



Appeal Decisions

Site visit made on 22 February 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal A Ref: APP/G1630/C/22/3297174

Appeal B Ref: APP/G1630/C/22/3297176

Appeal C Ref: APP/G1630/C/22/3297177

**Land on the east side of Broadway Road, Toddington, Cheltenham,
Gloucestershire GL54 5DT**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Christopher Holmes, Appeal B is made by Mrs Pamela Holmes and Appeal C is made by William Holmes against an enforcement notice issued by Tewkesbury Borough Council.
 - The notice was issued on 15 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an agricultural barn (the approximate position of which is shown edged in blue on the attached plan), laying of concrete hardstanding and retaining wall, erection of palisade fencing and access gates and installation of external lighting.
 - The requirements of the notice are to: Within the area outlined in RED on the attached plan: 1. Remove all external lighting fixed to the barn from the Land 2. Remove the palisade fencing and access gates from the Land shown approximately in the position marked with a dashed green line on the attached plan. 3. Remove the existing roller shutter doors from the barn and finish the elevations of the barn in accordance with permitted plan PL503 Rev C attached at ANNEX 2 of this notice. 4. Remove all the green metal sheet cladding from the external elevations of the barn and replace with Yorkshire boarding and finish the external elevations in accordance with permitted plan PL503 Rev C attached at ANNEX 2 of this notice. 5. Demolish the part of the barn shown hatched in black on the attached plan and finish the northern elevation of the barn in accordance with permitted plan PL503 Rev C attached at ANNEX 2 of this notice. Remove the concrete base within the area hatched in black on the attached plan and subsequently restore the land hatched black to its condition prior to the unauthorised development. 6. Within the area shaded orange on the attached plan, remove the hardstanding, concrete base and the concrete retaining wall and restore the land to its condition prior to the unauthorised development. 7. Within the area crosshatched in pink on the attached plan, remove the aggregate which has been deposited and lay 300mm of topsoil and reseed with grass in accordance with plan PL502 Rev C attached at ANNEX 3 of this notice. 8. Remove debris and materials, resultant from compliance with steps (1) to (7), from the Land.
 - The period for compliance with the requirement is: 6 (six) months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act). 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. Appeals B and C are proceeding on the grounds set out in section 174(2)(f) and (g) only.
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Formal Decisions

1. It is directed that the notice is corrected by deleting "*and installation of external lighting*" from "Matters which appear to constitute the breach of planning control" at paragraph 3.

2. It is directed that the notice is varied by deleting steps 1 to 8 from "Steps required to rectify the breach" at paragraph 5 and substituting them with:
 1. Demolish the barn in its entirety. Remove the concrete base, palisade fencing, the hardstanding and retaining walls. Remove debris and materials from the Land, resultant from compliance with step (1) and restore the Land to its prior condition.

OR

 2. Carry out remedial works so as to comply with the terms (including conditions) of planning permission ref: 20/00035/FUL dated 15 May 2020: For clarity, this includes: i. Remove the roller shutter doors from the barn; and ii. Remove the green metal sheet cladding from the external elevations of the barn and replace with Yorkshire boarding and finish the external elevations in accordance with permitted plan PL503 Rev C; and iii. Demolish the section of the barn and remove the concrete base within the area shown hatched in black on the attached plan in accordance with permitted plan PL503 Rev C; and iv. Remove the hardstanding, concrete base and the concrete retaining wall within the area shaded orange on the attached plan; and v. Remove the palisade fencing and access gates from the Land shown approximately in the position marked with a dashed green line on the attached plan.
 3. Remove debris and materials from the Land, resultant from compliance with step (2) and restore the Land to its prior condition.
3. Subject to the correction and variations, the appeals are 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 Act as amended.

Matters concerning the notice

4. The reasons for issuing the notice state, amongst other things, that the Council requires alterations to the Land and building to accord with planning permission 20/00035/FUL granted on 15 May 2020 (the 2020 permission) and to remove unauthorised structures and works. It is clear from the submissions from both the Council and the appellants that this is what it required. In the interest of clarity, the notice should reflect this in the requirements. Accordingly, I consider that it would be reasonable to vary the notice, in line with s173(4)(a) of the Act, that the land be restored to its condition before the breach took place or modified to comply with the 2020 permission. It is open for me to correct and/or vary the notice in accordance with my powers under section 176(1) of the Act. As such, I consider that the requirements can be corrected to provide clarity as set out in the formal decision. In doing so, I am satisfied that no injustice will arise to either of the main parties.
5. Further to this, the notice requires the removal of the external lighting fixed to the building and the removal of aggregate deposits, replacing with topsoil and grass seed. Firstly, the installation of external lighting on a building such as this, is not development pursuant to s55 of the Act and there are no conditions to control the installation of external lighting on the building in the 2020 permission, which currently remains extant. Secondly, the deposit of aggregate is a use of the land and there is no reference made to this within the allegation.

Therefore, under s176(1) of the Act, reference to external lighting should be removed from the allegation. It follows that reference should also be removed from the requirements of the notice. Similarly, reference to aggregate deposits should be removed from the requirements of the notice because it does not form part of the breach of planning control. In doing so, in these circumstances, I consider that no injustice would be caused to either party.

Preliminary Matters

6. The Tewkesbury Borough Local Plan sits beneath the Joint Core Strategy. Since the notice was issued on 15 March 2022, the Tewkesbury Borough Local Plan 2011-2031 has been formally adopted. The plan was adopted by Tewkesbury Borough Council on 8 June 2022 and both parties have referred to Policy AGR1 contained within the plan to support their case. The policies contained within the Tewkesbury Borough Local Plan 2011-2031 supersede the saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006). Accordingly, previously saved Policy AGR5 of the Tewkesbury Borough Local Plan to 2011 (March 2006) is no longer relevant.

Relevant planning history

7. Planning permission ref: 18/00449/FUL was granted by notice dated 3 August 2018 for the 'erection of a 4-bay steel framed hay storage barn open on one side'. A further planning application ref: 19/00192/FUL for the 'retention of an agricultural barn and associated works (Revised scheme Ref: 18/00449/FUL)' was subsequently refused and dismissed at appeal¹. Planning permission ref: 20/00035/FUL was granted by notice dated 15 May 2020 for 'part retrospective application for an agricultural barn for storage, hay and livestock and associated works (Revised scheme to 19/00192/FUL)'.

Ground (a) and the deemed planning application

Main Issue

8. These are the effect of the development on the character and appearance of the area having particular regard to its location within the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

9. The appeal site, which measures some 0.14 hectares, lies to the northwest corner of a field, and is enclosed by metal palisade security fencing with mechanically operated gates to the highway on its western boundary. The portal frame agricultural building, which measures approximately 24.15m by 12.15m, is sited close to the access and its rear elevation faces the road. The land slopes gently to its lowest point in the northwest corner of the site and there has been a reduction in levels to accommodate the building. Concrete retaining walls are in place to accommodate the change in levels.
10. The building is clad with concrete panels and has metal sheeting on the upper sections of the side and rear elevations. The low-pitched roof is covered with similar metal sheeting. The front elevation displays roller shutter doors to three of the four bays. External security lighting is fixed to each elevation. To the

¹ APP/G1630/W/19/3236917

front of the building there is an area of hardstanding in the form of a concrete apron and within the site there are areas where aggregate has been deposited.

11. The site, which is in the AONB, is located away from and unrelated to any other built form. It is surrounded on three sides by an undulating landscape of agricultural land divided into fields bounded by vegetation. While the B4632 Broadway Road passes close by the site on its western border, the immediate surroundings have a distinctly rural appearance.
12. The building is visible from the highway through the vegetation, and the eye is drawn to the site particularly because of the industrial style security fencing and the sizeable building within the site. I concur with the previous appeal decision for the land which considered that 'the building, given its scale, has the appearance of a large structure, which is an assertive visual element at this location. Whilst the use of metal sheet cladding can be common on agricultural buildings, at this location, when considered in combination with the scale of the structure, the development has a somewhat industrial character'. This is harmful to the character and appearance of the surrounding landscape.
13. Furthermore, from my observations, I consider that the extent of the concrete apron and retaining walls and the metal roller shutter doors reinforce the industrial character and appearance of the site. I acknowledge that planning permission was granted for a smaller open fronted agricultural building and concrete apron. However, the totality of the development before me, including the palisade fencing which does not form part of the extant permission and would in any case be precluded by that if the notice is complied with by modifying the development in accordance with the 2020 permission, culminates in a visually discordant anomaly in this rural setting and this is harmful to the scenic quality of the surrounding AONB.
14. The appellant proposes modifications which they consider would make the development acceptable in planning terms and for which planning permission should be granted subject to conditions. Section 177(1)(a) of the Act only allows the grant of planning permission in respect of matters stated in the notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters".
15. The alternate scheme as proposed by the appellant is accompanied by drawings PL504A (Proposed landscape plan) and PL503D (Plans and elevations). The appellant refers me to *Wheatcroft*², however the *Wheatcroft principle* has no application to ground (a) or the deemed planning application. I have, instead, had regard to the established case law in *Tapecrow Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 which held that an Inspector has wide powers to decide whether there is any solution short of a complete remedy of the breach which is acceptable in planning and amenity terms. As I consider that the proposals put forward by the appellant forms part of the matters alleged in the notice, they can be considered under s177(1)(a).
16. The modifications propose that the following features be retained: the fourth bay of the building and its concrete base, which extends its length from that

² It was held in *Bernard Wheatcroft Ltd v SSE* [1982] JPL 37 that amended plans can be accepted on s78 appeal and approved through a grant of conditional planning permission provided there is no substantial difference between what was originally applied for and the amended scheme.

approved by 6m; external lighting fixed to the building; the enlarged concrete apron; and the extended section of the concrete retaining wall.

17. The modifications also propose the removal of: the roller shutter doors; palisade fencing; aggregate deposits; and the replacement of the metal sheet cladding with Yorkshire boarding. Such works would indeed go some way to alleviate the harm that I have identified. However, the increase in the scale of the building from what had been previously approved and the extended concrete apron and retaining wall are elements which exacerbate the industrial appearance of the site in this rural location within the AONB. Moreover, there is no justification for an increase in floor area to support the agricultural business or tracking diagrams to demonstrate the need for the extended concrete apron, and retaining wall, to accommodate manoeuvring vehicles and machinery.
18. The development results in harm to the character and appearance of the rural area including that of the AONB which has the highest status of protection. The National Planning Policy Framework provides that great weight should be given to conserving and enhancing its scenic beauty and that the scale and extent of development within these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts.
19. Overall, I find that the development conflicts with saved Policy AGR1 the Tewkesbury Borough Local Plan 2011-2031 (June 2022), Policies SD4, SD6 and SD7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 and Policy CE1 of the Cotswold Area of Outstanding Natural Beauty Management Plan 2018-2023. Amongst other things, these policies seek to ensure that agricultural development is reasonably necessary, any adverse impact on visual amenity particularly within the AONB is minimised, that development responds positively to the site and its surroundings, landscape character is protected, development conserves and enhances the landscape and scenic beauty of the AONB and is sympathetically designed in terms of height, mass, materials, colour and landscaping where appropriate.

Conclusion on ground (a) and the deemed planning application

20. There are no material considerations that indicate that the deemed planning application should be determined other than in accordance with the Development Plan. For the reasons given, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

Ground (f)

21. The appeals on ground (f) are that the requirements of the notice exceed what is necessary and for the consideration of whether lesser steps would overcome the breach of planning control. The appellant's suggested modifications to the development have already been considered under the ground (a) appeal. However, although offering to remove the palisade fencing, they consider that this element would be development permitted by virtue of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order, as amended (the GPDO), by reducing its height to not exceed 1m along the road frontage and 2m in sections where it marginally exceeds that height limit. Although there was a condition which withdrew permitted development

rights for the erection of fences, gates, walls or other means of enclosure, as referred to by the appellants in their statement³ the 2020 permission has not been implemented. Accordingly, the appellants consider that the condition does not bite.

22. In *Garland v MHLG* [1968] 20 P&CR 93, as referenced by the Council, it was held that operational development must be considered in its entirety and should not be subdivided into parts that constituted permitted development and other parts that were not. Accordingly, the fence should be considered as a single operation of development. Consequently, the fence would require express planning permission.
23. To conclude on this ground, given that the requirements go no further than requiring the appellants to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control. As there are no lesser steps that would achieve the statutory purpose behind the notice, the appeals on ground (f) cannot succeed.

Ground (g)

24. The appeals on ground (g) are that the period specified in the notice falls short of what should be reasonably allowed. The appellants argue that 6 months is unrealistic and unreasonable given the amount and nature of work involved, especially during post Covid times where difficulties arise appointing tradespeople and obtaining materials. The appellants say preliminary enquiries indicate a lead in time for the commencement of work to be between 6 and 9 months, with a predicted 3 months to complete the works. A longer period of 12 months is therefore requested in which to comply with the notice.
25. The Council consider that 6 months is a reasonable and appropriate timescale for the level of works to be undertaken at the appeal site. Whilst it acknowledges that there are national constraints on obtaining building materials, most of the steps set out within the notice require the appellants to undertake demolition and removal of materials.
26. Having regard to both parties, and with an absence of cogent evidence to substantiate the reasons for the requested extension of the compliance period to 12 months, I consider that a period of 6 months is a reasonable to comply with the notice. Accordingly, the appeals on ground (g) do not succeed.

S A Hanson

INSPECTOR

³ Enforcement Appeal Statement of Case Paragraph 5.31