



Appeal Decisions

Site visit made on 3 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal A Ref: APP/L1765/C/22/3311622

Land to the north of Dradfield Lane, Soberton, Hampshire SO32 3QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nick Butler against an enforcement notice issued by Winchester City Council.
 - The notice was issued on 17 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a polytunnel.
 - The requirements of the notice are to remove the unauthorised polytunnel from the site including any fixtures and footings used for the siting of the polytunnel.
 - 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) & (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 Ref: APP/L1765/C/22/3311632

Land to the north of Dradfield Lane, Soberton, Hampshire SO32 3QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nick Butler against an enforcement notice issued by Winchester City Council.
 - The notice was issued on 17 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of two gates by the addition of boards attached to the two five bar metal gates situated between timber fencing either side.
 - The requirements of the notice are to remove the boards mounted to the two five bar metal gates situated between the timber fencing either side.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) & (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 C Ref: APP/L1765/W/22/3307421

Land to the east of Dradfield Industrial Estate, Dradfield Lane, Soberton SO32 3QD

- 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 Nick Butler against the decision of Winchester City Council.
 - The application Ref 21/01858/FUL, dated 7 July 2021, was refused by notice dated 21 March 2022.
 - The development proposed is described as *"improved farm access (retrospective), with the erection of 1.75m high oak access gates and polytunnel."*
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Decisions

1. Appeals A & B-The appeals are dismissed and the enforcement notices are upheld. Planning permission is refused on the applications deemed to have been made under section 177 (5) of the 1990 Act as amended.
2. Appeal C-The part of the appeal that relates to the polytunnel is dismissed. The part of the appeal that relates to the access improvements and gates is allowed and planning permission is granted for the improved farm access with the erection of 1.75 m high oak access gates at land to the east of Dradfield Industrial Estate, Dradfield Lane, Soberton SO32 3QD, in accordance with the terms of the application Ref 21/01858/FUL, dated 7 July 2021, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved drawings: 8504/01, 001, 002, 003, NJC-004 & NJC-005, only insofar as they relate to the access improvements and gates.

Preliminary Matters

3. In Appeal B, the appellant refers to erecting the proposed gates in Appeal C. However, those gates are not part of the matters alleged in the notice; they are a different development. At s177 (1) (a), the Act only provides for the granting of planning permission where it is for the whole or part of the matters stated in the notice. As a result, the proposed gates cannot form part of the deemed planning application arising from the ground (a) appeal in Appeal B.
4. The description in the banner heading of the proposal in Appeal C is taken from the application form. As the term 'retrospective' does not refer to an act of development, I have omitted it from the formal decision.

Application for costs

5. An application for costs in respect of Appeal C was made by Mr Nick Butler against Winchester City Council. This application is the subject of a separate Decision.

Appeal A

Ground (a) appeal

Main Issue

6. The main issue in this ground of appeal is whether the polytunnel has increased the risk of flooding.

Reasons

Flood risk

7. The appeal site is a substantial field, located in an area of scattered residential and commercial development within the wider countryside. The site is in use for agriculture, including growing crops and rearing livestock. The polytunnel is located towards the west end of the site and contains quantities of crops under cultivation with a working area.

8. The approach to managing flood risk set out in the revised National Planning Policy Framework (the Framework) is to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk, but where development is necessary, making it safe for its lifetime without increasing flood risk elsewhere. The site and surrounding land are in Flood Zone 1 and therefore at low risk of flooding from rivers or the sea. It is not disputed however that the locality is at risk of flooding from surface water. The National Planning Practice Guidance advises that development or the cumulative impacts of development can increase flood risk elsewhere, including where there is inadequate management of surface water.
9. The appellant has undertaken significant works to drain surface water from the site, including installing a drainage pipe and clearing a ditch. It is clearly in the appellant's interests to ensure that the site is well-drained, to safeguard the health and wellbeing of their livestock. Even so, measuring around 25 m in length with a width of about 11 m, the polytunnel has a substantial built footprint. It is entirely possible that enclosing and covering the polytunnel footprint in weatherproof materials has considerably reduced the capacity of the site to absorb surface water, with a corresponding increase in run-off. It is difficult to determine the efficacy of the appellant's drainage works simply by viewing them. Although during my visit the site surface and adjoining land was largely dry and free from standing surface water, I cannot reasonably be certain that this would continue to be the case at other times.
10. Few details have been supplied from which it might reasonably be ascertained that the appellant's drainage works are sufficient to drain surface water from the polytunnel or whether additional works of mitigation are required. Representations received from the Parish Council, the District Councillor, the Newtown, Soberton Community and Flood Action Group and interested residents, referring to recent incidences of flooding at the site and on adjacent land, reinforce the importance of full details of the polytunnel drainage being provided, so that an informed assessment can be undertaken. The absence of such details provides little assurance that recent incidences of flooding in the locality are not at least in part due to erecting the polytunnel.
11. I have considered whether a suitable planning condition could be imposed to require the submission of a scheme of surface water drainage for the polytunnel and following approval by the Council, its implementation within a defined timescale. This matter, raised by the appellant in their ground (f) submissions, is more appropriately dealt with on ground (a), being of relevance to the planning merits of the development. However, since the nature and scope of the works that might be involved in such a scheme and the feasibility of undertaking those works is unclear, I cannot reasonably be assured that imposing a condition would ensure that there is no increase in flood risk.
12. Therefore, based on the available evidence I am not persuaded that there has been no increase in the risk of flooding at the site and elsewhere as a result of erecting the polytunnel. This is in conflict with criterion in Policy CP17 of the Winchester Local Plan Part 1 (LP), which requires flood risk to people and property to be avoided by managing flood risk from new development to ensure risk is not increased elsewhere, as well as conflicting with criterion in LP Part 2 Policy DM17, which requires adequate provision for surface water drainage to be made. Also, by failing to ensure that flood risk is not increased at the site and elsewhere, the polytunnel is inconsistent with the Framework.

Other matters

13. The polytunnel would support the appellant's agricultural activity and that there is no harmful effect on the character and appearance of the surrounding area. However, those matters carry limited weight in relation to my findings on the main issue.

Conclusion-Ground (a)

14. The polytunnel has increased the risk of flooding and is in conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. It follows that the ground (a) appeal does not succeed.

Ground (f) appeal

15. The ground of appeal is that the notice requirements are excessive.
16. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place as provided by s173 (4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173 (4)(b). The notice requires nothing less than removal of the polytunnel and its constituent materials from the site. Therefore, although the notice does not state as such its purpose must be to remedy the breach of planning control by restoring the site to its condition prior to the breach taking place.
17. Set in the above context, any requirement which stopped short of removal of the polytunnel would sustain part of the breach and so would not achieve the purpose of the notice. The appellant did not advance an alternative to the notice requirements that would also remedy the breach and to my mind, no such alternative exists.
18. Accordingly, the notice requirements are proportionate and not excessive, being the minimum steps necessary to remedy the breach. The ground (f) appeal fails.

Ground (g) appeal

19. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
20. The notice has a compliance period of six months. Since the polytunnel is a simple structure constructed from lightweight materials its removal would be a relatively straightforward activity, probably taking little more than a few days at most. Such works would not be particularly dependent on good ground conditions and in all likelihood could be undertaken even in a period of poor weather. As it is now almost at the end of the growing season, the appellant would be afforded sufficient time within the compliance period to harvest remaining crops prior to removing the polytunnel and to make alternative arrangements for future growing activity. Furthermore, there would be time enough within this period to explore with the Council whether the objections to the polytunnel could be overcome and, if relevant, for the submission and determination of a further planning application.
21. As a result, the period specified in the notice affords the appellant sufficient time for the remedial works to be completed without causing undue disruption

to their agricultural activity. There is an appropriate balance struck between ensuring that the planning harm caused by the polytunnel is remedied as soon as is practicable, whilst also minimising the disruption on the appellant as far as is reasonably possible to avoid imposing a disproportionate burden on them. It follows that extending the compliance period to twelve months would achieve little beyond perpetuating the planning harm caused.

22. Consequently, six months is a reasonable timescale for complying with the notice and it would not be appropriate to extend that period. The ground (g) appeal also fails.

Appeal B

Ground (a) appeal

Main Issue

23. The main issue in this ground of appeal is the effect of the gates on the character and appearance of the surrounding area.

Reasons

24. The notice attacks a pair of gates around 2 m in height with an overall width of about 10 m. The gates, which are constructed in solid timber boards painted dark grey, are installed across the vehicle access to the site.
25. In dismissing a recent planning appeal¹, the Inspector considered that the gates... *"are therefore not a good low-key design or appropriate to the rural setting of the area. They detract from the rural location and appear dominant and unacceptable in moderate views, even though I accept they are not seen in wider views. The gates in particular form an enclosure which is alien to the natural landscape character of the area, and now provide a distinctive and harmful presence along Dradfield Lane. This neither responds positively nor has a satisfactory impact. The distinctive rural character and identity of local minor roads, such as this, are therefore important to protect."* I concur with that assessment. In any event, the visual harm caused by the gates is not in dispute.
26. Therefore, the gates have a harmful effect on the character and appearance of the surrounding area, in conflict with LP Part 1 Policy CP20 and LP Part 2 Policies DM15, DM16, DM17 and DM23 which, amongst other things, require development to conserve natural landscapes, respect the characteristics that contribute to distinctiveness, provide boundary treatments that respond positively to local context, are satisfactory in terms of impact, and do not have an unacceptable effect on the rural character of the area, also being inconsistent with the objectives of the Soberton and Newtown Village Design Statement (VDS). I attach similar weight to the other considerations.

Conclusion-Ground (a)

27. The gates are harmful to the character and appearance of the surrounding area and are in conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. It follows that the ground (a) appeal does not succeed.

¹ Appeal Ref: APP/L1765/W/20/3263363.

Ground (g) appeal

28. This notice also has a compliance period of six months. Removing the boards attached to the five bar metal gates behind is unlikely to be the work of much more than a few hours. I understand that the proposed gates in Appeal C would be made to order. Even so, I am not persuaded on the evidence before me that it would take longer than six months to raise sufficient funds to purchase the gates and to have them manufactured and fitted. In any event, the continued presence of the five bar metal gates following removal of the boards means that the site access would still be secured in a manner comparable with that of similar agricultural premises during any intervening period prior to the proposed gates being fitted.
29. As a result, the period specified in the notice gives the appellant ample time for the remedial works to be completed and strikes an appropriate balance between ensuring that the planning harm identified above is remedied as soon as is practicable, whilst also minimising the disruption to the appellant as far as is reasonably possible. It follows that the effect of extending the compliance period to twelve months would largely be to perpetuate the planning harm caused.
30. Therefore, six months is a reasonable timescale for complying with the notice and it would not be appropriate to extend that period. The ground (g) appeal also fails.

Appeal C

Main Issues

31. The main issues in this appeal are:
- Whether the polytunnel has increased the risk of flooding.
 - The effect of the access works and gates on the character and appearance of the surrounding area.

Reasons

Flood risk

32. Similar conclusions to Appeal A apply in relation to the polytunnel and the consequent conflict with Development Plan policy and the Framework.

Character and appearance

33. The Council concluded that the proposed gates, which would be of solid timber with a natural finish, together with the works to widen and hard surface the access, would not have an adverse effect on the character and appearance of the surrounding area. Similar conclusions were also reached in relation to the polytunnel. I concur. Therefore, the development accords with Policy CP20 in the LP Part 1 as well as LP Part 2 Policies DM15, DM16, DM17 and DM23 and there is no conflict with the VDS.

Other matters

34. I have had regard to the other matters raised, including in representations made by the Parish Council and interested parties. However, those matters carry limited weight in relation to the above findings.

Conclusion-Appeal C

35. For similar reasons to Appeal A, the polytunnel is in conflict with the Development Plan taken as a whole. There is no such conflict however in relation to the access works and proposed gates. The access and proposed gates are clearly severable, both physically and in terms of function, from the polytunnel. The access is capable of being used and the proposed gates being erected irrespective of whether the polytunnel is in situ. There are no material considerations that indicate the application should be determined other than in accordance with the Development Plan. Therefore, I shall issue a split decision.

Conditions

36. I shall impose a condition requiring the development to be carried out in accordance with the specified approved drawings, in the interests of certainty. However, as the access works have been undertaken, it is not necessary to impose the standard commencement condition. Further, I shall not impose the other suggested conditions as they would not meet the tests set out in the Framework. A condition requiring the proposed gates to be fitted within six months would neither be necessary nor enforceable. The notice in Appeal B will ensure that the boards attached to the existing gates are removed within that timescale. Since no hydro break is proposed, a condition requiring the submission, approval by the Council and implementation of such a scheme is also unnecessary. Furthermore, in the absence of clear evidence to suggest otherwise I am not persuaded that a condition to restrict lighting at the site is relevant to the development.

Overall Conclusions

37. For the reasons given above I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed applications. Also, for the reasons given above I conclude that the part of Appeal C relating to the polytunnel should be dismissed, whilst that part relating to the access and gates should be allowed.

Stephen Hawkins

INSPECTOR