



Appeal Decisions

Site visit made on 22 October 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2024

Appeal A Ref: APP/Z2315/C/23/3320978

Land at Cold Soil Ruins, Kebs Road, off Long Causeway, Todmorden, Lancashire OL14 8SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Mr Christian Michael Hoyle against an enforcement notice issued by Burnley Borough Council.
 - The notice was issued on 30 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years, the carrying out of the construction of a new dwelling on the site of a former ruinous dwelling on the land known as Cold Soil Ruins.
 - The requirements of the notice are: (a) cease any further works on the dwelling and land as edged red on the attached plan. (b) demolish the unauthorised dwelling and remove all related materials including the foundations, storage container and all other materials from the site. (c) reinstate the land to its original form as it was before the unauthorised works for the dwelling commenced.
 - The periods for compliance with the requirements are: (1) cease all unauthorised activity within 30 days from the date this notice takes effect. (2) remove the dwelling and all associated works within 12 months of the date that this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (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/Z2315/W/23/3328548

Cold Soils Ruins, Kebs Road, off Long Causeway, Todmorden OL14 8SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr C.M. Hoyle against the decision of Burnley Borough Council.
 - The application Ref is FUL/2023/0327.
 - The development proposed is the retention of building for use as holiday let including car parking, landscaping, and ancillary works.
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Decisions

1. The enforcement notice subject of Appeal A is quashed.
2. Appeal B is dismissed.

Preliminary Matter

3. The development subject of Appeal B has been partly built. This principally relates to the building proposed to be used as a holiday let. However, works to that building are not complete, nor are the car parking, landscaping, and ancillary works. Therefore, I have considered Appeal B based on what is proposed on the submitted plans.

Reasons

Appeal A on ground (b)

4. The Council explains that the enforcement notice (EN) is concerned with operational development and the material change in use of the land. An appeal on ground (b) relates to the matters as stated in the EN have not occurred. The onus is on the appellant to make out their case to the standard of the balance of probabilities.
5. Section 55(1) of the Act confirms the meaning of 'development' to be the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land. A 'building operation' as defined by the Act includes demolition of buildings, rebuilding, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on a business as a builder.
6. Historically a dwelling previously stood on the site. A photograph from 1979 confirms this. Since then, the former dwelling turned into a ruinous state as its elevations are incomplete and there is no roof, among other things, and it is not habitable. The Council says that the land was nothing more than a ruin up until 2018, but the appellant's photograph would suggest that was the case as recently as 2020.
7. The appellant's case on this ground is that the building erected on site (since 2020) is not a dwellinghouse. Although the appellant acknowledges that the building erected on the site is an operational development, they say that, as a matter of fact, the building is not used as a dwellinghouse as alleged.
8. Section 174(2)(b) is worded in the past tense, and the question is whether the alleged breach had occurred by the date of EN being issued. Therefore, for the alleged breach of planning control to be true, a new dwelling would need to have been constructed by the date when the EN was issued.
9. Although the alleged dwelling may be in a similar position to the former dwelling, the works carried out are new build and a building operation, and thus 'development'. The operational development undertaken concerns the construction of a building based on its size, permanence, and physical attachment to the ground.
10. There is, however, no definition of the term 'dwellinghouse' in the Act. Nevertheless, in *Gravesham BC v SSE & O'Brien [1983] JPL 306* the distinctive characteristic of a dwellinghouse was held to be its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
11. The building on site comprises of external walls, a roof, and fenestrations. The only openings with no windows or doors are two large openings in a single storey section to the side. Inside there are no floors, fittings, insulation, or utility connections. There are no staircases between the floors, no internal doors, and no bathroom, kitchen, or sleeping facilities. Nor is there any evidence of a garden, patio, or other residential paraphernalia. Hence, the building is not capable of being used as a dwellinghouse as it simply did not have those facilities when the EN was issued and still does not today.
12. Planning applications were submitted to the Council for the '*retention of reconstruction to former ruined dwellinghouse*' in June 2021 and August 2021.

Although the second of those applications involved an amended scheme, the use identified by both applications was that of a dwellinghouse. Both applications were refused planning permission by the Council but show the appellant's clear aspiration for the building and the site. This is borne out by the building's layout and appearance in comparison to the submitted floor plans. However, despite those aspirations and its layout and appearance, the building does not have the distinctive characteristic of a dwellinghouse due to its inability to afford anyone with the facilities required for day-to-day private domestic existence.

13. The development may appear to be a dwellinghouse but plainly that use could not be carried out when the EN was issued or now. Operations on the site are not complete. Nor could they be deemed to be 'substantially complete' given the lack of facilities to support day-to-day private domestic existence.
14. I note the parties' views about the use of the site for a skip hire business, but there is insufficient information either way on this matter to know about the extent and nature of any activities. I understand that there is no record of any planning permission for such a use, and a Planning Contravention Notice was served over 10 years ago in relation to that activity. The EN does not in any event relate to a skip hire business and I have explained my view about the alleged dwellinghouse.
15. Section 173(2) states that an EN complies with section 172(1)(a) if it enables any person on whom a copy of it is served to know what those matters are. The EN must, having regard to the test outlined in *Miller Mead v MHLG* [1963] 1 All ER 459, tell the recipient fairly what they have done wrong and must do to remedy it.
16. Given my finding that the building was not a dwellinghouse on the date when the EN was issued, the alleged breach of planning control is therefore wrong, and it does not relate to the development that has taken place on the appeal site as what is alleged had not taken place. Hence, the allegation of the EN and the requirements that flow from it are flawed and cannot remain as they are. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error, or misdescription in the EN or to vary its terms, provided I am satisfied that the correction or variation will not cause any injustice. I have therefore considered whether it is possible to correct the EN in this case.
17. There is no suggested wording before me to make the allegation in the EN clearer, but it would need to be different to the allegation the Council has used and would also lead to different requirements. In my judgement, the changes that I would need to impose would be likely to have a significant effect on the cases the parties would wish to put forward at appeal. Moreover, introducing a time limit for requirement (3) would make the EN more onerous. Neither party has referred to the missing timescale in paragraph 6, and although a longer compliance period has been suggested, that is based on submitting further planning applications to the Council and for a possible appeal. Imposing an additional compliance period for the reinstatement of the land could affect the appellant's case and the case that the appellant may wish to have pursued on ground (g).
18. For these reasons, I conclude that the EN does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance, or the period for compliance. It is not open to me to correct the

errors in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused were I to do so. The appeal on ground (b) succeeds, and the EN will be quashed. In these circumstances, the grounds set out in section 174(2)(a), (f), and (g) of the Act A do not fall to be considered.

Appeal B

Main Issues

19. The main issues for Appeal B are: (a) whether the proposal would be in a suitable location, having regard to the proposed use; and (b) the effect of the proposal on the character and appearance of the area.

Suitable location

20. The appeal site lies within the open countryside. Here, according to Policy SP4 of Burnley's Local Plan (LP) development will be strictly controlled.
21. LP Policy EM5 is a permissive policy relating to rural business and diversification. Proposals to expand existing or establish new businesses, including tourist facilities in the open countryside will be supported where they meet the other relevant policy requirements of the LP and the listed criteria.
22. A holiday let could be an appropriate use in the countryside. The proposal would add to the borough's tourism offer through an additional holiday let of considerable size. The proposal would be located near existing tourist attractions such as Bridestones Moor, Hardcastle Crag, and the Cludders; and multiple small towns and villages; and there are public footpaths in the area that enable persons to enjoy the site's scenic surroundings.
23. Stiperden House Farm is to the south-east of the appeal site further along the track, and planning permission has been granted here to install four glamping pods that can be used as holiday lets year-round. These would increase the existing holiday let offer here, and the proposed holiday let would be managed by Stiperden House Farm, which would provide additional work and income for an existing business. The proposal would diversify and support the existing holiday let offer by providing a large facility and add to the borough's tourism offer, though it would not, in my opinion, be of a specialist nature.
24. There is also no substantive analysis before me showing that there are no suitable sites within the Development Boundaries that could accommodate the proposal. Those include places such as Small Villages like those on the south-eastern side of Burnley that are either within or close to the attractive views, privacy, footpaths, or tranquillity that the appellant refers. The scale of the development proposed would chime with the scale of development expected in Small Villages. The proposed holiday let also differs to the glamping pods granted planning permission at Stiperden House Farm. Glamping pods thrive in rural areas, especially the countryside. The proposal could thrive here too, but also in a small village, and there is no substantive analysis showing that the latter could not be a suitable location for the proposal.
25. Added to this, the site is visually and spatially detached from the buildings at Stiperden House Farm, which are around 320 metres away. As such, the proposal is not well related to them in the site's moorland setting, that is characterised by individual farmsteads. It is not completely isolated, however.
26. Despite the likely increase in traffic movements from comings and goings to the proposed holiday let and the additional noise relating to that, there would

not be an unacceptable negative impact given the nearby road and location of residential receptors. Further, the existing access track leading to the site from Kebs Road is passable but not ideal, especially for up to 12 people each time the proposal would be let. The access arrangements are, however, in scale and character with the surrounding landscape, and the increase in traffic levels would not cause highway capacity issues.

27. The proposed parking arrangements could see multiple vehicles stationed on land in front of the building. They could be equal to, below, or greater than the number of parking spaces proposed depending on who were to occupy the proposed holiday let. The design of the car parking arrangements close to the building would be in keeping with the scale and character of the area.
28. Although some aspects of LP Policy EM5 would be complied with, the policy on the whole would not. This means that I conclude, on this issue, that the proposal would not be in a suitable location, having regard to the proposed use. As such, the proposal would not accord with LP Policies SP4 and EM5, which jointly, among other things, seek to strictly control development in the countryside and specifically proposals to expand existing or establish new businesses subject to meeting several criteria. Any support provided by paragraph 88 of the National Planning Policy Framework (the Framework) in respect of diversification and sustainable rural tourism is outweighed by the proposal being contrary to the provisions of LP Policy EM5.
29. The Council refers to LP Policy EM6, which relates to the conversion of rural buildings. However, prior to the works taking place, the former dwelling was a ruin. Even if it were a building, it was not capable of re-use or conversion. In any event, the proposal is not a conversion as it is a new build, so LP Policy EM6 is not relevant to the scheme before me.

Character and appearance

30. The appeal site lies within 'moorland fringe' that has an open, exposed, and elevated character largely absent of trees. Topographically, the site sits below Kebs Road and The Long Causeway. Owing to the varied topography in the area, the site is visible from long and short distant views from the roads and the public right of way network. Coal Clough Wind Farm is to the north-west of the site. Access to the site is off The Long Causeway/Kebs Road along a single track for approximately 325 metres. This track is a medieval packhorse track (PRN1823) and a locally listed heritage asset. Its significance is historic and likely to be functionally linked to nearby land uses and movements.
31. Traditional buildings sporadically populate the landscape. They are usually stone-built and have a straightforward vernacular consistent with the rural area with simple openings, well-proportioned facades and display a natural and limited palette of materials.
32. As I have explained, there is insufficient evidence either way about the skip hire business. Further, there is no evidence to suggest that the land would be used as such again, and a skip hire business and holiday let are fundamentally different in their nature, scale, and activity. This does not, however, change the fact that some or all of the appeal site is previously developed land. In this regard, the proposal would bring the land back into use.
33. The proposal consists of a limited palette of natural materials that relate to those found locally. The building would also have a straightforward

characteristic form with a large two storey element and a single storey section to the side. The large traditional barn style door opening would reflect the site's surroundings and the design of the former dwelling. Stone surrounds would add to the traditional feel of the building. Nevertheless, the proposal would be of considerable scale and mass despite its position in the landscape set down from the roads and up from Stiperden House Farm. Allied with its siting in an open, exposed, and elevated landscape, this means that it would be unduly prominent and not of an appropriate scale or design to minimise its impact on the landscape character of the site and its surroundings. The wind turbines nearby do not alter the proposal's effect given the site's topographic position beneath the ridgeline on which the turbines are sited.

34. I recognise that the appeal scheme is not complete and that over time, it is likely that the development would, to an extent, naturalise with its surroundings through the addition of suitable landscaping to improve the site's biodiversity value and to respond to the character of the area, or boundary walling characteristic of the area. Although a planning condition could be imposed to prevent domestic paraphernalia over time, the harmful effect of the proposal's scale, massing, and design would remain.
35. Given my findings about the proposed access arrangements, I consider that the proposal would have a neutral effect on the medieval packhorse track.
36. Nevertheless, even if the proposal were to be considered an improvement on the previous state of the land, that does not alter my conclusion that the proposal would harm the character and appearance of the area and conflict with LP Policies NE3 and SP5, as the proposal would not be appropriate to the nature and scale of the landscape's character. Conflict would also be caused with Framework paragraphs 88 a) and 135 c) as the proposal would not be well-designed or sympathetic to local character, including the surrounding landscape setting.

Conclusion on Appeal B

37. I conclude that the proposal subject of Appeal B would conflict with the development plan, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

Overall Conclusions

38. For the reasons given above, I conclude that Appeal A should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, ground (a) on Appeal A and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) does not fall to be considered as well as grounds (f) and (g).
39. For the reasons given above, I conclude that Appeal B should be dismissed.

Andrew McGlone

INSPECTOR