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# Appeal Decision

Site visit made on 7 August 2024

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

**Decision date: 15 August 2024**

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**Appeal Ref: APP/B3030/C/23/3331876**

**Hardys Farm Shop, Farndon, Newark on Trent NG24 3SD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Holly Hardy against an enforcement notice issued by Newark & Sherwood District Council.
  - The notice was issued on 25 September 2023.
  - The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the erection of a marquee- structure, as marked by an 'X' on the attached Plan A and shown on Photograph 1.
  - The requirements of the notice are  
A. Dismantle the marquee- structure and remove all associated materials from the land.
  - The period for compliance with the requirement is 90 days.
  - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (the 1990 Act)(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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## Decision

1. 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

2. The Council refused to grant planning permission for the development, the subject of the notice, on the 21 September 2023<sup>1</sup>. The reasons for the issue of the notice and the reasons set out in the delegated report that the Council wishes to rely upon are different. However, the Council has set out in its statement that the principle issue is the impact of the development upon the open character of the surrounding countryside. Although the Council refers to overcoming harm to the Green belt<sup>2</sup>, that appears to be an error as there are no other references to Green Belt in any of the evidence.

## Main Issue

3. The main issue is therefore the effect of the development upon the character and appearance of the surrounding area.

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<sup>1</sup> LPA reference 23/01249/FUL

<sup>2</sup> Paragraph 1.8

## Policy

4. The development plan is made up of the Newark and Sherwood Amended Core Strategy DPD (adopted March 2019) (the Core Strategy) and the Allocations & Development Management DPD (the DPD). Policy 9 of the Core Strategy and Policy DM5 of the DPD seek to ensure that development is of an appropriate form and scale to its context and complements the existing built and landscape environments. Policy 13 of the Core Strategy requires all development to be considered against the assessment contained in the Landscape Character Assessment Supplementary Planning Document 2013.
5. The development is within the 'Trent Washlands' Landscape Character Area and the 'Farndon Village Farmlands' policy zone identified within the Newark and Sherwood Landscape Character Assessment Supplemental Planning Document. Landscape actions require, amongst other things, development to be sensitively designed in a traditional character.
6. Policy 3 'Rural Areas' of the Core Strategy refers to new development beyond principal villages being considered against the following criteria; location, scale, need, impact and character.

## Reasons

7. The appeal site includes land and buildings known as Hardys Farm Shop which is located outside of any defined settlement boundary and is therefore within open countryside. Hardys Farm Shop is part of a complex of buildings which form Hardys Business Park which is located off Fosse Road. The character of the surrounding area is distinctly rural with open fields on all four sides of the Business Park.
8. The development itself consists of a white marquee style structure with UPVC windows and doors which creates a covered eating area. Whilst the development is towards the back of the complex, it is visually prominent as an extension to the line of existing buildings when viewed from the northwest. The other buildings which includes the farm shop are largely brick buildings of a more traditional character. The development is a discordant feature in comparison to those buildings, due to its design and shape, width and the colour and materials.
9. I did observe as part of my site visit, the polytunnels which are located close to the development. However, the polytunnels are not of a similar height or design to the development. There are also limited views of them from outside the appeal site as they are set back from the building line. I do not find the polytunnels to be comparable in terms of size, appearance or location to the development.
10. The development provides an enclosure for a terraced area which provides extra tables and chairs for the café. It is close to the childrens play area and a field which has alpacas. The development was purchased by the appellant after using a marquee during the Covid pandemic. Whilst marquees and other similar structures were permitted during the Covid pandemic under Schedule 2, Part 4, Class BB of the Town and Country Planning (General Permitted Development) (England) Order 2015, those provisions are no longer in force.
11. The appellant has referred to the benefits of having the development for her business and the community in terms of holding events and has seen an

increase in turnover since it was erected. Spatial Policy 3 'Rural Areas' of the DPD sets out five criteria which are to be considered when assessing new development beyond principal villages. Those criteria are location, scale, need, impact and character. Whilst the appellant may consider that there is a need for the development, it is not small scale in nature and also has a detrimental impact on the character of the location and its landscape setting. The development does not therefore meet those criteria.

12. The appellant indicates that it is not viable at the present time to invest in a new permanent structure given the likely cost of up to £400,000. However, there is no evidence before me to show that permanent planning permission for a marquee style structure of this height and design in a countryside location is the only option available to the appellant to provide a covered facility.
13. The Council has no objection with the principle of a proportionate expansion of the existing business which is likely to contribute towards local employment in accordance with Policy DM8.<sup>3</sup> However, the means by which the business has sought to enclose that area in terms of the design and nature of the development in this countryside location is not appropriate. Whilst a supporter for the development indicates that the removal of the development could put jobs at risk, I have no evidence that is the case particularly when there is no requirement to remove the terraced area itself. Policy DM8 also refers specifically to the requirements of Policy 3 which lists relevant criteria including location and character.
14. For the reasons given, I do find that the development does harm the character and appearance of the surrounding area. The development is therefore contrary to Policies 9 'Sustainable Design' and 13 of the Core Strategy which collectively refers to development being of a form and scale which protect and enhance the existing built and landscape environments. It is also contrary to Policy DM5 'Design' of the DPD which refers to the local distinctiveness of the landscape and built form being reflected in the scale, form, mass, layout, design and materials. It is also contrary to Spatial Policy 3 of the Core Strategy which, amongst other things, refers to new development being appropriate to its location and not having a detrimental impact on the character of the location.

### **Other Matters**

15. I note that the appellant indicates that she has not received any complaints from members of the public since the marquee was erected in February 2023 about its appearance. However, the absence of such complaints does not overcome my finding of harm.
16. The Council's delegated report which dealt with the previous planning application included as a reason for refusal, the site's location within Flood Zone 2. The reasons for issuing the enforcement notice do not refer to the risk of flooding. However, the appellant has stated within this appeal that a flood risk assessment (FRA) was being prepared but it has not been submitted. The absence of any actual flooding at the appeal site does not remove the need for an FRA. Whilst I have refused the appeal for other reasons, an FRA would be required before granting planning permission for development within Flood Zone 2.

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<sup>3</sup> Delegated Report of the Council at paragraph 3.3

17. The appellant who is not represented has not appealed under ground (g) which relates to the period of compliance. The Council does however have powers under Section 173A(1)(b) of the 1990 Act to extend the period of compliance if it considers that there are bone fide reasons to do so.

**Conclusion**

18. The development therefore conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan.
19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

*E Griffin*

INSPECTOR