



Appeal Decisions

Site visit made on 14 November 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th February 2024

Appeal A Ref: APP/C3240/C/22/3309779

Appeal B Ref: APP/C3240/C/22/3309780

Land at Montdore, The Barns at Coalport, Sutton Bank, Coalport, Telford TF11 9NJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeals are made by Mrs Julia Mosedale (3309779) and Mr John Mosedale (3309780) against an enforcement notice issued by Telford and Wrekin Council.
 - The notice was issued on 28 September 2022.
 - The breach of planning control as alleged in the notice is without the required planning permission, the erection of fencing (approximately marked F1 and cross hatched blue on the attached plan), an outbuilding (approximately marked G1 on the attached plan), decking with associated glass balustrade (approximately marked D1 and crosshatched green on the attached plan) and a pillared pergola structure (approximately hatched yellow and marked P1 on the attached plan).
 - The requirements of the notice are to:
 1. Remove from the land permanently, the outbuilding approximately marked G1 on the attached plan.
 2. Remove from the land permanently, the fencing in the location approximately marked F1 and crosshatched blue on the attached plan.
 3. Remove from the land permanently, the decking and glass balustrade in the location approximately marked D1 and crosshatched green and return to its former condition.
 4. Remove from the land permanently, the pillared pergola structure in the location approximately marked P1 and crosshatched yellow on the attached plan.
 5. Remove all the materials arising from the works to comply with requirements 1-4 of this notice.
 - The periods for compliance with the requirements is seven months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the 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 Act. Appeal B proceeds on grounds (b), (c), (d), (f), (g) only.
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Decision

1. The appeal on ground (a) is allowed insofar as it relates to the outbuilding marked G1 on the plan attached to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the outbuilding at land at Montdore, The Barns at Coalport, Sutton Bank, Coalport, Telford TF11 9NJ.
2. The appeals are dismissed and the enforcement notice is upheld insofar as it relates to the erection of fencing (approximately marked F1 and cross hatched blue on the notice plan), decking with associated glass balustrade (approximately marked D1 and crosshatched green on the notice plan) and a

pillared pergola structure (approximately hatched yellow and marked P1 on the notice plan) and planning permission is refused in respect of the fencing, decking with associated glass balustrade and the pillared pergola structure at land at Montdore, The Barns at Coalport, Sutton Bank, Coalport, Telford TF11 9NJ on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matters

3. The appeal site is one of five single residential dwellings within a wider residential farm development which includes the properties of The Farmhouse, Yorkdale, Sonnet and Mapletime. Enforcement notices alleging various breaches of planning control have been issued on each of these residential sites, and separate individual appeals have been made against each one of these notices. Each appeal is subject to a separate decision and are determined on their own merits.
4. The appellants have suggested that the notice be corrected in relation to grammatical matters such as the use of the term 'erected' and replacing the word decking with raised platform. However, the notice is clear in terms of identifying and describing what breaches of planning control are alleged as well as what the requirements are, and therefore the notice does not need to be corrected in relation to the matters raised.
5. It has been requested that permission should be granted for the removal of condition 13 of permission ref: TWC/2014/0772. These appeals are only made against the enforcement notice issued and not against a decision to refuse an application for the removal of a planning condition. The appeals are therefore dealt with accordingly.

Appeals on ground (b)

6. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact. The burden of proof falls on the appellants and the relevant test of the evidence is on the balance of probabilities. These grounds of appeals are made only in respect of the outbuilding, identified as G1 in the notice.
7. At my site inspection, I saw an outbuilding located in the position of G1 as identified on the plan attached to the notice. There is no evidence before me to suggest that the outbuilding was not situated at the site at the date the notice was issued.
8. Consequently, the appellants have failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and the appeals on ground (b) must fail.

Appeals on ground (c)

9. An appeal on this ground is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellants and the relevant test of the evidence is on the balance of probabilities. These grounds of appeals are made only in respect of the fencing and the decking.

10. Plan ref: SA29258_DC_01 Rev A was submitted to the Council in order to discharge condition 2 of permission ref: TWC/2014/0772 for the conversion of redundant farm buildings into 4no. dwellings (of which one of these dwellings forms part of the appeal site). Condition 2 was for details of materials to be agreed. The Council issued a letter dated 15 February 2018 confirming that the condition was discharged in relation to plan ref: SA29258_DC_01 Rev A, and detailing specifics in terms of downpipes and gutters, reclaimed bricks, mortar, and cills and headers with a note stating that foul drainage layout was not approved. This letter, under the section relating to condition 2, does not refer to any fencing.
11. Condition 5 of permission ref: TWC/2014/0772 related to details of enclosures. The Council letter states that condition 5 is discharged detailing internal yard fencing in accordance with plan ref: SA29258_DC_04_A1_RevA_180213 and boundary fencing to be post and rail. Plan ref: SA29258_DC_04_A1_RevA_180213 only shows details of wrought iron railings and ventholes.
12. Plan ref: SA29258_DC_01 Rev A does have an annotation stating '*Condition 5: Fences - 1.8m High Timber Privacy fences to be added in locations as specified on site plan. Indicative fencing shown in fig 1.*' Fig 1 on the plan shows a picture of a timber privacy fence. The plan does not indicate the positioning of where this timber privacy fence is proposed to be located on the site. The Council do not specifically confirm, in their letter dated 15 February 2018, either under the discharge of condition 2 or condition 5 that this 1.8m high timber privacy is approved.
13. Condition 13 of permission ref: TWC/2014/0772 removes permitted development rights from the site including, amongst other things, the erection of fencing. The appellant has claimed in their final comments statement that the majority of the fencing falls outside the redline boundary of permission ref: TWC/2014/0772 and therefore is not subject to the requirements of condition 13. This claim, however, directly contradicts the appellants argument that the fencing was agreed through the discharge of conditions 3 and 5. In any event, there is no convincing evidence that the fencing falls outside of the appeal site identified by the red line on the enforcement notice plan, which the appellant's have confirmed they own.
14. Taking account of all the above factors and with regard to all the evidence before me, the fencing as alleged in the notice has not been approved by the Council through the discharge of either condition 2 or 5 of permission ref: TWC/2014/0772. Neither is it considered to be permitted development given the removal of those permitted development rights by condition 13 of permission ref: TWC/2014/0772.
15. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that the enlargement, improvement or other alteration of a dwellinghouse is permitted development unless it would consist of or include the construction or provision of a raised platform. The GPDO's interpretation of "raised" in relation to a platform means a platform with a height greater than 0.3 metres.
16. The alleged decking in the notice is the raised platform in this instance. Whilst the appellants state that the majority of the raised platform is below 0.3 metres, it is clear that some of the raised platform is at a height greater than

0.3 metres. The raised platform is all one structure and is alleged as such in the notice. On this basis, as a portion of the raised platform is at a height greater than 0.3 metres, then the whole of the raised platform is not permitted development in line with paragraph A.1(k)(i) of the GPDO.

17. The fencing has not been approved through a discharge of conditions of permission ref: TWC/2014/0772. The decking as a raised platform does have a height greater than 0.3 metres and therefore is not permitted development. Condition 13 of permission ref: TWC/2014/0772 also withdrew permitted development rights from the site which included, amongst other things, fences. Since the fencing and the decking do not benefit from any other planning permission, they thereby constitute a breach of planning control. Therefore, the appeals on ground (c) fail.

Appeals on ground (d)

18. In order for the appeals on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late for enforcement action to be taken. The burden of proof is on the appellants and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
19. Section 171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
20. These grounds of appeals are made only in respect of the pillared pergola structure as identified as P1 in the notice. The appellant argues that the pergola has been fully completed for in excess of four years. The appellants have submitted a photograph dated 19 April 2018 which shows the pergola partly constructed with several of the pillars and some beams in place. However, there is no convincing evidence before me confirming that the pergola was substantially completed by 28 September 2018, four years prior to the issuing of the notice.
21. A Google Earth image dated 29 June 2018 has been provided. The image is blurry and does not clearly identify the pergola structure. The image also does not provide convincing evidence that the pergola was substantially complete by 28 September 2018.
22. A witness statement from the developer of the barns has been submitted. This statement details works in the courtyard area for drainage from which the remains of eight brick pillars with metal bar struts were detected in the ground. Photographs have been provided showing some of these remains. The statement further details that the pillars and old oak beams were reinstated for privacy reasons and that this work was done in the summer of 2018. This witness statement does not provide any specific dates as to when the pergola was substantially completed. The photograph dated 19 April 2018 shows some of the pillars and beams in place but at this time it was not substantially complete. There is no convincing evidence before me which clearly shows that

the pergola was substantially complete four years prior to the issuing of the notice.

23. Accordingly, having regard to all of the evidence before me, I find as a matter of fact and degree and on the balance of probability, that the pillared pergola structure has not been completed at the site for a period of four years before the notice was issued. Therefore, the appeals on ground (d) fails.

Appeal on ground (a)

24. The ground of appeal is that planning permission should be granted for the development.

Main issue

25. The main issue is whether the development preserves or enhances the character or appearance of the Severn Gorge Conservation Area and the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site.

Reasons

26. The appeal site is located within the Severn Gorge Conservation Area (SGCA) and the Ironbridge Gorge World Heritage Site (IGWHS). In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Moreover, paragraph 205 of the National Planning Policy Framework 2023 (the Framework) states that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
27. The SGCA is made up of several character areas with the appeal site sitting within the character area of Coalport. Coalport is dominated by the former ceramics factory and associated industrial buildings, with isolated farmsteads contributing to the character of the SGCA. The appeal site is part of a larger farmstead complex, with the buildings now residential accommodation, the main structures retain the traditional design, styles and materials of the original farmstead form. The significance of the SGCA, particularly in the location of the appeal site, is the historic interest of the rural built form within the setting of the wider industrial character of the area. The UNESCO description of the Outstanding Universal Value of the IGWHS refers to 'the traditional landscape and forests of the Severn Gorge' and the farmstead that the appeal site forms part of contributes positively to the traditional landscape of rural fields interspersed with agricultural built development.

Fencing

28. The fencing being close boarded and constructed from timber covers the majority of the south boundary of the site. Given its design and height, it is a dominant structure that is not in keeping with the traditional style of the farmstead buildings or the rural character of the surrounding area.
29. Whilst the fence has been in situ for around three years and its height provides a level of privacy, the close boarded nature of the fence and the overall mass of the structure detracts from the character and appearance of the area. The

timber material is a natural element for the area, however this does not outweigh the harm caused by the scale, height and style of the fencing.

30. My attention has been brought to a court judgement¹, in particular a passage from that judgement which states "*statutorily.... preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved.*" Following my assessment above, I find that the fencing does not make a positive contribution and does harm the character and appearance of the area.
31. I have had regard to the appellants statement of case including permission ref: TWC/2016/1125 which is for a 1.83m high fence. I do not consider this fence to be directly comparable to the fence subject of this appeal, given its construction includes stone plinth and posts and its location does not appear to be set within a rural farmstead setting.
32. Accordingly, the fencing does not preserve or enhance the character and appearance of the SGCA and IGWHS. It does not comply with Policies BE1, BE3 and BE5 of the Telford & Wrekin Local Plan and the Framework which states that development should respect and responds positively to its context and enhances the quality of the local built and natural environment, protect and enhance the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site, and preserve or enhance the character or appearance of conservation areas.
33. Under this ground of appeal, the appellants reiterate the arguments relating to the fence being approved through the discharge of conditions of permission ref: TWC/2014/0772. I have dealt with this matter under ground (c).
34. Reference is also made to permission ref: TWC/2018/0491 for retention of access road and revision to parking areas in conjunction with planning permission ref: TWC/2014/0772. This permission requires some accesses (one being close to the appeal site) to be permanently closed, however there is no convincing evidence that indicates that high close boarded timber fencing should be used to close off these accesses. This matter does not alter my findings above.

Decking with associated glass balustrade

35. The modern design and materials of the decking and glass balustrade are out of keeping with the historic and traditional materials and appearance of the appeal building and the wider farmstead. I accept that the appeal building and the surrounding buildings are residential in nature, nevertheless, they are part of a traditional farmstead complex that sits within the wider rural landscape.
36. The introduction of this feature does not integrate well with the traditional form and character of the building. It is intrusive and has a detrimental effect on the character and appearance of the building and the wider area. As such, I find that the decking and balustrade are incongruous features that have a harmful effect on the significance of the SGCA and IGWHS.
37. The appellants describe that over half of the decking would be permitted development although the exact scale of decking which would be permitted has

¹ South Lakeland District Council v Secretary of State for the Environment and another [1992]

not been provided. A smaller decking would have less effect on the surrounding area, however this does not justify the retention of the larger area of decking that I have found to be harmful to the character and appearance of the area. I attribute minimal weight to this matter in support of allowing the appeal.

38. The appellants have drawn my attention to permission ref: TWC/2019/0776 for various residential alterations to a property including a raised decking area. The raised decking area subject of this permission is different in style and materials to the decking in this appeal and the host property related to the permission does not form part of a farmstead complex. I therefore do not find the scheme in that permission directly comparable to the development subject of this appeal. I attach little weight to it in support of allowing the appeal.
39. To conclude, the decking and balustrade do not preserve or enhance the character and appearance of the SGCA and IGWHS. They do not comply with Policies BE1, BE3 and BE5 of the Telford & Wrekin Local Plan and the Framework which states that development should respect and responds positively to its context and enhances the quality of the local built and natural environment, protect and enhance the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site, and preserve or enhance the character or appearance of conservation areas.

Pillared pergola structure

40. The pergola structure is not a traditional feature of a farmstead complex in this rural location. Due to the design and materials of the pergola, it is an alien feature that detracts from the style and relationship of the existing farmstead buildings. Located centrally between the buildings, it is not highly visible from public viewpoints, however it is prominent within its immediate setting and visible from neighbouring properties. The scale of the pergola is excessive, and it results in a cluttered appearance within the surrounding built form.
41. Whilst the pergola is described as a standalone structure with no foundations that is reversible, it is nevertheless, a permanent structure which is an incongruous feature that detracts from the traditional nature of the farmstead. In this respect, although the effect on the wider SGCA and IGWHS may be limited, the pergola does have a harmful effect on the significance of the farmstead buildings and therefore its relationship with its rural surroundings and the immediate character and appearance of the SGCA and IGWHS.
42. The pillared pergola structure does not preserve or enhance the character and appearance of the SGCA and IGWHS. It does not comply with Policies BE1, BE3 and BE5 of the Telford & Wrekin Local Plan and the Framework which states that development should respect and responds positively to its context and enhances the quality of the local built and natural environment, protect and enhance the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site, and preserve or enhance the character or appearance of conservation areas.
43. I have had regard to the appellants statement of case including reference to court judgements² and a planning permission ref: TWC/2021/0052. The court judgements discuss the importance of previous decisions being material

² North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137; Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057 and R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2056

considerations and the consistency of decision making with cases that are similar in manner. The scheme approved in permission ref: TWC/2021/0052 is not directly comparable to the pergola subject of this appeal, particularly with regards to location, design and materials.

Outbuilding

44. The outbuilding subject of the notice is attached to the outbuilding of neighbouring property Yorkdale and appears as one single structure. I have therefore assessed it as one single structure accordingly.
45. The structure has a tall pitched roof form, however given its location and design it does not dominate the surrounding buildings. Farmsteads typically have associated buildings contributing to the built form and the structure is agricultural in style due to its sensitive material palette and therefore does not appear out of keeping within the historic agricultural character of the farmstead. The scale, design and materials of the structure are sensitive to its surroundings and does not have a harmful effect on the character and appearance or the significance of the SGCA and IGWHS.
46. I have had regard to the Council's statement of case including reference to need for storage, permitted development and permissions ref: TWC/2021/0533 and TWC/2014/0772. These matters do not alter my findings above.
47. The structure as a whole and therefore the outbuilding as described in the notice does preserve the character and appearance of the SGCA and IGWHS. It does comply with Policies BE1, BE3 and BE5 of the Telford & Wrekin Local Plan and the Framework which states that development should respect and responds positively to its context and enhances the quality of the local built and natural environment, protect and enhance the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site, and preserve or enhance the character or appearance of conservation areas.

Other matters

48. The submitted evidence refers to planning permissions ref: TWC/2021/0533 and TWC/2021/0534 both of which are for the development of dwellings including a car port. These developments lie to the west of the appeal site with the appellants describing the design of the dwellings as contemporary. Insufficient evidence has been provided with regards to the justification for granting permission for these developments, and they are a significant distance from the appeal site and do not form part of the farmstead complex. These developments do not alter my findings above.

Conclusion on ground (a)

49. I have found that the outbuilding does preserve the character and appearance of the SGCA and IGWHS. It does not conflict with policies of the development plan or the Framework and so planning permission should be granted for it.
50. However, the fencing, decking with associated glass balustrade and pillared pergola structure do not preserve or enhance the character and appearance of the SGCA and IGWHS. They do not accord with the development plan taken as a whole and there are no other considerations which indicates my decision should be made other than in accordance with the development plan.

51. The fencing, decking with associated glass balustrade and pillared pergola structure are harmful to the SGCA and IGWHS, and thereby the significance of the heritage assets. Nevertheless, I consider the harm to be less than substantial and in accordance with paragraph 208 of the Framework, this harm should be weighed against any public benefits of the proposal. Given the domestic nature of these structures, they have minimal public benefit which do not outweigh the cumulative harm to the SGCA and IGWHS. The fencing, decking with associated glass balustrade and pillared pergola structure, therefore, fails to sustain or enhance the setting, and thereby the significance of, the designated heritage assets. They do not accord with the policies of the Framework which seek to conserve and enhance the historic environment.
52. I conclude that the appeals should succeed in part. I will grant planning permission for the outbuilding but it is proportionate and necessary to uphold the notice and refuse to grant planning permission in respect of the fencing, decking with associated glass balustrade and pillared pergola structure.
53. I shall not vary the notice so as to delete the requirement to remove the outbuilding. Section 180 of the Act provides that where planning permission is granted after the service of an enforcement notice, for any development carried out before the grant of permission, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the grant of permission for the outbuilding shall override the requirement of the notice to remove the outbuilding.

Appeals on ground (f)

54. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach. These grounds of appeals are made only in respect of the outbuilding and the decking with associated glass balustrade described in the notice. Given my conclusion with respect to ground (a) above, there is no need to consider ground (f) in relation to the outbuilding.
55. The appellants claim the requirements are excessive in relation to the decking with associated glass balustrade as there only needs to be a need to reduce the decking so it is at a height no more than 0.3 metres and therefore permitted development in line with the GPDO. The GPDO does not grant retrospective planning permission, and in line with the *Garland* judgement³, the decking with associated glass balustrade has been found to be unlawful as a whole, not just part of the development that exceeds the permitted development limits. Varying the notice so that the decking must be reduced to a height no more than 0.3 metres would not serve to remedy the breach.
56. Accordingly, I conclude that the notice requirements are not excessive and the appeals on ground (f) fail.

Appeals on ground (g)

57. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. In this notice, the time to comply with the requirements is seven months. The appellants seek a time period of 12 months in which to comply with the requirements of the notice.

³ *Garland v MHLG* [1968] 20 P&CR 93

58. The appellants primary argument for seeking an increase in the period for compliance relates to the outbuilding, indicating that additional time is needed in order for the appellant to find alternative arrangements for the storage of items that are in the outbuilding. Given the outbuilding has been granted permission then this argument falls away.
59. I see no reason why the necessary works required to remove the fencing, decking with associated glass balustrade and pillared pergola structure within seven months, could not be achieved. There is no compelling evidence before me to indicate otherwise. As such I conclude that the periods for compliance with the notice requirements do not fall short of what should reasonably be allowed.
60. The appeals on ground (g) therefore fail.

Chris Baxter

INSPECTOR