



Appeal Decisions

Hearing Held on 3 May and 8 August 2023

Site visit made on 3 May 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal A: APP/U3935/C/22/3295441

Farm Buildings at Eastrop Farm, Shrivenham Road, Highworth, Swindon SN6 7QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Nigel King of Eastrop Barns Ltd against an enforcement notice issued by Swindon Borough Council.
 - The enforcement notice was issued on 23 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of two incomplete buildings.
 - The requirements of the notice are: (a) Demolish the two storey incomplete building and remove any footings, foundations and ground floor slabs associated with the unauthorised development. (b) Demolish the single storey incomplete building and remove any footings, foundations and ground floor slabs associated with the unauthorised development. (c) Clear all resultant debris, rubbish and materials from the site arising from compliance with these requirements.
 - The period for compliance with the requirements is six months.
 - 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.
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Appeal B: APP/U3935/W/22/3296042

- 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 Nigel King of Eastrop Barns Ltd against the decision of Swindon Borough Council.
 - The application Ref S/21/1241/PEEG, dated 7 July 2021, was refused by notice dated 21 December 2021.
 - The development proposed is: Change of use of agricultural buildings to provide 3no. dwellings, requiring full re-building of building 1, partial rebuilding of buildings 2 & 3, consolidation works to the granary, restoration of derelict farm workers cottages to provide 2no. dwellings, together with associated access works, parking and landscaping.
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for Costs

3. An application for costs was made by Swindon Borough Council against Mr Nigel King of Eastrop Barns Ltd. This application is the subject of a separate Decision.

Preliminary Matter

4. The enforcement notice (Appeal A) is directed against the erection of two incomplete buildings. Accordingly, the deemed planning application relates to the same. The appellant suggested that the description of the alleged breach should be amended to refer to dwellinghouses and that support from this is derived from case law¹. However, that case law relates to when the time limit for taking enforcement is triggered. Even if there were physical similarities between the case law and appeal before me, and for which there is limited evidence, the suggestion of the appellant would then appear to revert the notice to that tantamount to a previously issued notice, that was subsequently quashed on appeal² because the buildings were found to be incomplete. No further works have since been undertaken to the buildings. Based upon the evidence before me, it has therefore not been demonstrated on the balance of probabilities that the breach of planning control alleged in the notice has not occurred as a matter of fact.
5. The appellant also suggests that if I were to allow the appeal it would be open to me to use planning conditions requiring the submission of further plans and details sufficient to satisfactorily complete the development for residential purposes. However, this approach would not secure a residential use for the buildings, and therefore a further planning permission would still be required. This would be entirely unsatisfactory as it could result in buildings of a residential appearance, but a nil use.

Appeals A and B – The deemed planning application and refusal of planning permission

Main Issues

6. The main issues are:
 - whether the site is in a suitable location for residential uses, having particular regard to local and national planning policy; and,
 - the effect of the developments on the character and appearance of the area, including non-designated heritage assets.

Reasons

7. The site related to a range of Victorian farm buildings and cottages, as well as more modern steel framed buildings. It is located in the open countryside, albeit in close proximity of the settlement of Highworth.

¹ *Sage v SSETR & Maidstone BC* [2003] UKHL 22

² APP/U3935/C/21/3280902

8. The developments before me relate to the erection of two incomplete buildings the subject of the enforcement notice (Appeal A), and a proposed scheme for 5 dwellings by means of the full and partial re-building and restoration of structures, together with consolidation works to The Granary, associated access works, parking and landscaping (Appeal B).

Location

9. For the purposes of the Swindon Borough Local Plan 2026, adopted March 2015 (the LP), the site is located outside of the settlement limits associated with Highworth and is therefore in the countryside.
10. Policy SD1 of the LP identifies that to support sustainable development and communities in the Borough proposals should, amongst other things, be accessible by walking, cycling and/or public transport.
11. Policy SD2 of the LP then sets-out a sustainable development strategy, stating that outside Swindon, rural development will be located primarily at Highworth and Wroughton, which of the rural settlements are the most accessible and maintain the largest range of facilities. Policy 3 of the made Highworth Neighbourhood Plan (the HNP) then identifies the settlement of Highworth and that outside of these areas development will not normally be permitted.
12. The Council's approach to residential development is therefore broadly consistent with the housing approach and objectives set out in the National Planning Policy Framework (the Framework).
13. I could see during my site visit that Highworth contained a good range of services and facilities, as identified by Policy SD2 of the LP. The Council has then resolved to grant an outline planning permission³ for up to 250 dwellings in very close proximity of the appeal site. My attention has also been drawn to other schemes in/around Highworth where there has been the resolution to or grant of a planning permission as well as a nearby dismissed appeal⁴ for housing.
14. However, the scheme for up to 250 dwellings also includes various pedestrian links to facilitate access to Highworth and a school. The appeal site, by contrast, is approached via a long access driveway and the B4000 Shrivenham Road has a 60mph speed limit which is unlit and without footways. Even if in the future the proposed pedestrian links could be utilised, it may still leave a stretch of road that would be sub-optimal for pedestrians, contrary to Policy SD1 of the LP. An existing public right of way then passes through woodland and includes a stile, and so would provide an option, and which differentiates the site from the aforementioned nearby dismissed appeal, but it would still not be appropriate for all users. This means occupiers of the site would likely be more reliant upon the private motor car.
15. For this reason alone, I conclude the site is not in a suitable location for residential uses and therefore conflicts with Policies SD1 and SD2 of the LP and Policy 3 of the HNP. Consequently, this is a planning harm to which I attach moderate weight.

³ Council Ref S/OUT/20/0422

⁴ APP/U3935/W/22/3296937

Character and appearance

16. The site is set partially elevated in relation to surrounding farmland. The Council considered that the site represented a reasonably intact model Victorian farm, however only The Granary and attached structures substantively remain which are thus considered to be non-designated heritage assets (the assets). There also remains some original fabric in the partially erected buildings 2 and 3. It is therefore important to retain the remaining Victorian significance and conserve the setting of the assets.
17. The proposed scheme (Appeal B) sees the substantial reconstruction of the other buildings at the site. I recognise that the historic value of the group of buildings has been reduced. The Council is concerned that the proposal would mimic the appearance of the former historic buildings at the site and highlights differing footprints, the design of the link structures and specific areas of poor detailing, amongst other things.
18. However, it would appear to me to be entirely appropriate in these circumstances to seek to mimic what has unfortunately been lost, even though there would only be neutral to minor beneficial heritage impacts. Whilst it is not rebuilding like-for-like, in considering the scheme in the round, I do not find that aspects such as the link structures detract significantly from the overall scheme. On-balance, even with the introduction of sub-division to create individual gardens, it would therefore conserve the significance of the assets and their wider connection with surrounding farmland.
19. Moreover, suitably worded planning conditions will ensure that the Council is able to exercise considerable control over the materials and detailing of the scheme to ensure a high-quality design that respects existing built characteristics, so that it would not be a poor facsimile of the original buildings.
20. I conclude the proposed scheme, Appeal B, is not harmful to the character and appearance of the area, including non-designated heritage assets, and so accords with Policies SD1, DE1, EN10 of the LP. These policies, amongst other things, require development to be of a high-quality design, respect existing built characteristics and conserve the significance of non-designated heritage assets, including setting. The absence of this planning harm attracts neutral weight.
21. In contrast, the incomplete buildings the subject of the enforcement notice, Appeal A, currently stand as incongruous features. Whilst planning conditions might afford scope to provide them with a more appropriate finished appearance, there remains little evidence before me as to how they would then conserve the significance of the assets, given they would also remain with a nil-use. I accordingly conclude that the incomplete buildings are harmful to the character and appearance of the area, including non-designated heritage assets, and so conflict with the aforementioned Policies of the LP. This is a planning harm to which I attach significant weight.

Other considerations

22. I was advised during the Hearing that a planning permission⁵ was granted in 2017 which resulted in the change of use of the buildings to provide 5 dwellings, amongst other things. That permission did not envisage the extent

⁵ Council ref S/17/1023

of buildings works and rebuilding that is now before me and was considered pursuant to Policy HA7 of the LP. Nevertheless, there is considerable overlap between that permission and the scheme before me, on a site where 5 dwellings have previously been granted planning permission. I am also mindful that whilst the farm workers cottages were derelict, this was a site with a historic residential presence, the scheme would enhance a dilapidated site, it is supported by Highworth Town Council, and that during the Hearing the Council indicated it was amenable to discussing a future residential use at the site in respect of the Granary building. In considering all this in the round, it is a consideration to which I attach moderate weight.

23. The Council accepts that it is currently unable to demonstrate a 5-year supply of deliverable housing sites, and the parties agreed during the Hearing there is only a 3.6-year supply figure. The presumption in favour of sustainable development is therefore engaged as the development plan policies which are most important for determining the appeal are out of date. The development would not bring the range of social and economic benefits associated with the nearby large-scale housing scheme. Nevertheless, the delivery of 5 dwellings would make a reasonably useful contribution to this shortfall of housing. In considering all this in the round, it is a consideration to which I attach moderate weight.

Planning balance

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission, and therefore appeals, should be determined in accordance with the development plan unless material considerations indicate otherwise.
25. I have found that there would be conflict with Policies SD1 and SD2 of the LP and Policy 3 of the HNP in respect of the sites location. These policies are broadly consistent with the aim of the Framework. For the reasons already given, the harm caused would be moderate. Therefore, I give the conflict with these policies moderate weight. Nevertheless, the proposal would be in conflict with the development plan as a whole.
26. The Appeal B proposals are then not harmful to the character and appearance of the area, including non-designated heritage assets, which attracts neutral weight. The other considerations then attract moderate weight in favour of the development, and the contribution to the shortfall of housing, given the development plan policies which are most important for determining the appeal are out of date, attracts further moderate weight.
27. Consequently, the adverse impacts do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, there are material planning considerations which indicate that planning permission should be granted otherwise than in accordance with the development plan in respect of Appeal B. Moreover, in such circumstances, Policy SD3 of the LP is then engaged and supports the grant of planning permission as it reflects the presumption in favour of sustainable development.
28. I have however identified harm to the character and appearance of the area, including non-designated assets, in respect of the incomplete buildings, Appeal A, which attracts significant weight, and which is otherwise not outweighed.

Planning conditions

29. The parties have provided a list of agreed suggested planning conditions in the event I was to allow an appeal. In respect of Appeal B, each of the suggested planning conditions are then relevant and necessary in the interests of proper planning and the character and appearance of the area, including non-designated heritage assets.

Conclusion

30. For these reasons and having regard to all other relevant matters raised, I conclude that Appeal A should fail, and that Appeal B should succeed.

Appeal A- The ground (f) appeal

31. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
32. The appellant contends that it is excessive to require the removal of the footings, foundations and floor slabs that might have then been associated with the original farm buildings. However, the re-use of any materials or parts of original structure now forms part of the unauthorised development, which is namely the erection of two incomplete buildings. Accordingly, this has gone well beyond the repair, maintenance or conversion of the original buildings and it is therefore not excessive for the incomplete buildings the subject of the notice to be demolished, including any footings, foundations and ground floor slabs integral to the unauthorised development.
33. The appeal on ground (f) therefore fails.

Appeal A - The ground (g) appeal

34. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 24 months ought to be allowed for consideration of an alternative redevelopment.
35. However, such an extensive period would unduly perpetuate the breaches of planning control and does not persuade me that 6 months is too short in which to comply with the requirements of the notice, nor to explore other options with the Council. I also note that the Council has powers under section 173A(1)(b) of the Act, albeit that would be a subsequent matter and is entirely for them.
36. The appeal on ground (g) therefore fails.

Overall Conclusion

37. For the reasons given above I conclude that Appeal A should not succeed, and I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. Appeal B accordingly succeeds, and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decisions

Appeal A

38. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

39. The appeal is allowed and planning permission is granted for change of use of agricultural buildings to provide 3no. dwellings, requiring full re-building of building 1, partial rebuilding of buildings 2 & 3, consolidation works to the granary, restoration of derelict farm workers cottages to provide 2no. dwellings, together with associated access works, parking and landscaping at Farm Buildings at Eastrop Farm, Shrivenham Road, Highworth, Swindon SN6 7QQ in accordance with the terms of the application, Ref S/21/1241/PEEG, dated 21 December 2021, subject to the attached Schedule of Planning Conditions.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Gillespie, Impact Planning Services
Mr C Charlton, Clarke Willmott
Mr A Booth, Impact Planning Services

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Eggleton, Eggleton Planning and Design Limited
Ms L Moore, Senior Planning Enforcement Officer
Ms H Ashun, Senior Planning Officer
Ms J Busby, Principal Planning Officer
Mr S Hay, Planning Policy Manager
Mr C Howells, Planning Policy Officer

INTERESTED PERSONS:

Cllr Murphy, Highworth Town Council
Mr N King, Appellant

DOCUMENTS:

1. Submission made on behalf of Highworth Town Council
2. Full text of Policy HA7 of the LP

Appeal B: Schedule of Planning Conditions

1. The decision relates to the following plans:

Drawing 01 Location Plan dated Dec 2020;
Blue line Location Plan Drawing 5001 dated 27/10/21;
Revised Blue line Site Location Plan dated 27/10/2021;
Drawing 5003D Proposed Access Plan dated 27/10/2021;
Proposed Site Plan Drawing 10 E dated 15/10/21
Proposed Granary Elevation Drawing 11 dated Dec 2020;
Proposed Granary Floor Plans Drawing 12A dated 28/3/2021;
Proposed - Building 2 Floor Plans Drawing 14A dated 26/03/2021;
Proposed - Building 2 Elevations/Sections Drawing 13 dated Dec 2020;
Proposed - Building 3 Elevations/Sections Drawing 15 dated Dec 2020;
Proposed - Building 3 Floor Plan Drawing 16A dated 26/03/2021;
Proposed – Cottages Drawing 17 dated Dec 2020
Proposed – Sections Drawing 18 A dated 1/3/2021;
Proposed car barn Drawing 19 dated Dec 2020
Landscaping Layout Drawing C384/P/02 dated September 2021;
Landscape Strategy and Access Drive Details C384/P/01A dated Sept 2021
Engineering Plan Drawing 900A dated 7/10/2021

2. Notwithstanding the details of the submitted plans, prior to the re-commencement of works on site in connection with the development hereby granted consent, full details of all new areas of brickwork/stone/render, bonding, pointing and mortar mix, including samples of materials to be used, shall have first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with these approved details.
3. Notwithstanding the details of the submitted plans, prior to the re-commencement on site in connection with the development hereby granted consent, full details of all proposed doors, windows and their casements, including glazed walls and their surrounds including materials and finishes, together with revised details with regard to the number and position of flues, shall have first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with these approved details.
4. Notwithstanding the details of the submitted plans, there shall be no re-commencement of development on site until a plan indicating the positions, design, height, land levels and materials and type of all boundary treatments including any gates, has been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall then be implemented before the dwellings are first occupied and shall be retained in the approved form at all times thereafter.
5. Notwithstanding the details of the submitted plans (ref: C384/P/01A & C384/P/02), no re-commencement on site shall take place until details of the hard landscaping of the site including the widths, surface treatment and edges of the access from Shrivenham Road to the curtilages of the dwellings and any driveways, pathways and other hard surfaces have been submitted to and approved in writing by the Local Planning Authority. The driveway

shall be constructed in accordance with the approved details prior to the occupation of the first dwelling. Any gates approved by condition 4 shall be situated at least 5m back from the carriageway edge of the public road and hung so as not to open outwards towards the public highway. The area of driveway within at least 5m of the carriageway edge of the public road shall be surfaced in bound material. The access arrangements shall then be retained at all times thereafter. No dwelling shall be occupied until the vehicular parking and turning facilities for that dwelling have been provided in accordance with the approved details. These facilities shall then be maintained and made available for their intended purposes at all times thereafter.

6. Notwithstanding the details of the submitted plans (C384/P/01A, 5002 A & 5003 D), no re-commencement on site shall take place until a scheme of landscaping, including for the access track, gardens and any other land outside the gardens, to include a planting schedule and timetable of works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the positions, species and crown spread of all existing trees and hedgerows on and overhanging the land, detailing those to be retained, together with measures for their protection during development. The approved scheme shall then be implemented as per the approved timetable. Any tree or shrub planted in accordance with the scheme which is removed, dies or becomes diseased within a period of five years from first being planted shall be replaced by one of a similar size and species in the next planting season.
7. No dwelling shall be occupied until details of the provision to be made for covered and secure bicycle storage for two bicycles per dwelling has been submitted to and approved in writing by the local planning authority. The approved provision shall be made before first occupation of any dwelling and shall thereafter be kept available for the parking of bicycles at all times thereafter.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no garages, outbuildings, fences or extensions shall be erected other than those expressly authorised by this permission.
9. Prior to first occupation of any dwelling, a scheme demonstrating ecological enhancements within the curtilages of each dwelling and the surrounding amenity land; including a programme for implementation and management; and a scheme of external lighting that is in accordance with Bats and Artificial Lighting in the UK (Institute of Lighting Professionals (ILP) Guidance Note 08/18), has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out and maintained in accordance with the approved scheme.
10. No dwelling shall be first occupied until the electric vehicle charging point for that dwelling has been installed in accordance with the approved plans. The electric vehicle charging points shall then be maintained and made available at all times thereafter.

11. Notwithstanding the details of the submitted plans, no re-commencement on site shall take place until drainage measures that ensure that run off from the site does not exceed greenfield run off rates have been carried out in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and provide, a management and maintenance plan for the lifetime of the development to secure the operation of the scheme throughout its lifetime. No dwelling hereby permitted shall be occupied until the surface water drainage works have been implemented in accordance with the approved details.