Planning Inspectorate

Appeal Decisions

Site visit made on 14 September 2026

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 September 2026

Appeal A Ref: APP/C1760/C/24/3354722
Appeal B Ref: APP/C1760/C/24/3354723
Hillside Nurseries, Branches Lane, The Banks, Lockerley, Hampshire SO51 6JT

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- Appeal A is made by Mssrs T Wilson and Appeal B is made by Mr T N Wilson against an enforcement notice issued by Test Valley Borough Council.
- The notice was issued on 25 September 2024.
- The breach of planning control as alleged in the notice is *'Without planning permission, the erection of a single storey timber clad building on a concrete slab, together with a raised terrace'*.
- The requirements of the notice are to:
  (i) Demolish the single storey timber clad building, annotated with an "A" on the attached plan.
  (ii) Demolish the concrete slab for the timber clad building.
  (iii) Demolish the raised terrace, annotated hatched blue on the attached plan.
  (iv) Remove from the land all materials and waste resulting from compliance with steps (i), (ii) and (iii) of the above requirements.
- The period for compliance with the requirements is: Four (4) months.
- Appeal A proceeds on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 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 Act.
- Appeal B proceeds on the grounds set out in section 174(2)(c), (f) and (g) of the Act.

Decisions

1. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is also refused on the application deemed to have been made under section 177(5) of the Act.

2. Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Appeal A includes ground (a). Both appeals make the same case about the same enforcement notice on grounds (c), (f) and (g), which I have considered together.

Appeals A and B on ground (c)

4. For either ground (c) to succeed, the onus is firmly on the appellants to demonstrate, on the balance of probability, that the matters pursued by the notice, as set out in the 4th bullet point in the banner header above, are not a breach of planning control. In this case, that the necessary planning permission has been granted for this development, which comprises not just a single storey timber clad building (the notice building) but also a concrete slab and raised terrace.

5. The appellants consider that the notice should allege a breach of condition under section 171A(1)(b) of the Act, not development without planning permission under

section 171A(1)(a). But either way, that the Council granted planning permission in June 2022 for 'erection of stable building' (the approved stable building) with the repositioning of a storage shed and removal of a polytunnel (the PP)[1]. They say the PP has been implemented, so a breach of planning control has not occurred.

6. The Council maintains that even if the PP has been implemented, a breach of condition arises only if the notice building is a stable building, as per the description of development in the PP. It says the notice building isn't a stable building, let alone the approved stable building, so there has been no breach of condition but rather development without planning permission.

7. I saw that the external envelope of the notice building gives the visual impression of a stable building. There is also little to suggest that a concrete slab is not a suitable base for a stable building or was not intended for the approved stable building. It is common ground there was a pre-existing concrete slab where part of the notice building is sited. However, these considerations are not determinative. Although the notice does not pursue a material change of use of the Land, whether the notice building can practicably be used as a stable building is relevant to my assessment.

8. The raised terrace is a block paved surface with low, protruding perimeter brick edging and no fencing. It is narrow along one side of the notice building, next to doors which resemble entrances to segregated stalls but give access to a single large main room. This brick faced plinth is also elevated a significant height above the sloping ground level, especially at one end but also at the lowest end, diverging along the side as ground level falls away. There is thus a tangible risk of horses or handlers falling off this part of the raised terrace and sustaining injury. This way of accessing a stable building is unusual in my experience, even on sloping ground. The wider part of the raised terrace, at the highest end, included domestic patio seating and a table.

9. That a horse was outside on the Land one winter is consistent with what the Council observed at one instant in February 2024. Even if this horse was on the Land for 6 months, there is little explanation from the appellants about how the horse was 'using' the notice building. Council photographs from February 2024 show the raised plinth then still under construction.

10. Internal timber framing includes rockwool insulation. Walls, floors and ceilings are high quality tongue and groove timber boarding (as are the external elevations) with exposed roof trusses. There are domestic roof and wall light fittings (including hanging pendants), wall switches and plug sockets, an electric heater and possibly a wall mounted air-conditioning unit or another heater. This broadly reflects what is shown inside the notice building in Council photographs during 2023 and 2024 when the Council also observed a sofa. I saw one smaller room also includes what appeared to be a timber bed frame in situ and, as in another room, it was cluttered by storage of miscellaneous domestic paraphernalia.

11. The appellants do not dispute that these circumstances are at odds with relevant guidance on stabling and horse welfare before me[2]. In any event, and albeit a snapshot, despite some animal dung on the Land, I saw no horses in the notice building or on the Land, with little else to suggest any sustained use of the notice

[1] Ref: 22/01072/FULLS
[2] Code of practice for the welfare of horses, ponies, donkeys and their hybrids, 2017 - Department for Environment, Food and Rural Affairs and the British Horse Council.

building as a stable building when it was erected or since. There is thus little to persuade me that straw strewn over the floor in the main room, with some dung, a small cart and some bags of haylage, was anything other than for the benefit of my site visit. Despite the outward impression of the notice building, the internal configuration and immediate external apron is more akin to a domestic timber chalet or garden outbuilding on a raised patio.

12. The appellants have compared the plans approved by condition 2 of the PP against their as-built plans of the notice building, noting some differences in dimensions. They consider that the notice building is 'smaller in size' with 'reduced height and mass' and 'a far simpler design' than the approved stable building. There is also unchallenged evidence that not all of the external materials in the notice building are as approved by condition 3 of the PP for the approved stable building.

Ground (c) conclusions

13. In my planning judgement, and as a matter of fact and degree, the notice building is not a stable building or the approved stable building. Even if a concrete slab was intended as a base for the approved stable building there is little evidence it included a raised terrace, notwithstanding the gradient on the Land or any alleged drainage implications. I have not been informed that the concrete slab and raised terrace pursued by the notice were anything other than a single composite act of development to facilitate the notice building.

14. The appellants do not dispute that a single storey timber clad building on a concrete slab, together with a raised terrace has been erected on the Land. Nor have they shown that planning permission has been granted for the notice building or the other operational development pursued by the notice (concrete slab and raised terrace). The notice does not pursue a stable building, which fundamentally does not exist on the Land, nor does the approved stable building.

15. The Council was therefore entitled to issue the notice under section 171A(1)(a) of the Act and it does not need to be corrected to refer to section 171A(1)(b). Nor is it defective in this respect, such that it should be quashed. The appellants do not claim there has not been a breach of planning control for any other reason.

16. As a result, the appellants have not demonstrated on the balance of probability that the matters pursued by the notice are not a breach of planning control. For these reasons each ground (c) fails.

Appeal A on ground (a)

Main Issues

17. The deemed application for planning permission is for the matters specified in the breach of planning control in the notice; namely, the erection of a single storey timber clad building on a concrete slab, together with a raised terrace (the development). The main issues are:

    - whether the development is justified in this location; and
    - its effect on the character and appearance of the area.

Reasons

18. The appellants refer to the development collectively as 'a stable building' and do not argue a split decision for any potentially discrete, severable parts of it under section 177(1)(a) of the Act. The notice building is, though, a 'single storey timber clad building' with no use assigned by the Council. I am mindful that sections 75(2) and (3) of the Act provide that where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used. If none are specified, the permission shall be construed as including permission to use the building for the purpose for which it is so designed. Relevant caselaw in this regard has established that 'designed' in this context means 'intended', rather than 'architecturally designed'.

19. The appellants' evident intention in this appeal is that the notice building, taken with the concrete slab and raised terrace, is a stable building and planning permission should be granted in ground (a) for it. However, as set out in ground (c), when the notice building is properly considered holistically (not just externally or in architectural design) and with the raised terrace, it is fundamentally not a stable building or capable of safe, practicable use as such, and as is generally accepted for planning purposes. Accordingly, there is little substance to the appellants claim that what is before me in ground (a) in the deemed application for planning permission is reasonably or rationally a stable building.

<u>Location</u>

20. The Land is in the countryside. In the countryside, policy COM2 of the Test Valley Borough Revised Local Plan, January 2016 (the LP) permits only certain development via the exceptions in (a) or (b). There is no dispute that the development is not appropriate on the Land under (a). In granting the PP, the Council accepted that the approved stable building was a stable building and essential at that time for it to be located in the countryside, in accordance with (b).

21. However, there is no stable building in this appeal. Even if the notice building is a domestic timber chalet or garden outbuilding, there is little evidence it complies with exceptions in (a) or (b) or any other relevant LP policy. The appellants have not suggested any other use for the notice building, nor is any other suitable or appropriate use apparent.

22. Consequently, the development is not justified in this location. It undermines and causes harm to the Council's spatial strategy for development (and its related aims for protection of the countryside), in conflict with LP policy COM2.

<u>Character and appearance</u>

23. This part of the countryside is mostly undeveloped, gently sloping fields or paddocks bordered by trees and hedgerow. This prevailing rural impression is punctuated by lanes, scattered agricultural or equestrian buildings and some sporadic housing that is largely compatible in traditional design or use in this area. The Land is still a relatively small, mainly open field or paddock with vegetated boundaries. In these respects it has a complementary presence that makes a positive contribution to local distinctiveness.

24. Compared to the approved stable building, the notice building is also mainly of timber construction but without embellishment, such as a small clock turret and

roof overhang timber posts and the concrete slab it stands on is largely beneath it (though effectively part of the raised terrace). It is also smaller in some dimensions and in essentially the same position on the Land. Some roadside hedgerow or trees obscure it from some public views in much the same way as would be for the approved stable building.

25. However, notwithstanding that the notice building conveys the impression of a relatively modest sized stable building for two horses and a tack store, it is still notable in dimensions and building volume. The raised terrace is also significant in dimensions with appreciable surface area beyond the footprint of the notice building and an overtly domestic design. As a result, the substantial rectilinear scale and massing of the raised terrace projects significantly above ground level, even at the lower end. This elevated platform also unduly accentuates the size, scale and massing of the notice building which juts further upwards on top of it. This combined structure is, as well, visually and physically discordant – an incongruous conflation of incompatible built form on the Land, in the countryside, that is not in keeping with this rural locality.

26. I saw the notice building in public views from the lane next to the Land, over or between gaps in hedgerow (referred to as Branches Lane or The Banks). As well, across the wide, low gated vehicle entrance to the Land, including of the raised terrace. The notice building is also intrusive from parts of Carter's Clay Road, on lower lying land, including through gaps between buildings. Some of these views are partly dependent on how hedgerow or trees are managed and the time of year. But landscaping relied on for screening does not justify inappropriate development to begin with or overcome significant innate harm in this case.

27. Consequently, the development has an unacceptable adverse effect on the character and appearance of the area, contrary to LP Policy E2. This policy includes that development should protect, conserve and enhance the Borough's landscape by avoiding detrimental impact on the area within which it is located.

<u>Other considerations</u>

28. Even if the PP has been implemented, the development can be clearly distinguished from an extant approved stable building for the reasons explained earlier. Such a fall-back would thus not off-set the adverse impact of the development so this consideration has limited weight in support of the appeal.

29. The appellants invite me to grant planning permission 'subject to reasonable conditions' but haven't suggested any. I am, anyway, satisfied that planning conditions could not make the development acceptable given the fundamental objections set out in the main issues above.

Planning Balance and ground (a) conclusion

30. There are, therefore, no other considerations to indicate that ground (a) should be determined otherwise than in accordance with the development plan taken as a whole[3]. Consequently, for the reasons given above, the erection of a single storey timber clad building on a concrete slab, together with a raised terrace is unacceptable and planning permission should not be granted for it. Accordingly, ground (a) fails.

[3] Section 38(6) – Planning and Compulsory Purchase Act 2004, as amended

Appeals A and B on ground (f)

31. For either ground (f) to succeed, the appellants must demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.

32. The reasons for issuing the notice refer to some amenity considerations but these explain why the Council decided it was expedient to take enforcement action. Taken with the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control. Sections 173(3), (4)(a) and (5)(a) of the Act provide that the steps required to be taken by a notice can include restoring land to its condition before the breach took place by the removal of any building[4] or works. The requirements would achieve this outcome and the Council does not seek to under-enforce.

33. I acknowledge that planning enforcement should be remedial, not punitive. I also appreciate that simply removing interior fixtures or fittings from the notice building would be at less cost and disruption to the appellants. However, that would not fully address the development pursued by the notice or remedy the breach of planning control. The notice building is an inextricable facet of the development, including the concrete slab it is on and the raised terrace. There is no compelling technical evidence that the notice building could be retained without the raised terrace, incorporating the concrete slab. In any event, even if that were possible, it would render the notice building even less suitable or appropriate as a stable building.

34. In respect of section 57(4) of the Act, there is little to suggest other than that the development, including the notice building, is unlawful. There is little evidence about the lawful use of the Land, such as a lawful development certificate. But even if the Land can lawfully be used to graze or keep horses, there is no apparent reason why complying with the requirements of the notice would prohibit such use. I have not been informed that it is necessary for stables to be on the Land for either purpose or that there is an up-to-date, essential need for stables.

35. The appellants' case on ground (f) is otherwise essentially similar arguments already advanced in ground (a). This includes a claimed fall-back of the approved stable building as justification it would be disproportionate to demolish the notice building. No other lesser step or obvious alternative was advanced.

36. In these circumstances, the steps required by the notice to be taken are consistent with remedying the breach of planning control so are necessary, proportionate and not excessive. For these reasons each ground (f) fails.

Appeals A and B on ground (g)

37. For either ground (g) to succeed, the appellants must demonstrate that the 4-month period specified in the notice to take the steps required by it falls short of what should reasonably be allowed.

38. The appellants seek an additional 8 months (12 months in total) to allow for discussions with the Council to resolve issues without further enforcement action. However, that is not the matter in hand in ground (g) and the appellants do not contest that the 4-month time period is insufficient to carry out the requirements. The Council has referred to discretion it has under section 173A(1)(b) of the Act to

[4] 'Building' includes any structure or erection in section 336 of the Act.

extend the period for compliance, if justified; but that would be a separate matter for the main parties – the period in the notice must be sufficient to begin with.

39. There is, therefore, little to justify the appellants' request for an additional 8 months. In these circumstances, it would be tantamount to an unwarranted temporary planning permission and unduly perpetuate the harm the development has caused.

40. Consequently, on the evidence before me, the 4-month compliance period does not fall short of what should reasonably be allowed. For these reasons each ground (g) fails.

Overall Conclusions

41. Appeal A on ground (a) fails. Appeals A and B on grounds (c), (f) and (g) also fail.

42. Accordingly, Appeal A and Appeal B do not succeed.

Robin Buchanan
INSPECTOR