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## Appeal Decisions

Site visit made on 25 March 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 June 2025

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### **Appeal A Ref: APP/B2355/C/23/3327155**

#### **Land on the south side of Hall Street, Whitworth**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Ms J Radcliffe against an enforcement notice issued by Rossendale Borough Council.
  - The notice was issued on 27 July 2023.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission, operational development has taken place on the land comprising engineering works and the erection of stables. An open sided food storage outbuilding has also been erected on the land which is designated as Greenbelt.
  - The requirements of the notice are:
    1. Permanently cease the use of the extended stable block on the land (applied for on application 2023/0240).
    2. Permanently remove the extended stable block from the land.
    3. Permanently cease the use of the open food storage outbuilding on the land (applied for on application 2023/0240).
    4. Permanently remove the open food storage outbuilding from the land.
    5. Permanently cease the use of all domestic furniture, tyres, play equipment on the site.
    6. Permanently remove the domestic furniture, tyres and play equipment from the land.
  - The period for compliance with the requirements is: 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 (as amended).
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### **Appeal B Ref: APP/B2355/W/23/3326767**

#### **Land at Hall Fold, Hall Street, Whitworth, Lancashire**

- 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 Ms J Radcliffe against the decision of Rossendale Borough Council.
  - The application Ref is 2023/0240.
  - The development proposed is a replacement stable plus open sided food store.
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## **Decisions**

### Appeal A

1. It is directed that the enforcement notice is corrected by:
  - In section 3 the deletion of the alleged breach of planning control in its entirety and replacement with “The erection of replacement stable and open sided food store”.
  - In section 5 the deletion of the requirements in their entirety and replacement with 1) Remove the replacement stable and open sided food store from the land.

2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

### Appeal B

3. The appeal is allowed and planning permission is granted for a replacement stable and open sided food store at Land at Hall Fold, Hall Street, Whitworth, Lancashire in accordance with the terms of the application, reference 2023/0240, and the following plans/drawings: Location Plan (Ref JR.210523A); Building Details (Drawing No: HS-16-05-23-B); and Site Plans (Drawing no: HS-15-05-23-A).

### **Appeal A**

#### **The Notice**

4. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
5. In section 3 of the notice the breach of planning control alleged contains various words, such as “without the benefit of planning permission” and “on land which is designated as Green Belt”, which do not describe an act of development. In the interests of brevity, I shall remove all superfluous wording from the allegation.
6. In section 5 of the notice the first, third, and fifth requirements require the use of the stable block, open food storage outbuilding, and other items to cease. The enforcement notice does not allege any material change of use of the buildings or land, and instead only attacks the operational development carried out at the site which includes the erection of stables and an open food storage outbuilding. Such a stipulation is also unnecessary given that the removal of the buildings and items from the land would, of course, mean they could no longer be used in any event. I shall therefore delete the first, third, and fifth requirements accordingly.
7. Finally, the notice requires the operational development to be “permanently” removed from the land. The use of the word “permanently” is unnecessary having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice.
8. The above corrections do not fundamentally change the notice or its requirements. Consequently, they do not cause injustice to either party.

#### **The appeal on ground (c)**

9. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
10. The appellant accepts that the replacement stable and open sided food store are development which requires planning permission. The planning merits of those structures are dealt with in Appeal B. The appellant’s case on this ground therefore relates to other operational development attacked by the enforcement notice which is said to comprise engineering works.

11. Beyond the replacement stable and open sided food store, the allegation does not specify what other “operational development” or “engineering works” are alleged to have taken place on the site. The requirements of the notice though do require, amongst other things, the removal of domestic furniture, tyres, and play equipment from the land.
12. Section 55(1) of the 1990 Act sets out the meaning of development. Development comprises two limbs; (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land. In section 336 of the 1990 Act a “building” is defined as including any structure or erection.
13. Case law<sup>1</sup> states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. None of those factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgement.
14. The photographic evidence provided by the appellant shows small stacks of tyres adapted to form planters, lightweight children’s play equipment, and a table and four chairs which would commonly be found and used in a domestic garden. None of these items are of any significant size or weight, and there is no evidence before me to suggest that they could not be moved around the site as and when required. The items also do not display any characteristics of permanent features, nor is there any evidence that the items were physically attached to the ground by way of foundations or similar means. Given the lightweight nature of the items, it is also clear that they would not achieve any significant affixation to the ground through their own weight.
15. In view of the above, I conclude, as a matter of fact and degree, that the domestic furniture, tyres, and play equipment do not constitute building operations as set out in section 55(1) of the 1990 Act. Instead, I find that they are “chattels” placed on the land.
16. The Council’s appeal submissions on this matter are somewhat confusing given that they imply that the items may have been placed on the land as part of some form of mixed use of the site. However, whilst an enforcement notice can legitimately require the removal of any chattels or items associated with an unlawful material change of use of the land, in this case no material change of use of the land has been alleged. Accordingly, the domestic furniture, tyres, and play equipment do not constitute a breach of planning control.
17. The Council’s appeal statement also refers to the “levelling of the land” which is said to fall within the meaning of development as set out under section 55(1) of the 1990 Act. The notice does not specifically attack any levelling of the land or alteration to ground levels, and I note that the requirements set out in section 5 of the notice do not require any remedial works to ground levels to be carried out. Nevertheless, given that the allegation refers to engineering works I shall address the matter accordingly.
18. The appellant disputes that there has been any levelling of land at the appeal site that would amount to development, other than in relation to the creation of a new

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<sup>1</sup> Cardiff Rating Authority v Guest Keens [1949] 1KB 385 & Skerritts of Nottingham Ltd v SSETR (No 2) [2000] 2 PLR 102

vehicular access which benefits from planning permission<sup>2</sup>. The courts have determined that engineering operations involve works with some element of pre-planning, which would normally, but not necessarily, be supervised by a person with engineering knowledge.

19. The Council have provided little information or evidence regarding the alleged engineering works, beyond referring to the laying of concrete flag stones. Except for the works associated with the creation of the vehicular access in the eastern corner of the site, during my site visit I saw no evidence that any significant alteration to ground levels had taken place. Photographs provided by both parties that were taken on previous visits to the site, including in June 2015, also do not show any significant levelling of the land or other alteration of ground levels.
20. I acknowledge that minor landscaping works or the stripping of vegetation and topsoil may well have taken place on the site, however there is no evidence before me that demonstrates any significant re-grading works occurred. Commonly, engineering works to level or alter ground levels would also involve plant and machinery being brought to site to carry out the planned works and to assist in the removal or the importation of soil and other materials.
21. In the absence of any evidence to the contrary, I find the appellant's version of events relating to engineering works to be sufficiently precise and unambiguous. I am satisfied therefore that any ground works that have taken place on the site (save for those relating to the new vehicular access) do not amount to an engineering operation within the meaning of development in section 55(1) of the 1990 Act.
22. The appeal under ground (c) therefore succeeds to that extent, and I shall correct the enforcement notice by removing reference to engineering works from the allegation, and by deleting the requirement to remove domestic furniture, tyres, and play equipment from the land.

### **The appeal on ground (g)**

23. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has suggested a period of six months to allow sufficient time to find alternative accommodation for one of the horses which is currently kept at the appeal site.
24. Whilst I appreciate the reasons given for requesting an extension of time, no evidence has been provided to demonstrate why it would not be possible to carry out the required works and find suitable accommodation for the horse elsewhere. In the absence of substantive explanation, I consider the period of three months to be proportionate to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

## **Appeal B**

### **Preliminary Matters**

25. The revised National Planning Policy Framework 2024 ("the Framework") came into force during the course of the appeals. The parties were given an opportunity to comment on this and the submissions made have been taken into consideration.

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<sup>2</sup> Council Ref: 2019/0098

26. The application sought retrospective planning permission for the erection of a replacement stable and an open sided food store. However, there are some minor discrepancies between the development carried out and the detail shown on the submitted plans. For the avoidance of doubt, I have determined the appeal on the plans that were before the Council when it made its decision and on which parties were consulted.

### **Main Issues**

27. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the Framework and any other relevant development plan policies;
- The effect of the development on the character and appearance of the area; and
- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### *Whether inappropriate development in the Green Belt*

28. The Government attaches great importance to Green Belts. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 153 of the Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
29. Policy SD2 of the Rossendale Local Plan (adopted December 2021) (RLP) seeks to direct development to within Urban Boundaries unless it specifically needs to be located within the countryside and clarifies the locations of land which has been released from the Green Belt. However, the policy is silent on the types of development that the Council considers acceptable in the Green Belt. In that case, the policy provisions in the Framework prevail.
30. Paragraph 154 of the Framework advises that development in the Green Belt is inappropriate unless one of the listed exceptions apply. These exceptions include, at paragraph 154g), the limited infilling or the partial or complete redevelopment of previously developed land (PDL) (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.
31. The definition of PDL given in the Annex 2 to the Framework refers to, amongst other things, land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). The definition though excludes land that is or was last occupied by agricultural or forestry buildings.

32. The appellant has drawn my attention to the findings of the Inspector in a previous appeal<sup>3</sup> in 2016, who concluded that the appeal site met the definition of PDL. The available evidence clearly indicates that the site had been occupied by two buildings of permanent construction, along with an area of concrete hardstanding. There is no evidence before me to suggest that any of the development referred to by the previous Inspector was not lawful at that time. In any event, one of those buildings remains in situ and has therefore clearly been substantially completed for more than four years prior to the issue of the enforcement notice in Appeal A. There is also no evidence before me to suggest that the buildings on the appeal site were or are being used for agricultural purposes.
33. The previous Inspector also found that the majority of the appeal site had been in use as a paddock for the keeping of horses, thereby forming part of the curtilage of the buildings. From what I observed during my site visit, that position had not changed. In view of the above, I find that the appeal site meets the definition of PDL. The development therefore constitutes the partial redevelopment of PDL. However, following the latest revision to the Framework, to meet the exception under paragraph 154g), the development must also not cause substantial harm to the openness of the Green Belt.
34. The development comprises the erection of two timber clad buildings, which are a replacement stable and an open sided food store. The stable has replaced a previous building that had occupied the same position on the site, whereas the open sided food store has been constructed in the approximate position of where a shed had once stood. Both new buildings are relatively modest in size being single storey structures measuring a maximum of 3.3m and 1.8m in height respectively.
35. There is some dispute between the parties as to whether the development has resulted in an increase in overall footprint on the site. The Council have calculated that the development results in an increase of just under 28m<sup>2</sup>, whereas the appellant considers there has been an overall reduction of around 2.5m<sup>2</sup>. Although both parties' calculations have not been explicitly set out, the difference is likely to arise from the appellant including a greenhouse and small sheds which were previously on the site as part of the "existing footprint".
36. However, the previous Inspector set out that those structures had already been demolished and removed by the time of that decision, and therefore long before the development subject of this appeal was constructed. In my view, they cannot be reasonably considered as being "existing structures" that were replaced by the appeal development. I therefore consider it likely that the Council's calculation will be more accurate. This increase in footprint and volume results in a moderate reduction in the spatial openness of the Green Belt.
37. Despite the spatial reduction in the openness of the Green Belt, there is a much more limited visual reduction in openness. Given the modest size and height of the timber buildings and the topography of the site, the development is not unduly prominent in the wider area. Due to the elevated position of the site, existing vegetation, and the buildings being set back in the south-western corner of the site, views of the development from Hall Street to the east are largely restricted to those available through the newly constructed vehicular access.

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<sup>3</sup> APP/B2355/W/16/3150669



38. The development is visible from public vantage points on Hall Street to the north and west, and from a small number of nearby dwellings. However, given that the buildings are set below the level of the lane that runs to the north and west of the site, they do not appear visually prominent. Any visual impact is further offset by the removal of previous smaller structures from approximately the same locations. Consequently, the development results in limited harm being caused to the visual aspect of openness.
39. Bringing these matters together, the development has, given its scale and position, resulted in a moderate reduction in spatial openness of the Green Belt, and a limited reduction in visual openness. I do not, therefore, find the harm to the openness of the Green Belt to be substantial in this case.
40. For the reasons given above, I conclude that although the development has a harmful effect on the openness of the Green Belt, that harm would be moderate. The development does not therefore conflict with paragraph 154(g) of the Framework and would not be inappropriate development in the Green Belt. Consequently, there is no conflict with National Green Belt policy set out in the Framework and the need for special circumstances does not apply.

#### *Character and Appearance*

41. The appeal site is a broadly triangular parcel of land which is bounded by Hall Street on its north-eastern and western sides. Hall Street is a steeply sloped road with a continuous ribbon of dwellings up until the appeal site, with more sporadic housing thereafter to the north and west of the site. The appeal site itself is largely open, with a small cluster of buildings in the south-western corner.
42. The appeal development comprises the erection of a replacement stable and an open sided food store. The stable is constructed in timber with a corrugated steel roof, small overhang canopy, and a white uPVC door. The open sided food store is constructed in timber with a visqueen on ply deck roof covering.
43. The Council contend that the construction of these buildings has had a detrimental impact on the visual amenity of the site and wider area. In particular, the Council consider that the use of inappropriate materials and intensification of the built form has had a harmful impact. However, Policy LT5 of the RLP relates specifically to equestrian development and sets out, amongst other things, that *“traditional designs will generally be the most appropriate, clad externally in timber and with an internal timber frame, with a maximum ridge height of 3.5m for stables”*.
44. The timber construction of the appeal buildings is, in my view, entirely appropriate for the equestrian development they serve, and complements the existing timber buildings on the site. I acknowledge that the white uPVC door on the replacement stable is not a traditional material or design for a stable. However, as set out above due to the topography of the appeal site the development is not unduly prominent in the wider area. The location of the uPVC door on the eastern elevation of the stable building means that it is well screened from external views and is only apparent when standing in the appeal site itself. Consequently, I do not consider that the uPVC door causes harm to the character and appearance of the area.
45. In terms of the intensification of the built form on the site, I accept that the development has resulted in an increase in footprint from what previously existed. However, I do not consider this increase to be significant or to materially alter the

character and appearance of the appeal site and surrounding area. The stable building and open sided food store are modest in size and height, and their visual impact is significantly negated by their grouping together with the existing buildings in the south-western corner of the site. Accordingly, I find the siting, layout, massing, and scale of the development to be appropriate for its location.

46. I therefore conclude that the replacement stable and open sided food store do not have a harmful effect on the character and appearance of the area. As such, there is no conflict with the development plan as a whole, including Policies ENV1, ENV3, and LT5 of the RLP. These policies seek, amongst other things, to ensure that developments take account of the character and appearance of the area, including conserving and, where possible, enhancing the natural and built environment.

### **Other Matters**

47. I have had regard to the third-party representations submitted in response to the appeals and have taken those comments relating to the planning merits of the development into account. Some of the representations included other concerns including alleged anti-social behaviour and boundary disputes. These matters though fall outside the remit of these appeals.

### **Conditions**

48. The Council have not suggested any conditions in the event that the appeal is allowed. However, in the interests of certainty, I have included a list of the approved plans and drawings within my formal decision.

### **Overall Conclusions**

49. Appeal A - For the reasons given above I conclude that the appeal succeeds in part, on ground (c), but otherwise fails. I have therefore upheld the enforcement notice with corrections.
50. Appeal B – I have found that the development accords with the policies of the development plan when read as a whole. There are no material decisions that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that Appeal B should be allowed.
51. Whilst I have dismissed Appeal A and upheld the enforcement notice, in allowing Appeal B, the appellant can rely on the provisions set out in section 180 of the 1990 Act. Therefore, the requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission.

*David Jones*

INSPECTOR