



Appeal Decisions

Site visit made on 25 March 2025

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th April 2025

Appeal A Ref: APP/U2370/C/24/3344872

Land at Pad End Barn, Pinfold Lane, Inskip with Sowerby, Preston PR4 0UA

- 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 Daniel Marsden against an enforcement notice issued by Wyre Borough Council.
 - The notice was issued on 23 April 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a large industrial/storage building.
 - The requirements of the notice is: a) remove the building from the site ensuring all building materials, concrete base and other materials are removed from the site and disposed of accordingly.
 - The period for compliance with the requirement is: 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Act.
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Appeal B Ref: APP/U2370/W/24/3345305

Pad End Barn, Pinfold Lane, Inskip, Preston PR4 0UA

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Mr Daniel Marsden against the decision of Wyre Borough Council.
 - The application Ref is 23/01083.
 - The development proposed is two storey domestic outbuilding.
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Decision

1. Appeal A - The appeal is dismissed, and the enforcement notice is upheld.
2. Appeal B - The appeal is dismissed.

Preliminary Matters

3. Appeal A is on grounds (d), (f) and (g) against the enforcement notice, this relates to the erection of a large industrial /storage building. The same building is proposed to be retained in Appeal B against the Council's refusal to grant planning permission ref 23/01083. Therefore, to minimise duplication and repetition, I have dealt with Appeals A and B together in the decision letter.
4. The description of development in Appeal B, in the banner heading above is taken from the Council's decision notice, I have removed superfluous wording.
5. The Council asserted in final comments on the appeals that potentially the development was additionally in breach of condition No.5 of granted planning permissions¹ from 2003. However, the enforcement notice, the subject of Appeal A relates to operational development and the erection of the building. In the interests of fairness, the appellant made representations on this. The Council later

¹ 02/92/1624 & 02/03/00661

confirmed they have withdrawn this contention. I have therefore dealt with the appeal on the basis it relates to operational development and the erection of the building.

Appeal A, on ground (d)

6. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the building had been substantially completed more than 4 years before the date on which the notice was issued. The relevant date therefore is 23 April 2020.
7. For this legal ground of appeal, the Courts have established that the onus of proof falls to an appellant², with the test of the evidence being on the balance of probabilities³. Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted⁴.
8. The appellant has provided evidence to support their ground (d) appeal. This includes statutory declarations (declaration) from the appellant (Appendix 1) and the appellant's parents⁵. The appellant's declaration includes several images one is dated 21 March 2020, which shows the previous structure (Dutch barn) was in situ. The images dated 22 March 2020 are limited and only show demolition works were taking part on some area of the site.
9. The appellant's declaration states that between late March and early April that foundations were dug with an image dated 9 April 2020. This shows a small area of ground which is difficult on the image to identify the exact location with concrete poured in. The images dated 24 April 2020 show the building in part, which appears with no door, no mezzanine and excludes most of the roof overhang and the external projecting car port. The final images show the building erected with the appellant confirming these were taken on 9 May 2020. Despite no date stamps on the images themselves, dates are shown from the windows file properties and the images clearly show how development has evolved at the appeal site.
10. The declarations from the appellant's parents are identical in content and set out that by 19 April 2020 the barn was watertight and fully functional. However, they do not set out the date when the building was substantially completed and to a degree contradict the appellants images of the 24 April 2020. These images showed that the building still required works to be undertaken both internally and externally to be fully functional, including that there was no staircase or mezzanine floor. Furthermore, the appellant's own declaration says it was not until the 20 April 2020 that the concrete floor was poured.
11. The letter from 'Guy Hall Agricultural Services' confirms that work on the building commenced on 13 April. The dates in this letter do not include a year and the letter does not with any certainty add any weight to the appellant's case, as there are no dates when the project was completed and it is not a sworn statement.

² *Nelsovil v SSE* [1962] 13 P&CR 151

³ *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

⁴ *Gabbitts v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

⁵ Mrs Jane Marsden (Appendix 2) & Mr Paul Marsden (Appendix 3)

12. The Council and third-party evidence refer to the planning application for the same development as alleged in the notice. This was submitted with a planning application form, and the declaration for the planning submission is dated 13 November 2023. The form, at the section of 'Description of Proposed Works' states that the work started on 1 April 2020 and the work was completed 1 May 2020. The supporting letter which accompanied that planning application from the agent stated *'The application proposal relates to an existing domestic storage building and car port. The building was completed in May 2020 and was a replacement for a previous building on the site'*. This documentary evidence directly conflicts with the appellant's own case and that it was constructed earlier.
13. The Council have provided Google earth pro images which have an imagery date of 24 April 2020. The image does not show the building substantially completed as it shows there was no building in situ on that date. The appellant suggests that the date cannot be relied upon because it is not referenced in the enforcement notice and relies upon evidence from an internet selection on google image user instructions. Whilst the google image does not show the building, the appellant's own images are not conclusive as they were taken after the relevant date with dates of 24 April and 9 May 2020.
14. The appellant has directed me to an appeal decision⁶ and weight to be attached to statutory declarations. I do not have the full details of this case, and to my mind this appeal decision and its circumstances do not appear to be comparable relating to why the lawful development certificate was granted. The standard of proof is on the balance of probabilities, and the Inspector sets out in that decision it is in his view the weight to be attached to the declarations in that case. Moreover, Caselaw⁷ has established that pursuant to a ground (d) appeal the appellant must provide sufficient evidence.
15. In this case the Council have provided evidence to contradict and make the appellant's case less than probable. The declarations included are not independent and from the appellant's parents, who have an interest in the land. The declarations do not appear to be sufficiently precise and are ambiguous, including that they have not been tested through formal questioning. Overall, I find the appellant's case is contradicted by the Council's and third-party evidence. It is further contradicted and made entirely ambiguous by the different dates given for completion of the building as set out in the earlier planning application, including that the whole of the alleged development was substantially completed before the relevant date.
16. I conclude, on the balance of probabilities, that the building was not substantially completed more than 4 years before the notice was issued. Therefore, it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

Appeal A, on ground (f)

17. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice

⁶ APP/N5660/X/12/2178832

⁷ *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin)

requires the removal of the building, the purpose is clearly to remedy the breach. Leaving any part of it would not achieve that purpose. Consequently, the notice's requirements at Section 5 cannot be excessive.

18. The appellant's case on ground (f) is that the requirement at 5a) which includes the concrete base to also be removed is excessive. The appellant argues it would not have a negative impact on amenity and it serves no purpose in respect of the character of the area. In addition, permitted development rights remain within the curtilage; thus, the concrete base could be reasonably laid under permitted development.
19. I have no substantive evidence before me that it would meet the limitations or conditions in Part 1, Class F of Schedule 2 of the GPDO. The plans relating to the earlier permissions of when the farm buildings were converted do not show the hardstanding in situ. Moreover, there is no ground (a) for me to consider and the arguments are not relevant to a ground (f) which is only concerned with whether the requirements exceed what is necessary in order to remedy the breach. In any event, had an appeal on ground (b) been made (that the matters alleged had not occurred) it would have failed for these reasons. Therefore, leaving the concrete base in situ would not achieve its purpose to remedy the breach.
20. For the above reasons, I conclude ground (f) appeal fails.

Appeal A, on ground (g)

21. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed. The notice requires compliance within 4 months of it coming into effect.
22. The appellant in their appeal submission of '*Grounds of Appeal*' sought a period of 6 months, however in their '*Appeal Statement*' they refer to 12 months to comply with the notice. This is stated to be in the context that 4 months is too short to commission a contractor to dismantle the building and find an alternative location for storage of the various parts, which some are rare, collectable and valuable. In addition, they would require additional surveys for ecological reasons including relating to bats.
23. The appellant has provided no substantive evidence to support their ground (g) appeal, including that further surveys are necessarily required or that a licence would not be granted having regard to other regulatory legislation including the Conservation of Habitats and Species Regulations 2017. In addition, there is nothing before me to say that the existing dwellinghouse, or other associated buildings in the site's proximity could not be used for storage of the various items.
24. Moreover, the reasons why the Council issued the notice are that the unauthorised development is causing significant harm to the character and appearance of the host property and immediate area. Therefore, it is in the public interest for the breach of planning control to be remedied as soon as reasonably possible. This provides a further reason not to extend the compliance period beyond the current specified period to either 6 or 12 months. Accordingly, the appeal on ground (g) fails.

Appeal B, the s78 appeal

Main Issues

25. The main issues are i) whether the development constitutes ancillary residential accommodation, having regard to local plan policy; and ii) the effect of the development on the character and appearance of the host dwelling and surrounding area.

Reasons

Ancillary Accommodation and Policy

26. S55(2)(d) of the Act provides that the use of land or buildings within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development. The construction of buildings for incidental use, are permitted subject to criterion and limitations falling under Part 1, Class E of Schedule 2 of the GPDO⁸.
27. Policy SP4 of the Wyre Local Plan (2011-2031), (LP) sets out the provisions for development within countryside areas. The policy only grants development that meet the requirements of the Core Development Management Policies and restricts development unless it is for one of the stated purposes. However, policy SP4 falls silent on domestic outbuildings and extensions to the dwellinghouse. In addition, it does not make any reference to either ancillary accommodation or development that is incidental to a dwellinghouse.
28. The Council contend that the building is of a substantial size, and that it would be unreasonable to say that ancillary domestic buildings would not conflict with the objectives of Policy SP4. They say functionally the building provides for a usage totally independent of the residential property having an industrial appearance rather than that of an ancillary building to an existing dwelling and is out of scale when compared to the host building.
29. The main parties agree that the building falls within the curtilage, however that is not a use of land and the extent of the curtilage of a building is a matter of fact and degree. The appellant contends they applied for planning permission for an incidental building and not as an ancillary use for storage use, a gym and home office.
30. By the Council's own admission in the Planning Officer's report, it acknowledges at paragraph 8.1 that domestic outbuildings are not unacceptable in principle. It is not clear how the Council have assessed it as an independent dwelling or building, other than that it is not attached to the existing dwelling, and it is accessed independently. I am not satisfied that because of its excessive scale this can lead to a conclusion on its own that it is totally independent, and that it is not used in conjunction or incidental to the main dwelling.
31. As I saw at the time of the site visit the building is not occupied for the purposes of a residential dwelling and it did not appear to be being used for independent living. Furthermore, although the building is detached from the main dwelling it is in reasonable proximity to the main house and garden with access from a small adjacent garden gate.

⁸ The Town and Country (General Permitted Development) (England) Order 2015 (as amended)

32. The building is two storey and has a mezzanine floor but from what I saw there are currently no bedrooms, dining or living areas laid out. The ground floor contains a workshop and storage area, with a rear area contained by a large doorway and having more storage space of a variety of domestic and other stored items including railway memorabilia.
33. At first floor there is a W.C with combined basin unit which I consider would not be sufficient to establish that it has a full bathroom area. The kitchen area is also limited, with a sink and basin. Kitchen units were empty and there were no other cooking facilities than a standalone small microwave. To the rear of the mezzanine floor is a large room with gym equipment and desks with IT equipment suggesting a home office working environment. Therefore, it is likely that there would need to be a degree of connection with the host dwelling and the facilities it contains on both floors have a functional relationship with the dwellinghouse.
34. Moreover, it is clear from Appeal A that the Council do not consider it to be an independent residential unit or that a material change of use has occurred relating to a residential use or separate dwellinghouse as the notice relates to operational development. Even if, the building was to be used as a separate dwellinghouse or for business operations this is not what is before me, and a separate grant of planning permission would be required.
35. Therefore, in the absence of any other policies to support the Council's contentions that domestic outbuildings are inappropriate in principle within countryside locations and/or on ancillary accommodation, and that it requires justification for the appellant to provide for its scale, height or footprint. I conclude that the development on this basis is not in conflict with Policy SP4 of the LP.

Character and Appearance

36. The appeal site is located within an area of open countryside and a cluster of former farm buildings which have been converted into residential dwellings. There is a further bungalow situated to the end of the row of terraced properties. The character of the area is predominantly vast amounts of open countryside with sporadic pockets of development across the wider landscape.
37. The building is in situ to the southwestern side of a tight-knit courtyard which is shared by residents for access and parking including single storey brick buildings. The building is constructed of a portal frame with profile sheeting and a roller shutter door. It has a substantial overhang of the roof identified as a car port with posts and sits on a large concrete base.
38. The appellant maintains that it replaced a previous wooden building on the site similar in size and scale. From evidence provided, by the main parties and interested persons it appears this was an open wooden structure/barn different in character, use and size. Furthermore, in the absence of limited elevational plans of the structure from the time of the original planning permission I cannot be certain that the site plan is reflective of what is there now. Relating to comparable footprint and height, and these plans do not show the extent of any existing concrete base.
39. I accept the appellant's contention that it is surrounded by tall vegetation which would obscure the building from wider vantage points in the surrounding countryside and that materials are consistent with those found within countryside

locations. Therefore, I consider that the building has a negligible effect on the character and appearance of the wider open countryside and its setting.

40. Nevertheless, the building is of a substantial scale positioned next to and adjacent to the residential brick properties and is for a domestic use. This building is excessively large in both its scale and height in this immediate residential setting, resulting in a building which is detrimental to the character and appearance of the host dwelling and its immediate and shared residential setting. The element of a car port and projecting roofline with standing timbers only exacerbates its dominance within this domestic and residential setting.
41. In addition, as I observed from the upper floor bedroom windows of the neighbouring dwelling, the height and magnitude of its dominant appearance was clearly evident which would not be reflective of the existing buildings positioned adjacent to the building, which include those of a single storey nature. Therefore, the building does not appear subservient to the host dwelling or neighbouring properties.
42. The appellant has referred to other buildings in the vicinity of the site, however I do not have the full details of these developments and/or whether planning permission has been granted. Furthermore, those I did see along Pinfold Lane had a sufficient gap between the outbuilding and dwelling, or were stand alone within settings relating to agricultural uses. Neither did they appear to be domestic outbuildings. Nonetheless, I have determined the appeal based on the evidence before me, and site observations.
43. For the reasons given, despite there being no harm to the wider context of the character and appearance of the area. I conclude that the development would cause harm to the character and appearance of the host dwelling and its immediate setting. It would be contrary to Policy SPG4 (1) and Policy CDMP3 of the LP. Taken together, these policies amongst other matters require development to be of a high standard of design appropriate to the end use, designed to respect or enhance the character of the area; and do not grant development that would adversely impact on the open and rural character of the countryside.
44. The Council have referred to the Supplementary Planning Document (SPD), Design Note 10, (2007) in their reason for refusal on the decision notice. However, this relates to guidance on extensions to your home, therefore I find no conflict with the SPD.

Other Matters

45. Interested parties have made representations on the appeal, several of the matters appear to relate to ownership and sharing the land for parking including covenants and title deeds. These are not within my remit or jurisdiction of this appeal and would be civil matters for any parties involved or the relevant judicial authority.
46. Given that the building has no windows there would be no harm to the living conditions of neighbouring properties regarding privacy, disturbance, overlooking and outlook. The Council did not raise any concerns regarding parking or highway safety, and I am satisfied that the development does not lead to excessive parking or highway safety concerns to the extent that would result in conflict with LP policies. The matter of enhanced biodiversity or ecology could be dealt with by

suitable worded conditions. However, these matters are a neutral consideration within the planning balance.

47. Representations were made to the effect that the rights of the adjoining neighbouring occupier under Article 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. I have found that the proposed development would not result in the neighbouring property being overlooked or additional privacy/disturbance/outlook that would result in unacceptable harm to their living conditions. I am satisfied that development would not unacceptably interfere with the neighbours right to a private and family life and home. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8(1). Nevertheless, I have found that the development is unacceptable and would conflict with LP Policies SP4(1) and CDMP3 relating to character and appearance.

Conclusion on Appeal B

48. Although I have found no conflict with Policy SP4 relating to the principle of development this does not outweigh the harm I have found in relation to character and appearance. The development is contrary to the development plan taken as a whole, and there are no other material considerations that would indicate that the development should be determined other than in accordance with the development plan.

Formal Decision

Appeal A

49. The appeal is dismissed, and the enforcement notice is upheld.

Appeal B

50. The appeal is dismissed.

KA Taylor

INSPECTOR