



Appeal Decision

Site visit made on 2 September 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2025

Appeal Ref: APP/R2330/C/24/3345498

Land at Higher Rhoden, Oswaldtwistle

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Bradley Green against an enforcement notice ("EN") issued by Hyndburn Borough Council.
 - The EN was issued on 8 May 2024.
 - The breach of planning control as alleged in the EN is: Without planning permission, the erection of an agricultural building.
 - The requirements of the EN are:
 - i) Demolish and remove the agricultural building from the Land; and,
 - ii) Remove any resultant rubbish and debris from the Land.
 - iii) In the interests of local amenity, undertake i) and ii) above only between the hours of 0800 and 1830 Monday to Friday and 0800 and 1300 on a Saturday. No works shall be undertaken on a Sunday or a Public Holiday.
 - The period for compliance with the requirements is: 3 (three) calendar months from the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 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 1990 Act.
-

Decision

1. It is directed that the EN is corrected and varied by:

- *the deletion of the words "Without planning permission, the erection of an agricultural building" and their substitution with the words "Without planning permission, the erection of a partially completed agricultural building" in section 3;*
- *the deletion of the words "i) Demolish and remove the agricultural building from the Land" and their substitution with the words "i) Demolish the partially completed agricultural building from the Land" in section 5;*
- *the deletion of the words "iii) In the interests of local amenity, undertake i) and ii) above only between the hours of 0800 and 1830 Monday to Friday and 0800 and 1300 on a Saturday. No works shall be undertaken on a Sunday or a Public Holiday" in section 5; and*
- *the deletion of "3 (three) calendar months" and its substitution with "5 (five) calendar months" as the time for compliance.*

Subject to the correction and variations, the appeal is dismissed, the EN is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Matter Concerning the Notice

2. The wording of the alleged breach of planning control forms the basis of the deemed planning permission and therefore the wording needs to be accurate. The alleged breach of planning control as set out in the EN implies that the agricultural building has been completed. However, both parties agree that the building is unfinished.
3. I sought the parties' views on correcting the alleged breach of planning control to "*...the erection of a partially constructed agricultural building*". The appellant agreed that it should be corrected in this way, and the Council stated they had no further comments. As the amended description accurately reflects the development that has occurred, I am satisfied that no injustice would be caused by the correction. I have therefore determined the appeal on the basis of the corrected breach.

Preliminary Matter

4. The Council's appeal statement refers to insufficient information regarding Biodiversity Net Gain ("BNG"). However, BNG does not form a reason for issuing the EN. Furthermore, BNG cannot be applied to retrospective developments. Consequently, it is not a matter that falls to be considered by this appeal.

Appeal on Ground (a) and the Deemed Planning Permission

5. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The **main issues** are the effect of the development on (i) the character and appearance of the surrounding area; and (ii) the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance, odour and outlook.

Reasons

Background

6. S177(1)(a) of the 1990 Act states that planning permission may be granted "*in respect of the matters stated in the EN as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates*". The matter stated in the corrected EN is the erection of a partially completed agricultural building ("the building").
7. The appellant has submitted a drawing¹ to show the building's completed appearance. However, success on ground (a) and the deemed planning permission can only relate to the partially completed building. Therefore, planning permission under ground (a) cannot be granted for works that would allow the building to be completed. Consequently, I can only assess the effect of the partially completed building on the main issues identified above.

Character and Appearance

8. The building is predominantly two-storeys in height but has a single storey along its northern elevation that is irregular in shape. A large opening is positioned within the building's southeastern elevation that provides access. The building is constructed on top of a concrete slab and comprises timber poles (similar to telegraph poles)

¹ Drawing Ref C738-1 Rev A

with vertical timber boarding affixed to a timber frame. Sheets of MDF/plywood have been positioned around the internal perimeter of the building. The timber panelling to the external walls is incomplete and the building has no roof.

9. I acknowledge that timber boarding is used in the construction of agricultural buildings which weathers to become greyer in appearance. I also saw during my site visit that the surrounding buildings are mixed in their appearance. However, the building's unfinished appearance, rudimentary materials, and its atypical agricultural building design, appears incongruous. Furthermore, granting planning permission for a partially completed building would not be appropriate where there is no planning permission for it to be completed.
10. I appreciate that views of the building are limited within its immediate vicinity due to the presence of trees, the proximity of other buildings and the varied ground levels. However, the uppermost unfinished section of the building is visible from a Public Right of Way. Consequently, the building significantly detracts from the character and appearance of the surrounding area.
11. For these reasons, the development harms the character and appearance of the surrounding area. It conflicts with Policy Env6 of The Core Strategy, adopted 2012 ("CS") which, amongst other things, seeks to ensure that new developments maintain and enhance local distinctiveness and deliver high quality design by taking into consideration appearance.

Living Conditions

12. A static caravan ("Sheringham") is the nearest dwelling to the building. One window within the static caravan directly faces towards the building and an interested party has stated that it serves a bedroom. From the information before me and what I saw during my site visit, I have no reason to disagree with the interested party's assertion. The building has been constructed on the boundary shared with Sheringham with no intervening boundary treatment. It is in proximity of Sheringham's bedroom window and is substantially taller than the static caravan. The proximity and massing of the building relative to Sheringham's bedroom window therefore, results in a significant overbearing effect.
13. The building is used for housing livestock and the storage of hay. While the appellant asserts that it will also be used for the storage of farm machinery, chemicals and fertiliser. The appellant's evidence is inconsistent with reference to whether manure is stored in the building however, I did not see any stored within the building during my site visit.
14. The evidence before me indicates that effluent from the animals housed within the building seeped into Sheringham's garden. The appellant asserts that this matter has been resolved, however, I do not have any substantive evidence before me to corroborate this view. The appellant has also suggested that drainage details could be conditioned should permission be granted. However, I have insufficient evidence before me to determine whether an acceptable drainage scheme could be implemented.
15. At the time of my site visit, odour was emanating from the use of the building for the housing of animals. The exterior timber boarding to the ground floor of the building has gaps and the building is incomplete. Therefore, the building is unable to contain the associated odour. Noise from the animals was limited at the time of my site

visit. However, I appreciate that this was a snapshot in time. Furthermore, there is the potential for noise to be generated by the movement of machinery stored within the building, which could occur early in the morning or late at night depending on the activities associated with the farm.

16. I acknowledge that the building is in a semi-rural area whereby odour and noise associated with the keeping of farm animals and noise from farm machinery is more common. However, the noise and odour stemming from the use of the building would be in proximity of Sheringham's bedroom window and garden which, in the absence of any technical noise and odour reports, could be detrimental to the living conditions of the occupiers of the neighbouring property.
17. The appellant suggests manure could be managed by condition should permission be granted for the building. However, no manure was stored within the building at the time of my visit. Consequently, such a condition would not overcome the odour associated with the housing of animals.
18. The information before me suggests that the building was constructed on the floor slab of former stables and the appellant asserts that the building is not sited any closer to Sheringham than the former stables. However, I have limited evidence before me regarding the stables' siting, scale or whether planning permission was obtained or indeed required. I am therefore unable to ascertain whether the stables were directly comparable to the building. In any event, I must determine each case on its individual merits.
19. For these reasons, the development harms the living conditions of the occupiers of the neighbouring property, with particular reference to odour, noise and disturbance, and outlook. It conflicts with Policy Env7 of the CS and Policy DM29 of the Development Plan DPD, adopted 2018 which, amongst other things, state that new development will be permitted only if it is demonstrated that the material impacts arising by reason of visual impact, noise, pollution, odour or other nuisances will not give rise to unacceptable adverse impacts and can be properly controlled; and development will be required to protect the amenity of surrounding existing and future residents.

Other Matters

20. The appellant asserts that other than one representation received from the relative of a neighbouring property who lives elsewhere, there is no local objection to the building. However, this does not free me of my obligation to determine the appeal in the public interest.
21. The appellant asserts that the building utilises brownfield land and it contributes to the efficient use of such land, as opposed to being constructed on a greenfield site. The information before me suggests the land was formerly occupied by stables, however, it is unclear whether they were associated with an equestrian use or whether the use was lawfully developed. Consequently, I am unable to establish whether the land is brownfield.
22. The use of the existing concrete pad to construct the building may have reduced the cost of its construction. However, this does not outweigh the harm I have previously identified.

Conclusion on Ground (a) and the Deemed Planning Permission

23. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should be dismissed, and the deemed planning permission should be refused.

Appeal on Ground (f)

24. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. As I have corrected the breach of planning control to “*the erection of a partially completed agricultural building*” it is necessary for me to amend step i) of the requirements so that it refers to the same breach of planning control. It is also not necessary for step i) to require the removal of the building, as this is covered by step ii) of the requirements. As these variations are for precision and no objection was raised by the parties to changing the breach, I am satisfied that I can correct the EN in this manner without causing injustice.
26. The appellant asserts that requirement iii) of the EN that seeks to control the days/hours when the agricultural building is demolished and the resulting material removed from the site, exceeds what is necessary to remedy the breach of planning control. They consider this renders the EN invalid. The Council consider that requirement iii) is necessary to protect the living conditions of the occupiers of neighbouring properties from work being undertaken at unacceptable times of the day and night.
27. Sections 173(3) and (4) of the 1990 Act state that an EN shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, to achieve, wholly or partly, any of the following purposes:
- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
28. There is no provision within s173(3) or (4) of the 1990 Act for conditions to be imposed to remedy the breach of planning control. The purpose of the EN is to remedy the breach of planning control and steps i) and ii) of the EN would achieve that purpose. Consequently, I concur with the appellant that requirement iii) exceeds what is necessary to remedy the breach.
29. S176 of the 1990 Act allows me to vary the terms of the EN if I am satisfied that the variation will not cause injustice to either party. As the appellant has sought to remove step iii), deleting it from the EN would not cause them injustice. The Council has powers under different legislation to set hours for noisy construction activities and therefore, its removal would not cause them injustice. As I can vary the EN without causing injustice, it is not invalid.

30. I will therefore vary the requirements of the EN by deleting requirement iii). As such, the appeal on ground (f) succeeds to this limited extent.

Appeal on Ground (g)

31. An appeal under ground (g) is that the period specified for compliance within the EN falls short of what should reasonably be allowed. The period for compliance specified in the EN is 3 months. The appellant requests a period of 9 months.
32. The agricultural building is predominantly used for housing livestock which the appellant asserts need to be housed in a building for animal welfare reasons. The appellant states that there is no other building that could be used to house the animals. From the evidence before me, and what I saw during my site visit, I have no reason to disagree with these views.
33. To erect a replacement agricultural building elsewhere on the holding, the appellant would need to apply either for prior approval or full planning permission. Further time would then be required to appoint a contractor and to construct the building, before the existing agricultural building could be demolished. Consequently, I find that three calendar months falls short of what is reasonable. However, a period of 9 calendar months proposed by the appellant, is a lengthy period for the harm identified in the EN to persist.
34. I consider that extending the time for compliance to five calendar months would strike a more appropriate balance between remedying the planning harm identified in the EN as soon as practicable and allowing the appellant a more appropriate timeframe in which to secure any necessary permissions and arrange for and have the works carried out.
35. The appeal on ground (g) therefore succeeds to this extent and I will vary the EN accordingly.

Overall Conclusion

36. For the reasons given above, I conclude that the requirements of the EN are excessive to remedy the breach of planning control and the period for compliance with the EN falls short of what is reasonable. Therefore, I shall vary the EN prior to upholding it. The appeal on grounds (f) and (g) succeed to that extent.

A Berry

INSPECTOR