



Appeal Decisions

Site visit made on 3 May 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 19th July 2023

Appeal A Ref: APP/J1860/C/22/3311713

Appeal B Ref: APP/J1860/C/22/3311714

Workshop @ OS 378450, 237721, Walnut Tree Cottage, Walnut Tree Lane, Gloucester Road, Castle Morton, Worcestershire WR13 6BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeals are made by Mr John Heywood (Appeal A) and Mrs Beryl Heywood (Appeal B) against an enforcement notice issued by Malvern Hills District Council.
 - The notice, numbered M/ENF/22/0078, was issued on 15 November 2022.
 - The breach of planning control as alleged in the notice is "Without planning permission, the unauthorised erection of a building".
 - The requirements of the notice are to: "Permanently remove the building approximately edged blue on the attached plan and lawfully remove all resulting materials from the land edged in red on the attached plan; or alter the building approximately edged in blue on the attached plan to comply with the approved plans of planning permission 07/01038/FUL and lawfully remove all resulting materials which are not to be used in the construction of the development under planning permission 07/01038/FUL from the land edged in red on the attached plan"
 - The period for compliance with the requirements is 6 months beginning with the date on which the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the development proposal is exempt from the payment of fees, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
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Appeal C Ref: APP/J1860/W/22/3310907

Workshop @ OS 378450, 237721, Walnut Tree Cottage, Walnut Tree Lane, Gloucester Road, Castle Morton, Worcestershire WR13 6BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs John Heywood against the decision of Malvern Hills District Council.
 - The application Ref M/22/00826/FUL, dated 27 May 2022, was refused by notice dated 21 October 2022.
 - The development proposed is described as 'amended design of building previously constructed following approval of planning application 07/01038/FUL'.
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APPEALS A AND B

Summary Decisions

1. The appeals succeed in part and the enforcement notice is upheld with the corrections and variations in the terms set out below in the Formal Decisions.

Formal Decisions

2. It is directed that the enforcement notice is corrected by:
 - a) deletion of the word “unauthorised” from paragraph 3;
and varied by:
 - b) deletion of paragraph 5.2 and substituting it with the following new paragraph 5.2:

“5.2 Alter the building approximately edged in blue on the attached plan in accordance with the following plans:

 - PMS/M/HEY/01, dated July 2007 (Proposed Building/Retention of Existing)
 - PMS/M/HEY/02, dated July 2007 (Existing Building)
 - 07/0138, 22 Aug 2007 (Existing West End View, Existing North Elevation, Proposed North Elevation, Proposed West End View)
 - 07/0138, 22 Aug 2007 (Proposed Alterations to and Replacement and Renewal of Existing Buildings, Existing East End View, Existing North Elevation, Proposed Replacement of Existing Building)
 - 07/0138, 22 Aug 2007 (Existing South Elevation)
 - 07/0138, 22 Aug 2007 (Site Plan)

and remove all resulting materials not used in the building’s construction from the land edged in red on the attached plan.”
3. Subject to these corrections and variations, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL C

4. Appeal C is allowed and planning permission is granted for the retention of existing building at Workshop @ OS 378450, 237721, Walnut Tree Cottage, Walnut Tree Lane, Gloucester Road, Castle Morton, Worcestershire WR13 6BS in accordance with the terms of the application, Ref M/22/00826/FUL, dated 27 May 2022, subject to the conditions set out in the Schedule to this decision.

Applications for Costs

5. Applications for costs have been made by Mr John Heywood and Mrs Beryl Heywood in respect of Appeals A, B and C. These applications are the subject of a separate decision.

Background and Preliminary Matters

6. A Lawful Development Certificate¹ in respect of the appeal site was approved by the Council in 2007, which included consent for the retention of an existing building. The Council subsequently granted planning permission² for the

¹ 04/01690/CLE

² 07/01038/FUL dated 25/08/2007

renovation and extension of this building (Original Permission). The development was not carried out in accordance with the plans approved pursuant to the Original Permission, and the Council contends that the resultant building, which is the subject property of these appeals, is unauthorised. This means the Original Permission has lapsed, given the length of time since it was granted. I have proceeded on this basis.

7. Nonetheless, on account of the Original Permission, the principle of the building has previously been accepted by the Council. However, the Council alleges that the departure from the plans approved pursuant to this permission has resulted in harm to the landscape character of the area and to the setting of nearby listed buildings. An enforcement notice (EN) has therefore been issued by the Council to overcome this harm.
8. The appellants have appealed the EN on ground (a), alleging that planning permission ought to be granted for the building, as constructed. This forms the basis of Appeals A and B. Whilst not formally pleaded, the appellants have also intimated that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. In turn, I have also addressed this ground (f) in respect of Appeals A and B.
9. The appellant has also submitted a separate planning application in respect of the appeal property, which seeks certain alterations to the building. This application seeks to overcome the harm arising from the as-built development, as alleged by the Council. This application was refused by the Council and forms the basis of Appeal C.
10. Given the degree of overlap between the appeals, much of the reasoning in respect of the main issues is applicable to all three. I have therefore dealt with all three appeals in a single decision notice.
11. With regard to Appeal C, I have adapted the description of development so that it specifically refers to the retention of the existing building. This is because the Original Permission has lapsed, and the existing building is therefore unauthorised. Appeal C therefore relates to the whole building as constructed, although subject to the proposed changes to be made to it.

APPEALS A AND B (GROUND A) AND APPEAL C

Main Issues

12. In respect of all three appeals, the main issues are:

- the effect of the development on the landscape character of the area; and
- whether the development would preserve or enhance the setting of nearby listed buildings.

Reasons

Site Context

13. The appeal site is located in a rural area within the Malvern Hills Area of Outstanding Natural Beauty (AONB) and is accessed off a narrow track leading off from the west of the B4208. Commensurate with its status as an AONB, the surrounding area is characterised by rolling countryside, punctuated by occasional isolated buildings which broadly reflect the rural character of the

area. The wider appeal site and its immediate surroundings, which include stables just to the north of the track, are typical in this regard, and make a positive contribution to the landscape character of the area and to the rural and scenic beauty of the AONB.

14. The appeal site comprises a single storey building which is laid out in an “L” shape. It has a gabled roof which is clay tiled, the eaves of which overhang the principal elevations to the building. The external walls are finished in a mixture of timber and brick and include extensive UPVC fenestration, as well as UPVC doors along its southern gable elevation.
15. The building departs from the plans approved under the Original Permission in a number of ways. These include slight changes to the building’s overall footprint including to its length and width, as well as a slight increase in height. The overhang from the eaves of the building is also greater than originally consented. Nonetheless, the Council does not object to the principle of the building itself, and has confirmed in its evidence that the scale and general form of the building has already been accepted. However, the Council contends that harm derives from the inclusion and extent of UPVC windows and doors on the building, which were not approved as part of the Original Permission.

Appeals A and B – Landscape Character

16. The Original Permission included a condition which required external materials to be submitted to the Council for approval. The details subsequently approved³ included bricks, stained feather edge boarding and clay roof tiles. Contrary to the approved details, the windows on the elevations to the building have been finished in UPVC and are more extensive in their coverage than shown on the approved plans. On the southern side of the property, the gable elevation has been finished with full width UPVC glazed doors, whereas the approved plans showed an open store. A garage style door has also been incorporated on the eastern elevation, which was not approved.
17. The Original Permission was approved on the basis that the building would appear agricultural in character. This would enable the building to remain broadly in-keeping with the prevailing rural character of the area, including the stables just to the north of the appeal property. The use of external materials, and in particular the use of timber, was critical to the building achieving such an appearance.
18. Indeed, the AONB Guidance on Building Design⁴ (AONB Design Guide) highlights the importance of traditional local materials in the construction of new buildings, including timber, stone and brick, as these materials help provide a link to the local landscape character, rather than detracting from it. It specifically says that “the use of timber is generally preferred for doors and window frames as this is usually more locally characteristic and sustainable than other materials. UPVC window frames are not appropriate”. Similarly, the AONB Management Plan 2019-2024⁵ (AONB Management Plan) highlights that “a lack of attention to issues such as local design [...] and materials can harm the special qualities of the AONB and diminish the distinctiveness of the built environment”.

³ Ref 09/00322/CCO

⁴ Malvern Hills Area of Outstanding Natural Beauty, Guidance on Building Design

⁵ Malvern Hills Area of Outstanding Natural Beauty, Management Plan 2019- 2024

19. The extensive use of UPVC within the appeal property directly contravenes this guidance. As a result, the building has assumed a domestic appearance, which jars with the rural landscape character of the area. The domestic character of the building is amplified by the use of UPVC glazed doors on the southern gable elevation of the property, which have substituted the open store which would have been distinctly more agricultural in appearance. The garage style door on the eastern elevation further exacerbates this domestic appearance. In turn, the overtly domestic appearance of the building, which directly conflicts with the guidance set out in the AONB Design Guide and the AONB Management Plan, undermines the rural and scenic quality of the surrounding landscape and the AONB.
20. On account of these factors, the development pursuant to Appeals A and B harms the landscape character of the area, as well as the rural and scenic beauty of the AONB. In turn, it conflicts with Policy SWDP21 of the South Worcestershire Development Plan (2016) (Development Plan), which seeks to ensure new development achieves high quality design which integrates effectively with its surroundings. In particular, this policy says materials should be high quality and appropriate to their context. The development also conflicts with Policies SWDP23 and SWDP25 of the Development Plan, which promote development which is appropriate to the character of its landscape setting, ensuring it protects the special quality of the AONB. As set out above, the development also fails to meet the guidance set out in the AONB Management Plan and the AONB Design Guide. Finally, the development conflicts with paragraph 176 of the National Planning Policy Framework (2021), which says great weight should be given to conserving and enhancing landscape and scenic beauty within AONBs.

Appeal C - Landscape Character

21. The appeal scheme under Appeal C would replace the UPVC windows installed on the building with timber framed windows. Moreover, barn style timber doors would replace the UPVC glazed doors on the southern gable elevation, as well as the garage door on the eastern elevation. These alterations would significantly reduce the domestic appearance of the property and would help amplify its agricultural credentials as envisaged by the Original Permission. In turn, the building's increased agricultural character would broadly erode its incongruity with the surrounding rural landscape, thereby allowing it to integrate with its surroundings more effectively.
22. On account of these factors, I am satisfied that the development pursuant to Appeal C would overcome the harm arising from the building in its current form. In turn, it would not harm the landscape character of the area and would preserve the rural and scenic beauty of the AONB. The development would therefore be consistent with Policies SWDP21, SWDP23 and SWDP25 of the Development Plan, the content of which is outlined above. The proposal would also be consistent with paragraph 176 of the Framework, which ascribes great weight to the importance of conserving and enhancing the landscape and scenic beauty of AONBs.
23. Paragraph 16 of the Framework is not directly relevant to the development, as it relates to plan making, as opposed to specific development proposals.

Appeals A and B - Setting of Listed Buildings

24. Bannut Tree House, a grade II listed building⁶, is located to the south-east of the appeal site. This property comprises a domestic farmhouse which dates back to 1890 and incorporates roughcast external walls with applied timber framing. There is a separate listed stables and garden wall⁷ within the wider grounds to the house, which date back to a similar time. The appeal site is also located near to Walnut Tree Cottage, which is also grade II listed⁸. The cottage is located to the south-east of Bannut Tree House and fronts on to the B4208. It dates back to the 16th century and was restored in the 1980s, and comprises a domestic cottage, which is characterised by brick and timber framing, with a tile roof.
25. Notwithstanding the architectural detailing of these listed buildings, much of their significance is derived from the prevailing rural character of the land which surrounds them. Whilst the appeal site is separated from these buildings by mature trees and hedgerow, it nonetheless contributes to this wider rural setting, which in turn contributes to their significance.
26. As highlighted above, the domestic appearance of the appeal property undermines the rural landscape quality of the area. In turn, it also harms the rural character of the land immediately surrounding the listed buildings, thereby detracting from their significance. In line with my statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I attach considerable importance and weight to the desirability of preserving the setting of the listed buildings, and consequently, to this harm.
27. Whilst I consider the harm to be less than substantial, as per paragraph 199 of the Framework, great weight must be afforded to any harm to a heritage asset, irrespective of whether such harm is less than substantial or otherwise. Moreover, there are no identified public benefits which would outweigh this harm.
28. The development pursuant to Appeals A and B therefore conflicts with Policy SWDP6 of the Development Plan, which requires development to conserve and enhance heritage assets and their settings, which in this case includes Bannut Tree House, Walnut Tree Cottage, the stables and the garden wall.

Appeal C - Setting of Listed Buildings

29. As highlighted, the development pursuant to Appeal C would reduce the domestic character of the appeal building and would amplify its agricultural appearance. This would enable the building to integrate more effectively with the surrounding countryside. In turn, the building would assimilate more seamlessly with the rural landscape which contributes to the setting and significance of each of the listed buildings outlined above, noting that this landscape is punctuated by sporadic isolated buildings which generally reflect the rural and agricultural character of the area.
30. For these reasons, I am satisfied that the development pursuant to Appeal C would preserve the setting of Bannut Tree House, Walnut Tree Cottage, the adjacent stables and garden wall. The development would therefore be

⁶ List entry 1156932

⁷ List entry 1098823

⁸ List entry 1349215

consistent with Policy SWDP6, which requires development to conserve and enhance heritage assets and their settings.

Appeal C - Other Matters

31. Whilst I note public concern that the building may be used as holiday accommodation, any material change of use of the building would need to be authorised by planning permission. A condition can also be attached to the planning permission to regulate the use of the building.
32. Whilst concerns over drainage have been raised, there is no substantive evidence before me to suggest that drainage of the building is an issue. Moreover, the Council's specialist officers have not raised any concerns in this regard.

Appeal C - Conditions

33. I have reviewed the Council's list of conditions and have amended these in line with guidance contained in the Framework and Planning Practice Guidance.
34. I have included a plans condition to ensure certainty over the development permitted. Given the retrospective nature of the development, I have imposed a time limit by which the permission will lapse if the alterations to comply with those plans are not made.
35. To ensure the design of the replacement windows and doors is acceptable and in-keeping with the character of the surrounding landscape, precise details must be approved by the Council prior to their installation. There is a strict timetable for approval and subsequent implementation of the scheme. This is because the permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the fenestration scheme before the development takes place. As worded, the condition will ensure the development can be enforced against if the requirements are not met.
36. I have also included a condition restricting the building to industrial use. This is to ensure that the use of the building is consistent with the use originally consented by the Council.

APPEALS A AND B (GROUND F)

37. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the injury to amenity, and specifically injury to visual amenity, which has been caused by the breach.
38. There are two alternative requirements set out in the EN: the first is to remove the appeal building; and the second is to alter the appeal building so that it accords with the plans which were originally deemed acceptable by the Original Permission. In turn, the requirements give a degree of flexibility to the appellants, including the option of retaining the substantive structure of the building. These are proportionate requirements which goes no further than achieving the purpose of remedying the injury to visual amenity.
39. However, to ensure sufficient certainty in respect of the steps required, I consider it necessary for the plans originally approved pursuant to the Original Permission to be explicitly referenced in the notice. I have therefore varied the requirements in the notice to refer to these plans.

40. It is important to highlight that compliance with this requirement would not reinstate the Original Permission, as the Original Permission has lapsed. However, compliance with this second requirement would mean planning permission would be treated as having been granted for the altered building, pursuant to s173(11) of the Town and Country Planning Act (1990) as amended (TCPA 1990).
41. Notwithstanding the above, assuming that the permission granted pursuant to Appeal C is carried out, then any requirements of the EN which are inconsistent with the revised plans approved pursuant to Appeal C will fall away pursuant to s180 TCPA 1990.
42. The appeal on ground (f) therefore succeeds, but only insofar as it is necessary to give sufficient certainty to the requirements set out in the EN. The upshot is to give a choice as to whether to demolish the building, to make alterations to it so as to reflect the plans originally approved under the Original Permission, or to make alterations to it pursuant to the Appeal C scheme. Whichever option is pursued, the works must be carried out within six months (save for the slightly longer period given to achieve the fenestration details in Appeal C).

Conclusions

43. In terms of Appeal A and Appeal B, I conclude that the requirements of the notice require greater certainty. The appeals on ground (f) succeed to that extent. However, for the reasons outlined above, the appeals on ground (a) should not succeed. Subject to the corrections and variations outlined, I shall therefore uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.
44. In terms of Appeal C, for the reasons given above, and having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be allowed.

James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The permission hereby granted shall expire, and the building hereby permitted shall be demolished and all resulting materials removed from the land, unless within 6 months of the date hereof the development shall have been completed in accordance with the approved drawings: BLJT-00647797 (Location Plan); 1321:2005:01 (Proposed Elevations North & South); 1321:2005:02 (Proposed Elevations West & East); 1321:2005:01 (Proposed Plan); and 1321:2005:04 (Proposed Site Plan).
- 2) Unless within 3 months of the date of this decision, a fenestration scheme, providing detail of the proposed windows and doors, including scaled drawings and detail of materials, has been submitted to the local planning authority for approval, and unless the approved fenestration scheme is completed within 6 months of the local planning authority's approval (or such longer timescale as may be approved as part of the scheme), the building hereby permitted shall be demolished and all materials resulting from the demolition shall be removed. The fenestration scheme shall be maintained in accordance with the approved details thereafter.
- 3) The building hereby permitted shall not be used for any purpose other than purposes within Class B2 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification).