



Appeal Decisions

Site visit made on 12 September 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date 19 October 2023

Appeal A Ref: APP/F2415/C/23/3314277

Land Part OS 3058, Back Lane, Leire, Leicestershire LE17 5EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Knight against an enforcement notice issued by Harborough District Council.
- The notice, numbered EN642, was issued on 25 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of two buildings on the Land. The two buildings are referred to as Building 1 and Building 2 on the Plan, attached as photograph 1 and photograph 2 of this Notice.
- The requirements of the notice are:
 - a. Demolish and remove the two buildings from the Land in their entirety including all foundations, fixtures and fittings and surrounding hardstanding's associated with the structure.
 - b. Remove from the Land all materials, rubble and debris resulting from step (a) above.
- The period for compliance with the requirements is: six (6) months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: Appeal A is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/F2415/W/23/3314236

Land Part OS 3058, Back Lane, Leire, Leicestershire LE17 5EZ

- 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 David Knight against the decision of Harborough District Council.
- The application Ref 22/00975/FUL, dated 29 April 2022, was refused by notice dated 7 July 2022.
- The development proposed is for two new agricultural units and a new fence.

Summary Decision: Appeal B is dismissed.

Matters Concerning the Enforcement Notice

1. The allegation indicates two buildings have been erected, but with the benefit of a site visit as well as the evidence submitted, it is clear that the appellant has not completed one of the two buildings. As such, the works carried out on site relate to a completed building (Building 1) and a partially completed building (Building 2). There is no evidence to suggest that the appellant wishes to retain the partially constructed building as currently built. In fact, the drawings submitted as part of Appeal A and Appeal B propose to complete Building 2 as a single storey timber building with a pitched roof.
2. In view of the above, I am satisfied that this is an instance where I can exercise my power to correct the allegation in the Enforcement Notice (the Notice) without

giving rise to injustice. Consequently, in paragraph 3, the wording of the allegation shall be deleted in its entirety and substituted with the words, 'without planning permission, the erection of a building and the partial erection of another building. The completed building is referred to as Building 1, and the partially erected building is referred to as Building 2 on the Plan, attached as photograph 1 and photograph 2 of this Notice.'

3. For consistency with the changes to the allegation, in paragraph 5, step a, I shall delete the requirement in its entirety and substitute the words 'Demolish and remove Building 1 and Building 2 from the Land.' It is unnecessary to state 'in their entirety' and 'all foundations, fixtures and fittings to be removed.' The changes in the requirements are simply for conciseness and consistency with the varied allegation. This would not cause any injustice to the appellant nor the Council.
4. It is noted that paragraph 5, step a, requires the removal of the 'surrounding hardstanding's associated with the structure.' However, a hardstanding has not been alleged under paragraph 3 of the Notice. As such, it is not possible to require the removal of works that do not form part of the breach of planning control alleged. I have considered whether the allegation could be amended to include reference to a hardstanding, but this would make the alleged works more onerous. As the appellant has not had the opportunity to respond, amending the allegation in this manner would cause injustice to the appellant. Consequently, the words, 'surrounding hardstanding's associated with the structure' in paragraph 5, step a, shall be deleted.

Background and Preliminary Matters

5. The site address given on the Application Form for Appeal B differs from that shown on the Appeal Form for both Appeals A and B as well as the address on the Notice. The Application Form identifies the site as 'Hall Farm View, Back Lane, Leicestershire, Leire LE17 5EZ.' I am satisfied that all addresses given refer to the appeal site, albeit for consistency I have used those outlined on the Appeal Forms for the purposes of my Decisions.
6. Planning Contravention Notices (PCNs) were served on those with interest in the land on 28 February 2022. A PCN was completed and returned by the appellant, dated 21 March 2022. The completed PCN indicates that he owns the land subject of the appeal, and he erected the building and partially completed building in September 2021. The land also includes a fishing lake, which is managed by Lutterworth Angling Club on his behalf. The area of land on the western side of the fishing lake is described as an 'equestrian field' on the PCN. It is indicated by the appellant that a 2014 permission¹ for a hay barn, menage and horse stables has commenced on this part of the land.
7. Drawing references 502/007 Rev 0, 502/008 Rev A, 502/009 Rev B were submitted with respect to Appeal A. The drawing reference 502/008 Rev A was not included with the initial appeal submissions but was referred to in the appellant's Statement of Case. The missing plan was submitted on request and the Council were given the opportunity to comment on the drawing during the appeal process.

¹ Council reference 2014/00843/FUL

8. The deemed planning application scheme submitted with Appeal A, shown on the drawings referenced above, show Building 2 being completed with a pitched roof, timber clad elevations, rooflights, a window and an integrated office. However, Section 177(1)(a) of the Town and Country Planning Act 1990 (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.' Consequently, planning permission cannot be granted for more than Building 1 and the partially constructed Building 2.
9. Therefore, I am unable to consider the alternative scheme proposed as part of Appeal A under s177(1)(a). Nevertheless, the scheme that was refused planning permission under Appeal B proposes the two complete buildings and a fence in a very similar manner to that shown on the plans with Appeal A as part of the ground (a). As such, I have considered the buildings in respect of the amended allegation in respect of Appeal A, and the completed buildings and fence in respect of Appeal B.
10. In order to address the Council's concerns over highway safety, the appellant has submitted a Highway Technical Note, a block plan and swept path drawing with the evidence for both Appeals. This document and the associated plans were not submitted with the appeal but were included with the appeal submissions in a timely manner.
11. I have considered the Highway Technical Note, a block plan and swept path drawing under the principles established by the Courts in *Wheatcroft*². In this case, the Highway Technical Note (and drawings) is new information that was not seen by the Council and consultees during the application. However, as the additional information would not substantially alter the nature of the development, in my judgement, it would not be necessary to reconsult neighbours or other consultees. I am, therefore, satisfied that no party, including the Council who have viewed the additional information, would be prejudiced by my assessing the scheme with regard to it.
12. As set out above, two appeals are before me, which I have considered on their own individual merits. However, as the main issues are the same and to avoid duplication, I have considered them together.

Appeal A: the Ground (a) Appeal and the Deemed Planning Application, and Appeal B

13. The **main issues** in these appeals are:

- whether the site is a suitable location for the development, with regard to the Council's development strategy.
- the impact of the development on the character and appearance of the area.
- the impact of the development on highway safety.

Reasons

Suitable Location

14. The appeal site is located on the edge of the village of Leire, but in the countryside and outside of any defined settlement. Policy GD3 of the Harborough

² *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

Local Plan 2019 (Local Plan) states that outside Market Harborough, Key Centres, the Principal Urban Area (PUA), Rural Centres and Selected Rural Villages, and land adjoining them, but excluding Green Wedges, development will be permitted where it is required for, amongst other things, the following purposes:

- a. agriculture, horticulture, woodland management or other similar uses appropriate to a rural area.
 - e. where it is necessary for the continuation of an existing enterprise, facility or operation that is compatible with its setting in the countryside.
 - l. other uses which justify and are compatible with a countryside location.
15. The appellant has indicated that the business on site is intended to operate as two strands of work. On site tree growing will be undertaken, with saplings and seedlings grown for 3 years before commercial sale. The second revenue stream is contract farming, where work for 2 – 3 local agricultural holdings will be undertaken.
16. It is evident from the submissions and my site visit that the current use is primarily for the storage of agricultural machinery, tools and a workshop in association with the appellant's contracted farm work. There is some evidence on site of trees being planted on the land and some in pots, but the business plan and the site visit indicates that the horticulture element of the business is in its infancy. The erection of Building 1 and Building 2 has been carried out in association with the mixed use of the site. Building 2 is partially built but would be completed as part of Appeal B in association with the horticulture element, providing indoor space for storage and growing. Building 1 is complete and being used for storage of machinery and a workshop in association with the contractual work carried out by the appellant.
17. Elements of the use on site would be for horticulture, however, the storage of machinery for contracted work would be more akin to a B8 storage use³, rather than agriculture, horticulture or woodland management. This is particularly the case when the machinery is being stored for use elsewhere and not on the land. The combination of the uses would amount to a mixed use of the land, which would not be compatible with criterion (a). Furthermore, aside from the appellant owning the land, there are no tangible reasons why the agricultural machinery needs to be stored on the land in connection with the contracted work. Consequently, there is insufficient evidence to demonstrate why the existing enterprise is justified or compatible with the countryside location.
18. In view of the above, the site is not a suitable location for the development, with regard to the Council's development strategy. The erection of Building 1 and Building 2 for the mixed use of the site would be contrary to Policy GD3 of the Local Plan. This policy seeks limited development outside of settlement boundaries to justified exceptions to achieve a sustainable pattern of development and to protect the character and appearance of the countryside. Based on the evidence before me, the mixed use of the site is not one of those justified exceptions.
19. The Council have referred to Policy INF3 of the Local Plan, which permits the use, conversion and adaption of rural buildings for small businesses, recreation or tourism purposes subject to certain criteria. The development is for new buildings

³ As defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

and does not involve the conversion and adaption of rural buildings. As such, this policy is not relevant to the development subject of this appeal.

Character and Appearance

20. The appeal site is a field on the edge of the rural village of Leire. The appeal site borders a disused railway line and Broughton Lane to the east. The site has mature vegetation along the boundaries and is adjoined by undeveloped fields and farmland. The site is relatively flat and has a track from the northern access to the south of the site. Aside from a parking area to the south of the track, the site maintains a largely undeveloped character and appearance that is valuable to the sense of place and contributes positively to its rural setting.
21. The Development Management Supplementary Planning Document 2019 (SPD), Chapter 7, provides advice and guidance on agricultural, equestrian and structures in the countryside. Paragraph 7.1 of the SPD states that in general new agricultural buildings in the countryside will be permitted where they are required in connection with agriculture and provided that they do not have an adverse effect on the character and appearance of the countryside. Paragraph 7.4 of the SPD goes on to say that the proposed building should be appropriate in massing and scale for its use and location. Attention should be given to the scale and height to minimise the impact on the landscape. Dark colours, such as dark green, brown and grey are preferred to lighter colours for external finishes.
22. The plans submitted with Appeal B propose Building 2 as a single storey building. It would have a pitched roof finished with an overhang to the end elevation. The elevations would comprise grey timber cladding with a brick plinth. Appeal B shows a single door and an open internal space. As part of Appeal A, the partially completed building is simply the footprint of the building, the brick plinth, most of the timber frame of the walls but with no roof or cladding. Building 1 is shown on Appeal B as a single storey steel framed building that is finished in a dark grey cladding/panelling. It has a large roller shutter door, a small overhang and a pedestrian door to the front as well as a single door to the side elevation. This is how it appears on site and is considered as part of Appeal A.
23. There is no objective assessment in either appeal of the scale and design of Building 1 or Building 2 against the requirements of the intended use. Aside from a description of the use annotated on the plans, limited detail has been provided to indicate why two separate buildings are needed or why the buildings need to be the size and scale proposed. Consequently, based on the evidence before me, I am unable to conclude whether Building 1 or Building 2 (partially built or completed) are well-designed buildings and have an appropriate massing and scale for their use.
24. Building 2, as proposed in Appeal B, also includes features such as a large roof overhang, a pedestrian door as well as a yellow brick plinth. In this respect, the appearance of Building 2 would be at odds with the appearance of typical agricultural buildings, as well as the advice and guidance set out in the SPD. Clearly, in respect of Appeal A the visual impact of Building 2, as partially built, would be as harmful, or more at odds as it would be in respect of Appeal B. Appeal B also proposes the retention of the fence and gate access to the southern end of the site. The fence is 2.7m tall and is made of timber, with a close boarded panel design. The scale, height and design of the enclosure is also at odds with the typical post and rail fence enclosures one would see in a rural context.

25. Building 1 and Building 2 (as partially built or completed) are of a height and location that means that they are not visible from public vantage points from outside the site. The fence to the south is also set back into the site, away from public vantage points. Consequently, in terms of their visual impact, this would be limited to localised views from within the site and along the private road off Back Lane. Nonetheless, without the buildings and fence, the site would have a largely undeveloped appearance commensurate with the character of its surroundings. The fact that the buildings are not unduly visible or prominent is not a good reason to allow unjustified development in rural locations.
26. I recognise that the buildings and fence enclosures have been built and designed to provide security for the appellant's land, as well as expensive tools, machinery and goods he wishes to store. I appreciate that these matters can be concerning, but enclosing the land with a high fence and erecting new buildings is not the only solution to secure property and to alleviate theft. In this instance, security of the site and the fear of crime does not outweigh the harm identified to the character and appearance of the area.
27. Accordingly, the development is harmful to the character and appearance of the area, contrary to the aims and objectives of Policies GD8 of the Local Plan and the SPD. The policy, and guidance, seek to ensure development is a high standard of design, which is appropriate in respect of its massing and scale for its use and location. The development should also respect the context and characteristics of the individual site and the wider local environment.
28. I have had regard to paragraph 84 of the National Planning Policy Framework 2021 (the Framework). However, as the buildings are not well designed, in respect of their intended use, the development would also be contrary to paragraph 84 of the Framework, which seeks to ensure the sustainable growth and expansion of all types of business in rural areas, through the conversion of existing buildings and well-designed new buildings.

Highway Safety

29. The existing highway network in the vicinity of the site is predominantly made up of narrow rural roads. It is indicated that two accesses have been used historically in connection with the land for a mix of uses, including agriculture and a commercial fishing lake. Broughton Lane and Back Lane are both narrow roads with no footways. The existing access off Broughton Lane is close to a bridge underpass and includes a gate set back from the road. The access point to the site via Back Lane is on a curve on a quiet residential road, but also includes a stretch of a private way.
30. The details submitted originally with Appeal B indicate that access and egress would be via the existing access onto Back Lane. However, the Highway Technical Note submitted with both appeals states that the appellant could use the access off Broughton Lane to enter, and Back Lane to exit, as a one way arrangement. The Highway Technical Note states that there have been no recorded vehicle collisions at either access points. The development would result in 16 two way vehicle movements on any given week. An access plan shows vehicle swept paths for a 12m rigid vehicle entering the site via Broughton Lane from both directions.
31. Based on the evidence before me, the Council do not raise concerns with the number of vehicular movements associated with the development. Instead, it

claims that insufficient information was provided on the turning space for vehicles to enter and exit the site in a forward gear, as well as there being no details on the site access and visibility splays at Back Lane.

32. I accept that the highway network consists of narrow rural roads and the visibility on one side of either access is somewhat restricted. Notwithstanding this, there are no records of vehicle collisions over an extended period at either access. The number of movements on any given week would be low and the vehicles that would be used are not significantly different in terms of size than in association with the previous uses. Even if it is not possible to turn within the site, I am satisfied that larger vehicles could enter from Broughton Lane and exit via Back Lane in a forward gear. Hence, I do not consider that the development would significantly increase traffic to and from the site or poses a serious highway safety risk over and above the existing situation.
33. Accordingly, the development would not have an unacceptable effect on highway safety. The development would comply with Policy IN2 of the Local Plan, which indicates that proposals for residential and commercial development will be permitted subject to the provision of, amongst other things, a safe access, servicing and parking arrangements having regard to the highways authority guidance and standards.
34. The development would also be compliant with paragraph 111 of the Framework, which indicates that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

35. I have had regard to the economic benefits that would arise from the growth of the mixed horticultural and commercial employment use of the site. However, having regard to the size of the business, and the potential number of employees generated by the growth, the economic benefits would not be significant. In this respect, they do not outweigh the conflict with the development plan strategy and the harm to the character and appearance of the area.

Conclusion

36. For the reasons above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
37. For the reasons given above, I conclude that Appeal B should be dismissed.

Formal Decision

Appeal A Ref: APP/F2415/C/23/3314277

39. It is directed that the Notice is varied by:

In Paragraph 3, the wording of the allegation shall be deleted in its entirety and substituted with the words, 'without planning permission, the erection of a building and the partial erection of another building. The completed building is referred to as Building 1, and the partially erected building referred to as Building 2 on the Plan, attached as photograph 1 and photograph 2 of this Notice.'

In Paragraph 5, step a, delete all the words and substitute with the words 'Demolish and remove Building 1 and Building 2 from the Land.'

40. Subject to variations, Appeal A 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 Ref: APP/F2415/W/23/3314236

41. Appeal B is dismissed.

M. P. Howell

INSPECTOR