



Appeal Decision

Site visit made on 23 January 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 13 February 2024

Appeal Ref: APP/C1625/C/23/3326034

**Land adjacent to Selsley Common, Stroud, Gloucestershire GL5 5LB
(as identified on Land Registry ref GR427710)**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Nicholas Jordan against an enforcement notice issued by Stroud District Council.
 - The notice, numbered S.21/0735/UENG, was issued on 13 June 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the excavation of land, and the erection of a building in the approximate position edged in blue.
The requirements of the notice are to: (i) Demolish the whole of the metal structure and stone wall and permanently remove all the resulting debris from the land; (ii) Infill the area of excavated land and return it to its natural gradient prior to the excavation work taking place; (iii) On completion of steps (ii) and (iii) reseed with grass seed in the first available planting season.
 - The period for compliance with the requirements is: 6 (six) months after this notice takes effect, being the 18 January 2024.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.
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Decision

1. It is directed that:

section 5 'What you are required to do' is varied by deleting requirement (ii) and (iii) and substituting it with "(ii) Infill the area of excavated land and return it to its natural gradient and previous condition prior to the excavation work taking place."

and

section 6 'Time for Compliance' is corrected by deleting the words "after this notice takes effect, being the 18 January 2024".

2. Subject to this variation and correction, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

3. In December 2023, the Government published a revised National Planning Policy Framework (the Framework). The changes have no bearing on this case. As a result, I consider that there is no requirement for me to seek further

submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

4. The site lies within the open countryside and within the Cotswolds Area of Outstanding Natural Beauty (AONB). AONBs have now been renamed as 'National Landscapes' and I shall refer to the new designation in my decision.

Background Information

5. An application to establish the lawful use of the land ref: S.22/0779/CPE (existing use of the site for storage of building materials for a period in excess of 10 years) was refused by the Council by notice dated 24 May 2022.

The Notice

6. Section 173(9) of the 1990 Act provides that an enforcement notice 'shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities...'. The period for compliance with the notice starts to run from the date when the notice comes into effect and if appealed, that is the date of the appeal decision. There is no requirement to specify a particular date and under s176(1) of the 1990 Act, as there will be no injustice to either party, the notice will be corrected accordingly.
7. Step 5 (iii) of the notice requires the appellant, on completion of steps (ii) and (iii) to reseed the area with grass seed in the first available planting season. This is beyond the legislative limitations provided in s173(4) of the 1990 Act regarding compliance steps. Therefore, the step should be varied to require the land to be restored to its previous condition before the breach took place.

The appeal on ground (a) and the deemed planning application

Main Issue

8. The main issue is whether the development is an acceptable form of development in this location particularly with regard to its effect on the character and appearance of the area, which is within the Cotswolds National Landscape formerly referred to as the Cotswold AONB.

Reasons

9. The appeal relates to a partially constructed building within a sloping field that has been excavated at the lower level to provide a flat surface for the building, a storage area and improved manoeuvrability within the site. Access to the appeal site is via a long rough track through open land which leads up from the public highway on Selsley Hill. The site is in an elevated position. It shares a common boundary with two residential properties on its eastern side. A row of approximately eight residential properties adjoins the site on its southern boundary with their frontages facing Selsley Hill.
10. Open land adjoins the site to the rear and its northern boundary, and this land is a designated area of common land, Selsley Common SSSI, over which there are several Public Rights of Way. The appeal site is occupied by the appellant who uses the land to store building materials and equipment associated with their small building contracting business.

11. A metal portal frame building has been erected on the land and one side is in-filled with breeze blocks. The gable end adjacent to the northern site boundary has been in-filled with natural stone. Adjoining the new building to the front is an older stone outbuilding with a significantly lower roof height. This building, although within the notice area, does not form part of the notice. At the time of my visit, there was a mini digger and a small dumpster beside the building, and materials consisting of piles of bricks, blocks and roof tiles were being stored on the land. The quantity of materials was modest and most likely being used to construct the building on the site.
12. The works undertaken to level the land through excavation are significant and although views of the site may be limited to an extent, it is nevertheless considered harmful to its immediate surroundings. This is particularly so considering the quantity of light, yellow-coloured stone that has been used to create the large, levelled area. The starkness of the hard material is in direct contrast to the natural verdant landscape which mostly surrounds the site. This has a harsh and obtrusive visual impact which is harmful to the character and appearance of the immediate setting and the wider Cotswold National Landscape.
13. With regard to the building, the appellant has suggested that this could be finished with natural stone and a tiled roof and that it would have the appearance of a rural agricultural building, which is not uncommon, within the landscape. While I would agree that the building due to its size, height and suggested finished materials would likely not detract from the appearance of the surrounding landscape or damage its character, the use of the building would not be for agricultural purposes.
14. The appeal site lies within the Cotswolds National Landscape which is a landscape designation of national importance, and great weight should be given to conserving its scenic beauty. The site is also outside an identified settlement where policies in the Local Plan seek to restrict development. In such rural areas, Policy CP15 of the Stroud District Local Plan (2015) (SDLP) sets out six principles which support proposals in these locations. The policy refers to a quality living and working countryside and enables, amongst other things, development whose location is essential to support the rural economy through employment etc.
15. A building contractor is not considered to be a rural land-based use and there is no evidence to persuade me that it is essential for the appellant's yard to be located within the countryside, especially within a National Landscape which has the highest status of protection. While the appellant may undertake work within the rural locality, and I acknowledge that it may be convenient for the yard to be based close to work that has been undertaken locally in recent times, it is probable that building work will also be sourced further afield.
16. With the site occupying an elevated position within a wider area of rolling and largely undeveloped countryside, such a commercial operation would have a noticeable presence. The use of the land for the storage of building equipment and materials would appear alien in this rural setting and this would negatively impact the character and appearance of the area. I acknowledge the support within the Framework for a prosperous rural economy, however, a builder's yard is a use that I do not consider to be a sensitive form of development within a protected landscape setting such as this.

17. In considering the development, I have had regard to the purpose of conserving and enhancing the natural beauty of the National Landscape as set out in Section 85 of the Countryside and Rights of Way Act 2000 and paragraph 182 of the Framework. I conclude that the development would harm the character and appearance of the area and as such there is conflict with the Framework and Policies CP1 and CP15 of the SDLP. There is also conflict with Policy ES7 of the SDLP which states that development proposals should conserve or enhance the special features and diversity of the different landscapes within the district. The development would neither conserve or enhance the scenic beauty of the area and I attach great weight to the harm this would have on the Cotswold National Landscape.

Other Matters

18. The appellant refers to prior approval legislation which enables some agricultural buildings to be put to commercial or residential use, and that Government support through the Framework encourages the expansion of rural businesses and new buildings to meet their needs.
19. Permitted development under Class R of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 allows for development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within certain use classes including B8 (use of land for storage or distribution). This is subject to a number of conditions and limitations, and I cannot be certain that there would be compliance. Nevertheless, this only permits the change of use, and any associated operational development would require its own planning approval. The proposal before me is the erection of a new building and excavation works, therefore I find the suggested fallback position to have limited weight in the determination of the appeal.

Conclusion

20. The development results 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. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as amended, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

S A Hanson

INSPECTOR