



Appeal Decisions

Site visit made on 29 January 2019

by A A Phillips BA(Hons) Dip TP MTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 February 2019

Appeal A: APP/T4210/C/18/3195131

Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0 0EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms J Brown of SR and RJ Brown Ltd against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 31 January 2018.
- The breach of planning control as alleged in the notice is the erection of an agricultural building.
- The requirements of the notice are demolish and permanently remove the building, including the base and foundations.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/T4210/W/18/3202305

Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0 0EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
- The appeal is made by Mr J Brown against the decision of Bury Metropolitan Borough Council.
- The application Ref 62677, dated 6 April 2018 was refused by notice dated 8 May 2018.
- The development proposed is an agricultural building for the storage of silage.

Summary of Decision: The appeal is allowed.

Background

1. With respect to Appeal A it is my understanding that there is a deemed consent to carry out an agricultural development which complies with the limitations and conditions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). The building the subject of the enforcement notice has been built in approximately the same location, but it is a different size and design from that approved. The existing building has been the subject of a planning appeal ¹ which was dismissed on 2 September 2016 for reasons relating to noise; however, at the time it was

¹ APP/T4210/W/16/3151468

proposed to use the building for housing livestock. The evidence before me, and my own site observations confirms that the building is not being used for housing livestock, but rather is being used for the storage of hay and machinery.

2. With respect to Appeal B I am aware that planning permission for an agricultural building for the storage of silage has previously been granted at the appeal site. That approval was for full planning permission because the footprint of the building was in excess of the limitations set out in the GPDO. I understand that the difference between the approved scheme and the current appeal proposal is that the height of the building is some 3 metres higher which is achieved by lowering the finished floor levels by approximately 1 metre. Consequently, the overall height difference is approximately 2 metres.
3. It is my understanding that an access track to the building is the subject of a separate enforcement investigation.

Appeal A on ground (a)

4. The appeal site is in the Green Belt and therefore the relevant policy context for establishing whether the development is inappropriate development in the Green Belt is paragraph 145 of the National Planning Policy Framework (the Framework) and Policy OL1/2 of the Bury Unitary Development Plan adopted August 1997 (the UDP). The use of the building is for agricultural purposes and this is not a matter of dispute between the main parties. It is important to note here that the Framework sets no specific limits for the scale of such a building and furthermore, as it is one of the exceptions given in paragraph 145 of the Framework, the effects of an agricultural building on the openness of the Green Belt are not relevant in considering whether they are inappropriate.
5. Therefore, for the purposes of the Framework and the UDP the development is not inappropriate development in the Green Belt.
6. Consequently, I consider the main issues to be:
 - i. The effect on the character and appearance of the Special Landscape Area;
 - ii. The effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise; and
 - iii. Whether the development poses an unacceptable risk of ground water contamination.

Character and appearance of the Special Landscape Area

7. The site is located within a Special Landscape Area and occupies an elevated and prominent within its surroundings. It is elevated above Bamford Road and Church Road and forms part of the local wider open ground of steep hills which is scattered with agricultural buildings. The building is a substantial structure which has an agricultural character and appearance, being constructed of concrete panels with Yorkshire boarding and a corrugated sheeting roof. The building's open side faces onto agricultural land. It is immediately above existing agricultural buildings of similar construction which are situated at a significantly lower level.

8. The building is prominent and as a result of its overall bulk, massing, scale, design and materiality it is a visually intrusive structure within its relatively open and elevated landscape surroundings. It is visible from some nearby areas, including residential properties and it dominates its immediate surroundings. However, the building is screened from some views by existing buildings, landscaping and topography and is seen in the context of other nearby agricultural buildings. Only a few residential properties have windows which directly face the appeal site.
9. I am also aware that there is a proposal which has deemed consent which would have a slightly lower ridge and eaves height and would not include the open side facing onto the agricultural land. It would incorporate similar materials. The visual effects of that building would nevertheless be similar to the existing building which is the subject of the enforcement notice. Indeed, the deemed approval building would have potentially greater impact on the character and appearance of the area because it would not have an open side and corners. From some viewpoints it would be more visually intrusive and harmful to the Special Landscape Area.
10. Therefore, I conclude that the visual effects of the appeal building do not result in more significant harm to the character and appearance of the Special Landscape Area than those of the scheme which benefits from deemed consent. Although there is some conflict with Policies OL4/5, EN1/2 and EN 9/1 of the UDP and the Council's Development Control Policy Guidance Note 8: New Buildings in the Green Belt (January 2007) (the SPD), the conflict I have identified would be outweighed by the lack of significant harm above that of the development which has deemed consent.
11. In coming to this conclusion I have taken account of the fact that the Council disagrees with the conclusions of my colleague Inspector who dealt with the previous appeal for the site ²with regard to the comparison between the building which has deemed consent and the building which is the subject of the enforcement notice. I understand the difference between dealing with the retention of an unauthorised building and the distinct application for prior approval, but on the grounds that the prior approval could still be implemented I consider it entirely reasonable to take account of the differences between the two.

Living conditions

12. The building is a limited distance from residential properties; notably those along Church Street and Millhouse Street. The enforcement notice has been issued partly on basis that the building is being used for housing livestock, but at my site visit I noted that it is currently being used to store hay and machinery. In addition, the appellant has suggested that a suitably worded condition could be used to preclude the use of the building to keeping animals. I agree that this is a suitable approach and would mitigate the potential harm to living conditions relating to noise from animals. Should the building be used for keeping animals in the future the Council would be entitled to take appropriate action.

² APP/T4210/W/16/3151468

13. Therefore, on this issue I conclude that subject the use of a condition, the development would not have a harmful effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise.

Ground water contamination

14. I have noted that this issue is identified as a reason for issuing the enforcement notice, but the Council has not provided evidence to support this in its Appeal Statement. There is insufficient evidence before me that any assessment of the risk of ground water contamination has been provided. Although contrary to the provisions of Policies ENV7/4 (Ground Water Protection) and ENV7/5 (Waste Water Management) of the UDP I am satisfied that a suitably worded condition could address the concerns and any conflict with the UDP. Consequently, I do not consider that this matter constitutes a reason to withhold the grant of planning permission in this case.

Other matters

15. In coming to my conclusions on this appeal I have had regard to the complex planning history of this and other adjacent sites and am aware of the previous approvals, refusals and investigations undertaken by the local planning authority.
16. Comments have been received with respect to the loss of trees and shrubs as result of the development that has taken place to date. A landscaping scheme, including tree and shrub planting will mitigate the harm that may have been caused by the loss of trees within the appeal site.
17. I have insufficient evidence that the stabilisation of land is requires with respect to the land on which the agricultural building has been erected. During my site visit I observed no obvious signs of the collapse of banking adjacent to the building.
18. The matter that the building has been erected without planning permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations.

Conclusion and conditions

19. I have concluded that the development is not inappropriate development in the Green Belt and that it does not result in significant harm to the character and appearance of the Special Landscape Area than the development which has deemed consent. Furthermore, I consider that the lack of evidence regarding ground water contamination could be controlled by a condition. The use of the building can be restricted to ensure it is not used for keeping animals and that approach would mitigate potential harm to living conditions from animal noises.
20. The appeal succeeds on ground (a) and planning permission will be granted.
21. The Council has not suggested conditions, but the appellant has done so. I have taken account of those and where necessary amended them in line with national policy and guidance. Conditions should only be used to enable a development to proceed by mitigating the adverse effects where it would otherwise have been necessary to refuse planning permission by dismissing this appeal on ground (a).

22. In order to safeguard the character and appearance of the area I have attached a condition relating to landscaping of the site. To ensure the satisfactory drainage of the site it is necessary to control details of the disposal of foul and surface water. I have also attached a condition to restrict the use of the building.

Appeal A on grounds (f) and (g)

23. It is unnecessary for me to consider whether the appeal on grounds (f) and (g) should succeed, as the enforcement Notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall therefore take no further action on these grounds of appeal.

Appeal B

24. The provisions of the GPDO require the local planning authority to assess the proposed development on the basis of the siting, design and external appearance of the building. That is the basis on which I will determine the current appeal and therefore, in the light of the above, the main issues are:
- i. Whether the proposal would conflict with one of the reasons for including the land within the Green Belt; and
 - ii. The effect on the character and appearance of the Special Landscape Area.

Reasons

Green Belt purposes

25. The appeal site is located in the Green Belt and therefore the starting point in terms of policy is the Framework and the UDP. An agricultural building is not inappropriate development in the Green Belt. Therefore, as the effect of development on the openness and the purpose of including land within the Green Belt are not expressly stated as determinative factors in assessing inappropriateness for buildings for agriculture and forestry, there is no need for me to separately assess the effect of the development on the openness of the Green Belt or the purposes of including land within it.
26. Therefore, on this issue I conclude that the proposal would not conflict with the reasons for including the land within the Green Belt and there is no conflict with the Framework and Policy OL1/2 of the UDP.

Character and appearance of the Special Landscape Area

27. The proposed building would be located in a field which is part of a relatively steeply sloping hillside. There is a modern agricultural building to the west of the site which is the subject to appeal reference APP/T4210/C/18/3195131 and to the south, at a lower level, are other agricultural buildings. The wider landscape is characterised by scattered farmsteads with some groups of residential properties.
28. The proposed building would be a substantial structure measuring approximately 40 metres by 13.7 metres with an overall ridge height of approximately 8.3 metres and an eaves height of approximately 6.9 metres. The building would have a green corrugated steel roof and pre-cast concrete slab walls. The only opening would be in the east facing elevation. It is my

understanding that the proposal also includes a hardstanding area and new access track, but these elements of the scheme do not appear to be the subject of the Council's refusal.

29. I am aware that planning permission has been previously granted on appeal for the erection of a silage building on the same site; however, the current proposal is higher than that scheme which showed a ridge height of approximately 5.35 metres and an eaves height of approximately 3.8 metres. Therefore, in determining the current appeal a key consideration is the effect of the additional height, scale and massing of the proposal in the context of the sensitive landscape setting.
30. The building would be a large structure constructed of materials that are acceptable for an agricultural building of this type. The scale, mass and bulk of the building, when combined with its elevated position, means that it would be a significant visual feature within the surrounding landscape. However, from most viewpoints, locally, including roads and footpaths the building would be seen in the context of the existing agricultural buildings that form part of the larger farmstead. Consequently, I do not consider that it would be seen as a new isolated building, but rather part of the group of agricultural buildings and as such it would not be an incongruous or unacceptably visually intrusive feature in the landscape.
31. I also observed at my site inspection that many of the houses in the area do not face directly towards the site and from those that do, there are other buildings, landscaping and topographical features that would largely screen the building from view. I can see that it would be visible from some properties which face onto Bamford Road, but from those it would be seen largely in the context of the other agricultural buildings.
32. I can understand that some would not describe the local agricultural buildings as being particularly attractive, but they are typical farm buildings and ones which can reasonably expect to be found in a location such as this, including in an area of Special Landscape Value or the Green Belt. Consequently, I do not find that the building would be harmful to the rural character of the area.
33. I have also taken account of the fact that prior approval has previously been granted for an agricultural building for silage on the appeal site. I acknowledge that the current proposal is for a larger building, but I do not find that the additional bulk, scale and massing would be significant in terms of the impact on the character and appearance of the surrounding area.
34. Therefore, on this issue, the proposal would not be harmful to the character and appearance of the Special Landscape Area. As a result, I find there to be no conflict with Policies OL1/2 and EN1/1 of the UDP and the SPD. These seek to ensure that developments are of a high standard of design and do not have a detrimental effect on the visual amenity and relate well to existing buildings.

Other matters

35. I am aware of there being some local opposition to the proposal. The proposal would be visible from some properties, but I do not consider the building would be unduly harmful with respect to the outlook from these properties.
36. I am aware that silage may produce an odour which some may find unpleasant, but the building would be mostly enclosed with there only being

one opening in the east elevation, which does not directly face properties. In addition, I noted at my site visit that a large number of animals are housed in nearby agricultural buildings at certain times of the year. As such there are likely to be agricultural odours in this rural setting. There is insufficient evidence before me to establish that the odours likely to emanate from the use of the building for storing silage would lead to unacceptable levels of odour above and beyond those that are likely to be reasonably experienced in rural areas. In any case this is not a matter before me in dealing with this particular type of appeal.

37. I am also aware that some concern has been expressed with reference to the effect of the development on house prices. However, it is a well-established principle that the planning system does not exist to protect private interests such as the value of land or property.
38. In terms of the living conditions, some concern has been expressed regarding the effect on light and highways safety. These are not matters before me in dealing with a prior approval appeal.

Conclusion

39. For the reasons given above and taking account of other matters raised I conclude that the appeal should be allowed.
40. In granting approval the appellant should note that the GPDO states at paragraph A.2 of Schedule 2, Part 6, Class A that the development must be carried out within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (d)(ii) of paragraph A.2 (2).

Formal Decisions

Appeal A

41. The enforcement notice is quashed and planning permission is granted for the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of an agricultural building subject to the following conditions:
1. Unless within 2 months of the date of this decision a landscaping scheme, including an implementation programme, and details of the foul and surface water drainage and any storage tank for the storage of slurry, if necessary are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 60 days of the local planning authority's approval, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building. The landscaping scheme shall include boundary treatments, planting plans, written specifications (including soil depths, cultivation and other operations associated with plant and grass establishment), and scheduling of plants noting species, planting sizes and proposed numbers and densities.
- If no schemes in accordance with this condition are approved within 4 months of the date of this decision, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building.

The landscaping works shall be carried out in accordance with the approved details, and with the agreed implementation programme. The completed soft landscaping scheme shall be maintained for a period of 5 years from the date of planting. During this period any trees or shrubs which die, or are damaged, removed or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. The agricultural building hereby approved shall not be used for the keeping of animals without any written prior approval of the local planning authority.

Appeal B

42. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 for the erection of an agricultural building for the storage of silage at land at Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0 0EH in accordance with the terms of the application Ref 62677, dated 6 April 2018, and the plans submitted with it.

A A Phillips

INSPECTOR