



Appeal Decisions

Site visit made on 21 August 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Appeal A Ref: APP/W1850/C/22/3307197

Land at Turf Cottage, Garway Hill, Orcop, Hereford HR2 8RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended.
- The appeal is made by Mr Garry Blott against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 23 August 2022.
- The breach of planning control as alleged in the notice is 'without planning permission, unauthorised operational development for erection of timber roof trusses'.
- The requirements of the notice are to:
 1. Remove the timber roof trusses from the building and from the Land.
 2. Restore the previous roof or similar at the previous level.
- The period for compliance with the requirements is 2 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with correction and variation in the terms as set out below in the Formal Decision.

Appeal B Ref: APP/W1850/W/22/3304925

Turf Cottage, Garway Hill, Orcop, Hereford HR2 8RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr Garry Blott against the decision of Herefordshire Council.
- The application Ref 214596, dated 13 December 2021, was refused by notice dated 27 May 2022.
- The development proposed is construction of barn roof structure together with timber store, improved access and parking (part retrospective).

Summary of Decision: The appeal is dismissed.

Procedural matters and background relevant to Appeal A and Appeal B

1. Information submitted by the parties indicates that the building subject to the appeals was previously a modest dwelling, but this was abandoned in the late 1960s. Over time, the building became derelict, with no roof and the remains of stone walls overgrown by vegetation. In recent years, the appellant has been repairing the building including adding a metal sheet roof in 2017, to help the walls dry out to enable their repair. In March 2020 the Council indicated in an email to the appellant that they considered the works to that point, including the metal sheet roof, to be permitted development. However, no certificate of lawfulness was applied for or granted.

2. In October 2021, the Council raised concerns regarding the removal of the metal sheet roof and construction of new roof trusses above the pre-existing stone walls. It is these new roof trusses which form the focus of the enforcement appeal under Appeal B and Appeal A relates to an application to retain the roof trusses and complete the new roof.
3. The application and the enforcement notice subject to the appeals relate to operational development rather than the use of the site. I have restricted my considerations accordingly.

Application for costs

4. An application for an award of costs has been made by Mr Garry Blott against Herefordshire Council, in relation to Appeal A and Appeal B. The application is the subject of a separate decision.

Appeal B – s78

Procedural matters

5. The application form described the development as 'construction of barn roof structure part retrospective'. This was changed during the course of the application, with agreement, to 'construction of barn roof structure together with timber store, improved access and parking (part retrospective)'.
6. At the time of my site visit, timber roof trusses had been erected on top of the repaired stone walls of the original structure, but the building remained open and unfinished. Next to it was a rudimentary timber storage structure covered with a tarpaulin sheet. Notwithstanding this, Appeal B has been determined on the submitted proposed drawings.
7. I have referred throughout this decision to the 'proposed building'. This includes the pre-existing stone walls as well as the addition of a new roof, with the associated raising of the eaves, as proposed under the application subject to Appeal B. While the stone walls are largely pre-existing, I have considered the effect the proposed building would have in its entirety, with the addition of the new roof.
8. The Herefordshire Local Plan Core Strategy (CS) was adopted in 2015. It is undergoing review but is currently out of date. However, as set out in paragraph 219 of the National Planning Policy Framework (the Framework), policies should not be regarded as out-of-date simply because they were adopted before the Framework. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Weight is a matter for the decision maker to judge in the circumstances of the case. Policies relevant to the determination of this appeal remain broadly consistent with the Framework so I afford substantial weight to any conflict with the policies.

Main issues

9. The main issues are the effect of the proposed development on:
 - The character and appearance of the site and the surrounding area; and
 - Biodiversity.

Reasons

Character and appearance

10. The appeal site is within the countryside. It contains a modest sized structure with stone walls, which until the works mentioned above, had been derelict for many years. The site is on the edge of and in the same ownership as a small area of woodland. The character and appearance of the area is rural and dominated by fields and woodland. There are dispersed dwellings in the area, most of which are large and set within generous plots, set back from the road.
11. The proposal would increase the height of the eaves by around 0.6 metres above the existing stone walls and this addition would be clad. The steeply pitched roof would be finished in slate. The proposed building would be approximately 5.6 metres high to the ridge. The height, combined with a length of 7 metres, mean it would present a bulky elevation along the site boundary with the road. The building is located close to the road and in an elevated position directly opposite a T junction, so the proposed building would be a prominent and highly visible feature, despite some screening.
12. No details have been provided on the proposed door and window fittings, but the openings would be modest and domestic in scale, proportion and location. Overall, the design and finish of the proposed building would have the appearance of a small dwelling or domestic outbuilding.
13. Despite its appearance, the proposed building is not domestic, nor is it associated with a dwelling. The nearest dwellings are on the other side of the road, visually and functionally separate from the appeal site. There are other buildings in the immediate area with a similar appearance to the proposed building, but these all have a close visual relationship with dwellings and appear to be used for domestic purposes. I have been presented with no evidence which demonstrates that there are non-domestic buildings within the context of the appeal site which have a similar appearance to the proposed building.
14. Consequently, the proposed building, whilst having a domestic appearance, would be at odds with the scale, form and layout of surrounding dwellings and their associated outbuildings and hence would be an incongruous addition to the area. It would extend built form with a domestic appearance further into the countryside, impacting negatively on the rural character.
15. The stated use of the proposed building is as a store, workshop and restroom, to enable the management of the small area of associated woodland. It would not have the appearance of a building generally associated with forestry or agriculture, which are more typically simple structures, often with sheet roofs, and with openings of a size and location commensurate with their use. Consequently, the proposal would result in a bulky and overly prominent building, with a design, scale, proportions and layout at odds with its stated purpose and out of keeping with the surrounding context.
16. The appellant argues that the proposed new roof has no greater visual impact than the previous roof and that the increase in the height of the eaves and ridge of approximately 0.6 metres is not significant. From the submitted photographs and plans I can see that the previous roof was constructed of metal sheeting, set directly onto the repaired pre-existing stone walls.

17. The previous roof gave the building the appearance of a simple rural store which was not out of keeping with the character of the site and its surroundings. As set out above, the proposed building, with the higher eaves and ridge and slate covering would not be in keeping and would be visually harmful to the site and its surroundings.
18. In the absence of a certificate of lawfulness, I do not have the evidence before me to determine the lawful status of the previous roof. Notwithstanding this, even if I accepted the previous roof as a fallback to which I could attach weight, it was less detrimental to the character and appearance of the site and the surrounding area than the proposed roof, so does not weigh in favour of the proposal.
19. The proposed wood store would be a simple open structure largely screened by the existing stone walls. The site access is off a quiet road and there is space on site for a vehicle. The Council has not raised any specific issues regarding these matters and from my assessment of the evidence and viewing of the site, I have no reason to conclude they would be unacceptable, if the rest of the proposal was acceptable.
20. I conclude that the development would cause unacceptable harm to the character and appearance of the site and the surrounding area. Consequently, the development would not comply with Policies LD1 and SD1 of the Herefordshire Local Plan Core Strategy (Adopted 2015) (CS), which together seek to ensure that development takes account of the local context and character, maintains local distinctiveness and respects the scale, height, proportions and massing of surrounding development.
21. I have been presented with no substantive evidence which would lead me to conclude that a building on the scale of that proposed is required in order to enable management of the small area of associated woodland. Therefore, I do not consider there to be any material considerations of sufficient weight for me to determine this application otherwise than in accordance with the development plan.

Biodiversity

22. No ecology survey was submitted with the application subject to this appeal. However, as part of the appeal, a Preliminary Ecological Assessment was provided, which has been reviewed by the Council Ecologist. On this basis, the Council concluded that subject to the imposition of conditions to secure suitable lighting, nest boxes and bat roost features, the development would be acceptable in terms of biodiversity matters. Having reviewed the information and suggested conditions, I agree with the Council conclusion.
23. I conclude that, subject to the imposition of conditions, the development would not cause harm to biodiversity. Consequently, the development would comply with Policy LD2 of the CS.

Conclusion on Appeal B

24. For the reasons given above and taking into account the development plan as a whole and all other matters raised, I conclude that the appeal should be dismissed and planning permission should not be granted.

Appeal A – s174

The notice

25. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council.
26. The Land to which the notice applies, and the location of the building in question on the Land, is clearly identified on the plan attached to the notice. However, I have corrected the description of the Land in section 2 of the notice to aid clarity. Requirement 2 of the notice is to 'Restore the previous roof or similar at the previous level'. This would have been more precisely worded as 'Restore the previous metal sheet roof, or a similar roof, at the height of the previous eaves and ridge'. Despite this, the appeal submissions show that the appellant understood with reasonable certainty what was required. I am therefore satisfied that I can make these corrections to the notice, as set out in the formal decision below, without causing injustice.
27. In specifying a requirement to restore the previous roof, the Council appear to have been seeking to restore the site to its condition before the alleged unauthorised operational development commenced. While the breach could arguably be remedied just by requirement 1, without requiring the restoration of the previous roof, I do not consider this matter to be such that the notice is invalid or a nullity.
28. In their appeal statement, the Council say they no longer seek to pursue requirement 2, to restore the previous roof. Despite this, the appellant has made it clear that if the notice is upheld, they do not want the requirement to restore the previous roof to be deleted, because complying with it would result in the restored roof being treated as having been granted planning permission, under the provisions of s173(12) of the Act.
29. As detailed in Appeal B, from the evidence available to me, I consider the previous roof to not have had a significant detrimental effect on the character and appearance of the site and the surrounding area. The Council chose not to take enforcement action against the previous roof and included a requirement in the notice to secure its restoration. This indicates that the Council consider a roof with the design, materials and height of the previous roof to be visually acceptable. Photographs and plans provided with the appeal give sufficient details of the previous roof to ensure clarity in what is required for its restoration.
30. For the above reasons, I consider that deleting requirement 2 of the notice, and hence the removal of the potential for deemed planning permission, would cause injustice to the appellant. Consequently, it would be beyond the scope of my powers under section 176(1) of the Act. Therefore, requirement 2 is retained, with correction.
31. The effect of the previous roof on the external appearance of the building would be materially different to either the roof trusses to which the notice relates, or the proposed new roof subject to Appeal B. Therefore section 55(2)(a) of the Act is not relevant.

The appeal on ground (f)

32. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice, or as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is clear to me from the reasons for issuing the notice, and its requirements, that the purpose of the notice is to remedy the breach of planning control.
33. Requirement 1 is to 'Remove the timber roof trusses from the building and from the Land'. Given the existing roof trusses could be adapted and re-used to reinstate the previous roof under requirement 2, their removal from the Land is excessive. I shall vary the terms of requirement 1 to allow the timber to be retained on site in so far as they are used in the restoration of the previous roof under requirement 2.
34. For the reasons given above, I conclude that the requirements of the notice exceed what is necessary and the appeal on ground (f) succeeds. I shall uphold the notice but exercise my powers under s176(1) of the Act to vary the notice, as set out below in the formal decision.

The appeal on ground (g)

35. The ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 2 months after the notice takes effect.
36. Given that the appellant may need to secure contractors to undertake the work as well as source the necessary materials, a period of 2 months does not seem reasonable, particularly for requirement 2. However, given that it is desirable to address the breach of planning control without undue delay, the 12 months suggested by the appellant is not acceptable.
37. I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 6 months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1) of the Act to vary the notice, as set out below in the formal decision.

Conclusion on Appeal A

38. For the reasons given above, I conclude the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. The appeal on grounds (f) and (g) succeeds to that extent. Therefore, I shall vary the notice prior to upholding it.

Formal decision on Appeal A

39. It is directed that the enforcement notice is corrected and varied as follows:
- In section 2, which describes the Land to which the notice relates, delete the words 'shown in the approximate location marked X on the attached plan edged in red' and substitute the words 'shown edged in red on the attached plan, with an X marking the approximate location of the timber roof trusses';

- In section 5, requirement 1, delete the words 'from the Land' and substitute the words 'remove any timber from the Land which is not used in complying with requirement 2';
- In section 5, requirement 2, delete the words 'Restore the previous roof or similar at the previous level' and substitute the words 'Restore the previous metal sheet roof, or a similar roof, at the height of the previous eaves and ridge'; and
- In section 6, time for compliance, delete the words '2 months' and substitute the words '6 months'.

40. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR