



Appeal Decision

Hearing held on 10 March 2026

Site visit made on 10 March 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2026

Appeal Ref: APP/C1760/C/25/3375182

Emer Farm, Green Lane, Ampfield, Romsey SO51 9BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Edward Godwin of Roe Buck Holdings Limited against an enforcement notice issued by Test Valley Borough Council.
 - The notice was issued on 24 September 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a building.
 - The requirements of the notice are: (i) Demolish the building. (ii) Remove all materials resulting from compliance with step (i) 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)(a), (b), (e), (f), (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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Summary of Decision

1. The appeal is dismissed and the Enforcement Notice is upheld subject to a variation.

Applications for Costs

2. An application for costs was made by Mr Edward Godwin of Roe Buck Holdings Limited against Test Valley Borough Council. This application will be the subject of a separate Decision.

Procedural Matter

3. Following the close of the Hearing, I have, as indicated, accepted late comments from the Environment Agency and the main parties on the wording of a suggested planning condition. Injustice does not arise from this.

The Enforcement Notice

4. The appellant contends the notice is a nullity. The notice is however not defective on its face as it is not missing some vital element that it should include under Section 173 of the Act or the Regulations¹. It is also for the Council to describe the alleged breach of planning control as it sees fitting in the first instance. The reasons for issuing the notice are then adequately detailed and cite relevant development plan policies. There is therefore not a lack of justification, and this is then a matter to be assessed in the ground (a) appeal. There is accordingly no

¹ Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

fundamental error which renders the notice null² and the Council was not obligated to provide its Enforcement Memo as part of the papers that were served.

5. There is then little suitably qualified professional evidence to demonstrate that the notice, with a requirement to demolish the building, fell within the scope of the Habitat Regulations or that it goes to the heart of the regulations and thus responsibilities were engaged prior to the issuing of the notice. In any event, whilst the Council does not consider it necessary, it has sought to address the appellant's criticism by undertaking an Appropriate Assessment. This concludes there will be no likely significant effect either alone or in combination. Natural England were then consulted and concurred with this view. During the Hearing I provided the appellant with an opportunity to comment on the Natural England response, which they chose not to do.
6. Whilst I am now the competent authority, had an Appropriate Assessment been necessary, I would have had little reason to disagree with the Council's and Natural England's view. Furthermore, if the appellant considered the issue of the notice by the Council to have been procedurally unlawful, the remedy would have been to make an application for judicial review against that decision, which they chose not to do.
7. The plan attached to the notice then identifies an area of land which includes the precise boundaries of the land to which the notice relates. There is thus no procedural or other requirement for it to extend to the whole of an agricultural holding or planning unit when there is no requirement placed by the notice to undertake works on or clear wider land. During the Hearing the appellant was unable to draw my attention to any case law which demonstrates otherwise.

The ground (e) appeal

8. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land, as required by Section 172 of the Act.
9. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Council, is materially affected.
10. I have already found that the entirety of the planning unit does not have to be identified as the land affected by the notice. There is also no obligation placed on the Council to serve a planning contravention notice prior to issuing the enforcement notice.
11. It is said that drainage works associated with the building the subject of the notice are situated on land outside that affected by the notice. However, the notice does not require the removal of drainage or other works or the removal of debris on wider land.
12. The Council also displayed a copy of the notice at the entrance to the site when it was served, and which can constitute a valid form of service. I also note that various grounds of appeal, including a ground (a) appeal, has been lodged. Consequently, there is little evidence to demonstrate on the balance of

² And as per: *Miller-Mead v MHLG* [1963] 2 WLR 225

probabilities that a party with an interest in the land materially affected by the notice has been substantially prejudiced.

13. The appeal on ground (e) therefore fails.

The ground (b) appeal

14. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the erection of a building, has not occurred as a matter of fact.
15. The appellant contends that an existing agricultural building has been converted, as opposed to the erection of a building. The appellant states that works were undertaken in respect of the strip of the building back to original foundations, and that the retention of a primary concrete portal frame and existing floor structure are consistent to an act of implementing a 2023 deemed approval for dwellings. It is however conceded that works to remove all the external blockwork walls go beyond that indicated as well as the increased height of the roof.
16. There is some photographic evidence of the works undertaken. The appearance and condition of the agricultural building is also evidenced given previous applications for residential use.
17. Whilst I accept that parts of the original building remain and likely remain performing a structural role in concert with what has since been constructed, it is necessary to assess the entirety of the works undertaken, as a matter of fact and degree. Whether some of the works undertaken were consistent or not with the 2023 deemed approval, the entirety of the works undertaken must still be assessed, as the parties agreed during the Hearing. Accordingly, works cannot be disaggregated from the assessment.
18. To this effect, during the Hearing there was dispute between the parties about the increased ridge and eaves height of the building. The appellant contended it was 0.8m and the Council 1.2m. During the site visit it became visually evident that the increase was more than 0.8m owing to the number of additional rows of concrete blocks. The appellant therefore had to concede that the building was at least 1.075m higher. That was however an internal increase and therefore did not reflect the external roofing. I consequently prefer the figure provided by the Council.
19. This obvious inaccuracy also casts other significant doubt in my mind. There is no sworn evidence before me to which I can attach significant weight, and only one set of the columns and portal frame, out of a total of six sets, could be seen during my site visit, as the remainder were said to be set within cavity walls.
20. Even if all six sets as well as the foundations and flooring contended by the appellant remain within the structure, the building consists of entirely new external and internal walls, other foundations and concrete flooring and an entirely new roof structure. The walls are also cavity walls which means the footprint of the building is both longer and wider. This therefore all represents substantial new building works and structural elements, given the roof is also supported by new roof trusses and purlins, which in turn are supported by the new external blockwork cavity walls. As a matter of fact and degree, the external appearance of the building is consequently materially different from what either went before or was shown pursuant to the 2023 deemed approval.

21. Given the new roof, cavity walls, larger footprint and increase in ridge and eaves height, amongst other things, it is difficult to reconcile how these act in support of rather than as a replacement for the original building fabric, or that for example, the original framework could still reflect the form and function of the original building.
22. That as far as reasonably practicable from the appellant's perspective the original foundations, structural framework and floor structure have been retained and incorporated, does little to demonstrate on the balance of probabilities that a new building has not been erected.
23. As a matter of fact and degree, the appellant has therefore failed to demonstrate on the balance of probabilities that there has not been the erection of a building. The works are therefore not consistent with a mere conversion and alteration.
24. The Council has then not alleged the demolition of a building in the notice, but the appellant confirmed during the Hearing that there has only been a single building operation, as opposed an act of demolition, and then the erection of a building. This therefore does little to assist the appellant to demonstrate on the balance of probabilities that the breach alleged has not occurred as a matter of fact.
25. The appeal on ground (b) therefore fails.

The ground (a) appeal

Main Issue

26. The main issue is whether there is an essential need for the building to be located in the countryside.

Reasons

27. The site is located in the countryside, accessed via a short track off Green Lane. The appeal building is located within a main yard area and is reasonably close to the access point with the highway.
28. The deemed planning application relates to the erection of a building. This is because at the time of issuing the notice the building did not contain a permanent roof covering, fenestration or internal fixtures and fittings, amongst other things. This remained the case at the time of my site visit.
29. For the purposes of the adopted Test Valley Borough Revised Local Plan DPD 2011-2029 (the LP), the site is located in the countryside. Policy COM2 of the LP states that development outside the boundaries of settlements will only be permitted if it is appropriate in the countryside as set out in further listed policies or it is essential for the proposal to be located in the countryside.
30. There is very little evidence that compliance with the further listed policies would be achieved. The appellant however advances a case for use of the building for agricultural purposes as an essential need.
31. It is asserted that the building would support the underlying agricultural use of the holding and is appropriately located within the functioning yard for use as a farm office, egg hatchery and storage unit, cleaning and embryo facilities, animal feed storage, workshop storage and the potential processing of seasonal poultry, amongst other things.

32. The basis of this proposition is because it is said the appellant is better off retaining the building rather than having no building at all, and they wish to remain viable as well as diversify. It would therefore retain the building as a valuable second-best opportunity behind the preferred residential use.
33. I accept the preference of the appellant would be to retain the building and that there is a legitimate farming activity at the wider site. That however does not translate into an essential need for the building to be located in the countryside. I am extremely mindful the appellant gave-up the use of the original agricultural building in favour of a residential use and that a residential use is still very actively being pursued with an intention to appeal a recent refusal of planning permission.
34. This casts significant doubt in my mind that the building for an agricultural use is thus essential. Whilst I was advised during the Hearing that using the building would enable metal storage containers to be replaced that were substandard, the appellant did not propose a planning condition to secure their removal. There was also little evidence they benefitted from a form of planning permission in the first place. They have also seemingly been at the site for several years and if the appellant's preference for residential use succeeds, would likely need to remain for some time further given financial constraints would apparently limit the ability to then imminently construct a replacement building or structures.
35. There is also very little evidence of a business plan or financial accounts to demonstrate an essential need in terms of the existing viability of the holding or as part of projections for diversification. Intentions that I was advised of during the Hearing were then conceded as not featuring in the appellant's written submissions, which casts doubt in my mind as to how advanced or viable the future plans are for the holding.
36. That all being so, little support is provided by paragraph 88 of the National Planning Policy Framework (the Framework) given the very limited professional evidence pertaining to the sustainable growth and expansion of the farm or diversification that would genuinely be achieved through the retention of the building for agriculture.
37. I therefore conclude there is not an essential need for the building to be located in the countryside and so the development harmfully contravenes Policy COM2 of the LP and the supporting a prosperous rural economy objectives of the Framework. This is a planning harm to which I attach substantial weight.

Other Considerations

38. There was a deemed approval at the site for the change of use of an agricultural building and conversion to 5 dwellings and therefore the principle of residential use. However, that deemed approval only arises on the principle of converting an existing and suitable agricultural building, as opposed the erection of a new building. There are also material differences in respect of height, appearance and the proposed use which is before me. I consequently afford this limited weight.
39. The appellant also alludes to their personal circumstances and that they are living in the adjoining bungalow with their grandmother. The retention of the building for an agricultural use would however seemingly do little to alter this situation. I afford such considerations limited weight.

40. During the Hearing the appellant stated the building contains embedded carbon and thus it would be wasteful for it to be demolished. Such an approach would however undermine all such cases of enforcement action being undertaken and the planning system in general. I therefore afford this neutral weight.
41. The Council has raised planning objections in respect of flood risk and biodiversity, but it would appear from the evidence these objections could now likely be dealt with by suitably worded planning conditions and therefore would carry neutral weight. Even if I am wrong, I have already found harm of substantial weight in respect of the essential need main issue. The absence of any other planning harms would then attract only neutral weight.

Planning Balance

42. There is not an essential need for the building to be located in the countryside which is a planning harm that attracts substantial weight. The other considerations then only attract limited and neutral weights and so do not outweigh this harm.

Conclusion

43. There are not material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal fails.

The ground (f) appeal

44. The parties agreed during the Hearing that the purpose of the enforcement notice is to remedy the breach of planning control. It therefore does not seek to under-enforce. Accordingly, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose alternatives steps.
45. The re-use of any materials or parts of original fabric now form part of the unauthorised development, which is namely the erection of a building. Accordingly, this has gone beyond the conversion of the original structure, as I have already found, and it is therefore not excessive for the unauthorised building the subject of the notice to be demolished. Whilst the Council had latterly indicated there would not be an objection to the remaining elements of the previous building being retained, this was because it was unsure as to the extent of its powers, but it is clear that to remedy the breach the entirety of the building should be demolished.
46. That the appellant is then not placed in the same position as prior to the unauthorised development being undertaken through having an agricultural building does little to evidence why the steps required by the notice are excessive to remedy the breach of planning control. Given the notice was correctly not issued in respect of a breach of planning control consisting of the demolition of a building, for the reasons I have found in my ground (b) assessment, the notice then correctly does not require the construction of a replacement building, as Section 173(6) of the Act is not engaged. Consequently, re-constructing the former agricultural building, even if it was not a harmful one, would amount to a separate building operation for which a form of planning permission or prior approval would very likely be required.

47. The requirements of the notice are then neither null nor defective and go no further than remedying the breach of planning control. They are clear and precise and no requirement is made to undertake works on wider land.
48. The appeal on ground (f) therefore fails.

The ground (g) appeal

49. The appellant does very little to demonstrate on the balance of probabilities that a period of 3 months is too short to comply with the requirements of the notice. However, a longer period of 12 months is requested to enable the recent refusal of a planning application to be appealed. That application however relates to the conversion and alteration of a building, as opposed the building that has been erected, and so in light of my findings would be of little practical benefit. During the Hearing, the appellant also requested the same period of 12 months to enable a further application to be submitted to retain the building and use it for various residential purposes, should that prove to be necessary.
50. Given such a use was always the appellant's intention, and this appeal did not enable the merits of retaining the building for that use to be assessed, it strikes me as reasonable to afford that final opportunity. The requested period of 12 months would therefore facilitate this and not unduly perpetuate the breach of planning control given these circumstances.
51. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

52. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to a variation and refuse to grant planning permission on the deemed application.

Formal Decision

53. It is directed that the enforcement notice be varied by:
- substituting '*12 months*' as the time for compliance in section 6. (i) of the notice.
54. Subject to this variation, the appeal is dismissed and 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.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Aaron Smith	Agent
Ms Ros Trotman	Solicitor
Mr Callan Powers	Agent
Mr Edward Godwin	Appellant
Mr Mark Davis	Chartered Surveyor

FOR THE LOCAL PLANNING AUTHORITY:

Ms Dreana Coen	Senior Enforcement Officer
Mr Mark Staincliffe	Head of Development Management
Mr Tim Parker	Senior Planner

INTERESTED PARTIES:

Cllr Alan Warnes

DOCUMENTS:

1. NE consultation response dated 9 March 2026
2. Decision Letter dated 18 February 2026
3. EA consultation response dated 13 February 2026
4. EA consultation response dated 8 December 2025
5. FRA dated November 2025
6. List of suggested conditions
7. Appellant's Costs Application
8. Council's response to Costs Application
9. Appellant's Final Comments on Costs Application
10. Late comments from the EA and the main parties on the wording of a suggested planning condition