, vehicles are likely to be parked in the open.

43. The limited weight attached to these other considerations does not clearly outweigh the harm by reason of inappropriateness, which carries substantial weight, and the other harm resulting from the reduction in openness and harm to the character of the landscape, which together add further substantial weight against the appeal. Accordingly, very special circumstances do not exist and both the erection of the Green Building and the Blue Building conflict with LP Policy SS10 and the Framework.
44. The unauthorised buildings conflict with the development plan as a whole. No conditions could overcome the harm identified and I am satisfied that the appeal on ground (a) must fail.

Ground (f)

45. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. Having regard to its requirements, it was agreed that the purpose of the notice is to remedy the breach of planning control. That purpose includes restoring the land to its condition before the breach took place.
46. Although the notice only alleges the construction of buildings, requirement (a) is to, "Demolish the Unauthorised Buildings, including any hardstanding, foul drainage connections and/or buried tanks and remove all materials arising from their demolition from the Land." The extent of hardstanding was not indicated on the notice plan, but the appellant assumed it included all the hard surface extending from Brindwood Lodge east to the Blue Building. However, during the inquiry, the Council explained that the requirement was only intended to relate to the hard area immediately under the unauthorised buildings, that being part and parcel of those buildings.
47. The Council accepted it would be sufficient for requirement (a) to say, "Demolish the Unauthorised Buildings and remove all the materials arising from their demolition from the Land." This would reflect the Council's true intention and the fact that the notice does not allege the construction of a hard surface. The altered wording would necessitate removal of all those things which are part and parcel of the buildings, including any hard base under the buildings, foul drainage connections and/or buried tanks. I am satisfied that correcting the requirement in that way would not cause injustice to either party.
48. Though these points were not mentioned in the appellant's closing, he also contended that the requirements to remove materials arising from demolition and to reseed the ground with grass were excessive.
49. As far as removal of materials is concerned, the appellant accepted that a lot of material will be left after these buildings are demolished. I see no reason to depart from the usual practice of requiring their removal, as this is part of restoration of the land to its condition prior to the breach.
50. The appellant indicated he will wish to reuse materials to construct replacement buildings with the benefit of PD rights. However, the timescale for this is

uncertain, especially as the appellant will be advised to apply for a certificate of lawfulness of proposed use or development before carrying out further building works. Large quantities of materials should not be stored on site for an indefinite period pending new building works. That said, depending on the timing of any new works, the Council will retain the power under s173A of the 1990 Act to waive or relax the requirement to remove materials, if appropriate.

51. Requirement (b), to reseed the ground with grass was less contentious, once it became clear the Council does not require the removal of hardstanding, outside the footprints of the buildings. The appellant nevertheless contends that the areas underneath the buildings were not grassed before they were constructed. Aerial photographs show that much of the ground, where the unauthorised buildings now stand, was hard-surfaced from at least a 2016. I am satisfied that requirement (b) should simply demand restoration of the land to its condition before the breach took place.
52. I shall correct and vary the requirements as indicated and, to this extent, ground (f) succeeds.

Ground (g)

53. This ground is that the period for compliance is unreasonably short. The appellant says the deconstruction, removal and storage of the Green Building is a specialist job and skilled labour is in short supply at present. I accept that the appellant may wish to be able to reuse expensive materials, including the oak framework. The appellant requested a period of 6 to 9 months for demolition and the Council indicated it would not object to 4 – 6 months.
54. I am satisfied that a period of 6 months for demolition would be reasonable and a further 2 months should be allowed for restoration of the land, making a total of 8 months. Ground (g) therefore succeeds, and I will vary the notice accordingly.

Conclusion

55. For the reasons given above, I conclude that the appeals should not succeed, other than in relation to grounds (f) and (g). I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J A Murray

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R1038/C/21/3288613	Mr Robert Hadfield
Appeal B	APP/R1038/C/21/3288771	Mr Robert Hadfield

APPEARANCES

FOR THE APPELLANT:

David Hardy of Counsel
Eric Telford BA, BSc

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithhead of counsel
Julian Hawley BSc MSc URP, Principal Planning Enforcement Officer for North East Derbyshire Council

INTERESTED PARTIES:

Sally Ann Marples-Shaw, local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1	Plan attached to Planning Contravention Notice issued 7 October 2022
2	Council's costs application and appendices
3	Statement of Common Ground
4	The appellant's response to the costs application
5	Derbyshire County Council's Part One : Landscape Character Descriptions – 3. Derbyshire Peak Fringe and Lower Derwent
6	Derbyshire County Council's Technical Support Document 1 – Areas of Multiple Environmental Sensitivity 2013
7	Appellant's opening submissions
8	Council's opening submissions
9	Google Earth 3D view photograph
10	Email correspondence between the appellant's agent and the Council October/November 2022
11	Google Street View image taken from Johnnygate Lane before the development
12	Council's closing submissions
13	Appellant's closing submissions
14	Council's updated costs application
15	Appellant's updated costs reply
16	<i>Mansell v Tonbridge & Malling BC</i> [2017] EWCA Civ 1314
17	<i>SSCLG & Ors v Redhill Aerodrome Ltd</i> [2014] EWCA Civ 1386
18	<i>R (oao Samuel Smith Old Brewery (Tadcaster) & others) v N Yorkshire CC</i> [2020] UKSC 3