



Appeal Decision

Inquiry held on 21 & 22 July 2009

Site visit made on 23 July 2009

by **D H Brier BA MA MRTPI**

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

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**Decision date:
25 August 2009**

Appeal Ref: APP/X2410/C/09/2093440

Land adjacent to 67 Main Street, Swithland, Leicestershire LE12 8TG

- 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 Mr C W White against an enforcement notice issued by Charnwood Borough Council.
- The Council's reference is E/08/0241.
- The notice was issued on 13 November 2008.
- The breach of planning control as alleged in the notice is the erection of a building.
- The requirements of the notice are:
 - a) Demolish the building.
 - b) Remove from the land all resulting debris including the foundations of the building, all building materials and building equipment and:
 - c) Reinstate the land to its former conditions [sic] as pasture land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

The Notice

1. In opening I drew the parties' attention to an apparent typographical error in requirement c) in that "conditions" is expressed in the plural rather than in the singular. It is incumbent upon me to get the notice right and mindful that both parties confirmed that no injustice would ensue, I shall exercise the power of correction vested in me accordingly.

Planning Obligation

2. During the inquiry a section 106 undertaking dated 22 July 2009 was submitted by the appellant. The nub of the planning obligation is that the appellant undertakes that he will not within 20 years use or apply for planning permission to use the building for any purpose other than a barn in agricultural use.

Appeal on Ground (c)

3. In essence, the appeal on this ground is based on the premise that the building in question is permitted development by virtue of the provisions of Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPD0). In this case not only is the question of whether the building falls within Class A at issue, but there is also a

fundamental difference between the parties concerning the subject of prior approval with particular regard to the conditions set out at A.2(2). I deal with this matter first.

Prior Notification

4. The salient background facts are:

- An application for a determination as to whether prior approval was required was received by the Council on 3 February 2004. It was accompanied by an explanatory letter dated 26 January 2004 and a plan (Drawing No.SWBN01) indicating a "stone barn" as well as certain works on the land.
- A letter from the Council dated 9 February 2004 advised that the application was incomplete and could not be dealt with pending the submission of a scaled location plan "*showing the full extent of the land and showing the proposed barn accurately positioned thereon.*"
- The letter of 9 February 2004 was sent to the wrong address.
- A copy of the same letter dated 22 March 2004 was sent to the appellant's correct address.
- A letter from the appellant's solicitor dated 31 March 2004 referred to the application and advised "*In view of the fact that our client has not received any response from yourselves within the 28 days required under the regulations, our client will be proceeding with the development as notified to you.*"
- A reply to the above from the Council dated 5 April 2004 advised that there had been "*an administrative error*" and went on to say "*... the application has been held as incomplete since its submission. As you so rightly say if no response is received from us you do have the right to proceed with the development.*"

5. The Council contend that the prior approval procedure was not properly discharged, in which case Class A was not engaged and so the development in question is not permitted development. As the determination application form refers to a unit of 5.01ha, only slightly above the threshold of Class A, and the then extant PPG7 advised that the lawfulness of agricultural development should be checked thoroughly, it is perhaps understandable why the Council sought further details of the extent of the land. That said, this is not a requirement of A.2(2). Furthermore, while the request for accurate information regarding the positioning of the proposed barn contained in the Council's letter of 9 February 2004 is consistent with the additional information that can be required under A.2(2)(a)(i), this information did not need to be provided at the outset in order to validate the application. The necessity would only have come into play if the Council determined that prior approval of the siting of the building was required.

6. The letter of 9 February is signed by a Council officer and the comments contained therein could be construed as a decision of sorts. However, while there is nothing to indicate that the Council's 'decision', or its legal validity, was challenged, I am unable to concur with the Council's view that the

determination application was invalid. If there was concern about the absence or insufficiency of information regarding the matters expressly referred to at A.2(2)(a)(i), the mechanism for remedying this is set out in that subsection. Moreover, no mention of the need for prior approval or otherwise is contained in the letter; all it does is refer to the claimed incompleteness of the application and what was considered necessary to remedy that.

7. I acknowledge that the letter of 9 February 2004 was sent within the 28 day period referred to at A.2(2)(a)(iii)(bb). Nevertheless, as a matter of fact and degree, I am not satisfied that the letter amounted to a determination under A.2(2)(a)(i), in which case the appellant was entitled to rely on the provisions of A.2(2)(a)(iii)(cc). As I see it therefore, this case is different from both the appeal decision¹ and the commentary in the Encyclopaedia of Planning Law² cited by the Council, both of which address determinations as opposed to the question of validity. The circumstances of this case are such that in the apparent absence of a determination under A.2(2)(a)(iii) within the requisite 28 day period, I see no conflict with A.2(2)(a).
8. The foregoing conclusion does not in itself mean that the development in question benefits from the permitted development rights conferred by Part 6 of Schedule 2 of the GPDO. In this respect, 4 further matters are in contention: firstly, whether the building has been erected in accordance with the details submitted to the Council; secondly, whether the building was erected on agricultural land; thirdly, whether the disputed development is reasonably necessary for the purposes of agriculture and; fourthly, whether the building was designed for agricultural purposes. I consider these matters in turn below.

Accordance with the Details Submitted

9. The Council contend that condition A.2(2)(a)(v) has not been met in that what has been built does not accord with the details submitted with the determination application. The Council's evidence regarding the precise positioning of the structure, which was not challenged, shows that the block form of the building indicated on the application plan does not reflect the actual form of the building as built, or its precise siting. I acknowledge that most of the building lies outside the outline shown on drawing SWB01, but as a matter of fact and degree, I am not satisfied that the divergence from the 'details' shown on a small scale block plan is so great that it is materially different from what was submitted. I am not satisfied therefore that the development as carried out fails to comply with condition A.2(2)(a)(v)(bb).

Agricultural Land

10. The permitted development rights under Class A expressly apply to "agricultural land". In cross-examination, the Council's agricultural witness accepted that the land was in agricultural use in 2004. But, referring expressly to the definition of "agricultural land" in Part 6 of Schedule 2 of the GPDO, the Council contend that the land was not in active agricultural use in May 2007. The significance of this is that the parties differ as to when work on the building commenced. According to the appellant, this was in 2004 when preliminary

¹ Appendix SLR6 to Mr Lewis-Roberts' proof of evidence.

² Encyclopaedia of Planning Law 3B-2110.

preparatory works were undertaken, whereas the Council contend that work did not begin in earnest until May 2007.

11. I heard that the land had been used by another party, a Mr Kirkham, for the occasional grazing of cattle. However, according to the appellant, this stopped around 2005 to 2006. This is somewhat at odds with the note of a meeting between Mr Wiggins and representatives of the Council which indicates that some grazing took place in 2007 and the grass was mown³. Nevertheless, I do not consider that the apparent inactivity on the land for what seems to have been a relatively short period in the order of a year or so means that it was no longer in use for agriculture, or that the agricultural use needs to be continually active in order for the land to fall within the definition of agricultural land. In so saying, I am also mindful that the definition refers to land in use for agriculture *before* [my Italics] development permitted by Part 6 is carried out.
12. In the light of the foregoing, I am satisfied that the disputed development accords with this part of the GPDO.

Reasonably Necessary

13. Class A also requires that a building be "*reasonably necessary for the purposes of agriculture within that unit.*" In cross-examination the appellant explained that of the 5.01ha unit referred to on the determination application form, about 1.62ha is owned by himself and the rest by Mr Kirkham. He also accepted that while the agricultural activity on the land had been carried out by Mr Kirkham, the building in question is unrelated to Mr Kirkham's agricultural operations. Rather, I heard that the building is intended for use in association with a proposed enterprise involving an additional parcel of land, 5.56ha in extent, at Bradgate Road, Cropston which the appellant had purchased. The agricultural regime envisaged on his current holding, amounting to some 7.2ha, that is the 1.62ha at Swithland plus the land at Cropston, would involve outdoor pig rearing at Swithland and the cultivation of oriental vegetables at Cropston. At the time of the inquiry neither of these activities had commenced, although a crop of maize was being grown on the Cropston land.
14. The still extant Annex E of PPG7 advises that the reasonably necessary 'test' does not require that a new building should necessarily accommodate an agricultural use already existing on the unit⁴. I am unable therefore to concur with the Council's submission that any reliance upon the GPDO would have been vested in Mr Kirkham. However, although it was claimed that the main activity would be at Swithland, the evidence strongly suggests that the proposed activities at Cropston would be a key factor contributing to the perceived need for the building. And, the appellant acknowledged that a building of this scale was not needed solely for the pig element of the enterprise. Moreover, there is nothing that indicates that the building is in any way related to activity on the remainder of the 5.01ha unit at Swithland owned by Mr Kirkham. It seems to me therefore that the building in question cannot reasonably be regarded as being reasonably necessary for the purposes of agriculture on the unit referred to on the determination application form. As I

³ Appendix 5 to Mr Kernon's proof of evidence, paragraphs 5.3 & 5.4.

⁴ PPG7 Annex E, paragraph E3.

see it, the perceived agricultural need for the building relates to a different agricultural unit, albeit one that includes part of the unit at Swithland.

15. I accept that the appellant's current unit exceeds 5ha, but even though the determination application form used by the Council nowadays refers to a proposed agricultural unit, the additional land has only been acquired relatively recently. In cross-examination the appellant accepted that negotiations regarding the Cropston land had not commenced in 2007 and that the transfer of the land took place in February 2009. Not only is the latter date well after both the dates when works on the building are claimed to have commenced, (2004 and 2007 according to the appellant and the Council respectively), but it is also after the issue of the enforcement notice in November 2008. Because of this, I do not consider it necessary for me to take a view as to the date of the commencement of works, as at each of these 3 dates, the current 7.2ha unit did not exist. Accordingly, therefore, the agricultural unit against which the building fell to be assessed, or in the words of the GPDO "that unit", had to be the 5.01ha of land at Swithland. As a result, I am not satisfied that the disputed building was reasonably necessary for the purposes of agriculture on that unit at the time the development took place, in which case I find that the building does not fall within the ambit of Class A in this respect.

Designed for Agricultural Purposes

16. A.1 expressly identifies various forms of development not permitted by Class A. One of which (c), is if the building is not designed for agricultural purposes. In this respect, I am mindful that PPG7 advises that the Courts have held that this relates to the physical appearance and layout of a building, not its function⁵.
17. The building has a somewhat complex form. There are 2 rectangular sections, of different widths and with different roof profiles, set at an angle to each other, plus a large and distinctive circular turret with a conical roof on the south-west corner of the structure. The front elevation has 3 different sized gables and is punctuated by openings, including 4 different sized doors, together with various windows at ground floor level and above – the building has 15 such openings in total – and vertical ventilation slots. The eastern part of the building has several external buttresses, together with internal blockwork ones. The structure is supported by an internal oak timber frame, the vertical posts of which are positioned some 2m inside the main walls.
18. Appearance-wise, the building is far more elaborate than a typical modern agricultural building. But, neither the building's somewhat individualistic and ornate nature, nor the use of traditional materials, such as the stone and slate external finishes, necessarily mean that it has not been designed for agricultural purposes. According to the appellant, the design of the building was inspired by traditional barn design, and I have been acquainted with various examples of other agricultural buildings that display certain of the features in evidence here. In addition, examples of turrets can be seen in Swithland and the surrounding area. Be that as it may, rather than looking like a purpose built functional structure, my impression is that the building appears more as a collection of rather eclectic features. Moreover, the number and disposition of

⁵ PPG7 Annex E paragraph E4, first bullet point.

- openings is such that I am inclined to agree with the Council's view that they are more in keeping with an office building or a large dwelling⁶.
19. The overall effect of combining a collection of features seemingly gleaned from other buildings in one structure has resulted in something that, when viewed as a single entity, does not look like an agricultural building. Judging by the comments in many of the written representations, together with the evidence given at the inquiry by local residents, I am not alone in that view. For the appellant, it was submitted that the 'reasonable person' test should be applied to the building's external appearance. I am not satisfied that such a person would conclude that this is a building designed for agricultural purposes.
 20. In my experience, the layout of most agricultural buildings, both modern and older ones, tends to be essentially simple and functional, responding for the most part, to the prevailing agricultural practices and technology so that the building is easy and convenient to use. This simplicity of form is not readily apparent in the layout of the appeal building, the 3 sections of which impart a perceptible degree of complexity to it. This is compounded to some extent by the buttresses that project internally into the building for some 1.6m to 1.75m. Together with the supporting timbers, these features tend to impede free movement within the building, thereby making it harder to manoeuvre implements and the like.
 21. It may be that "designed for agricultural purposes" is not necessarily synonymous with being free from functional inefficiency. However, while the appellant vigorously defended most of the Council's concerns in this respect, some of these matters do raise valid questions about the manner in which the building has been laid out. I saw that the appellant was able to reverse a combine harvester into the eastern end of the building without undue difficulty. However, the presence of a horizontal beam prevents the harvester from being parked further inside the building as there is insufficient clearance. As a result, the presence of the harvester tends to obstruct access to other items of equipment. And, despite the other doors in this part of the building, it seems likely that the harvester would have to be moved in order to allow some of the machinery to be brought into and out of the building, a somewhat inconvenient arrangement, in my view.
 22. The contention that the beams would prevent grain from being tipped directly into the area marked 'grain store'⁷ was not challenged. Nor was what I regard as the valid criticism of the alternative method envisaged by the appellant, whereby grain would be fed into a hopper by means of an elevator placed through an upstairs window. As this concern was voiced by an experienced local farmer as well as the Council's expert witness, I am inclined to attach some weight to it. Likewise, although I heard that the building would be used for vegetable packing, no space has been allocated for this, in which case it could well be necessary to move machinery around, even if this activity does not require a great deal of space and could itself be moved around, as the appellant claimed. In response to the unchallenged claim that the doors to the area marked 'tractors' are too narrow for most modern tractors, it was said that the New Holland tractor would probably live outside. This is rather at odds

⁶ Mr Lewis-Roberts' proof of evidence, paragraph 4.1.13.

⁷ Layout plan of the building at Appendix 5 to Mr White's proof of evidence.

with the appellant's claim that equipment could not be stored outside due to security concerns and damage by the weather⁸; seen in this context, I regard this as this a rather curious deficiency in the building's design. As I see it, this is something else that tends to call the structure's fitness for purpose as a building designed for agriculture into question somewhat.

23. None of the above factors would prevent the building from being used for agricultural purposes, but they are likely to create real practical operational difficulties. To my mind, these operational deficiencies arising from the building's layout are such that I find it difficult to conclude that the building was *designed* for agricultural purposes, or to serve a modern farming enterprise such as that envisaged by the appellant.
24. There are other facets of the building that cause me concern too. While it was explained that insulated cavity walls in the western part of the building are required for the staff room and office, the appellant could offer no explanation for the presence of cavity insulation in the western wall of the tractor store. Moreover, as this store is served by 2 doors, the presence of 2 windows in the same wall seems a rather anomalous feature in an agricultural building. On the plans submitted for Building Regulations approval⁹ the first floor of the turret is annotated "sleeping quarters" and a balcony is shown at first floor level. I appreciate that the balcony, which was said to have been a mistake, has not been built. Nor have the sleeping quarters been installed. But, the fact that these features, which I would not normally associate with an agricultural building, formed part of the proposed structure at what would have been a fairly advanced stage in the design process¹⁰, also tends to call the agricultural credentials of the design of the whole building into question somewhat.
25. Having seen that farm equipment is stored in the structure, it is clearly capable of functioning as an agricultural building. And, the building and its means of construction may well have been inspired by traditional farm buildings. However, the building's eclectic appearance, coupled with its awkward layout and the other oddities I have referred to are such that, as a matter of fact and degree, I am not satisfied that it can reasonably be regarded as having been designed for the purposes of agriculture, in which case it does not fall within the ambit of Class A.

Overall

26. Five matters appertaining to the application of the rights conferred by Part 6 Class A of Schedule 2 of the GPDO are at stake in this case. Although I find that 3 of these 'hurdles' have been cleared, for the reasons given above, I do not consider that the development in question accords with all the relevant provisos contained in Part 6, in which case the erection of the building was not permitted development. In the apparent absence of any appropriate planning permission therefore, I find the matters alleged in the notice do constitute a breach of planning control.
27. In the light of the foregoing, the appeal on ground (c) fails.

⁸ Mr White's proof of evidence, paragraph 3.5.

⁹ Appendix 21 of appendix SLR3 of Mr Lewis-Roberts' proof of evidence: drawing No. 0419 10D.

¹⁰ The floor plan drawing No. 0419 10D is dated 10 October 2006.

Appeal on Ground (a) and the Deemed Application

28. I consider the main issue is whether the character and appearance of the area would be adversely affected.
29. The appeal site lies within an area of countryside on the western fringe of Swithland, beyond the village's limits to development and within an area designated in the Council's adopted Local Plan (CLP) as an Area of Particularly Attractive Countryside (APAC). Part of the site (but not the part where the building has been erected) lies within the Swithland Conservation Area, the boundary of which is formed by a watercourse that runs through most of the southern part of the land.
30. The development plan comprises the East Midlands Regional Plan and the CLP. The 2 policies most relevant to the case are CLP Policies CT/1 and CT/7, both of which reflect the guidance in PPS7 in applying strict controls upon development in the countryside. Policy CT/1 provides for small scale new built development where there would not be a significant adverse environmental impact and the proposal would, amongst other things, be essential to the efficient long-term operation of agriculture, or facilitate the diversification of the rural economy. Policy CT/7 provides for planning permission to be granted where the proposal would not detract from the essentially undeveloped rural character of the landscape by reason of, amongst other things, the introduction of prominent, visually obtrusive or incongruous elements.
31. The building's floorspace is some 308m². This is appreciably less than the 465m² allowed for under the provisions of Part 6 of Schedule 2 of the GPDO. Be that as it may, the form and massing of the building which, according to the Council¹¹, is 28m long with a height of up to 8.8m, plus the 10.5m high turret, is such that I do not consider it can reasonably be regarded as small-scale development.
32. Although the site's eastern boundary flanks the western edge of development fronting onto Main Street, the building in question lies on the western part of the land. And, being set some 50m or so back from Main Street, it appears as a separate and distinct entity in the countryside, physically unrelated to the marked linear pattern of both the frontage development to the east and that which extends further westwards on the south side of Main Street opposite the site, a feature that contributes to the special visual quality of the conservation area.
33. The building is rich in features, and traditional materials appropriate to the area have been used in its construction – a factor that PPG7 advises can be an important consideration¹². However, while the individual features may well be redolent of ones found on traditional farm buildings, the relative profusion of features and shapes on display here give the building a degree of elaborateness which tends to make it appear as a very conspicuous and strident feature in the local landscape, notwithstanding the appropriateness of the materials that have been used.

¹¹ Mr Lewis-Roberts' proof of evidence, paragraph 4.2.3.

¹² PPG7 Annex E paragraph, E31.

34. The greenery alongside the western part of the site's frontage onto Main Street tends to filter views of the building somewhat. However, the eastern part of the site's frontage is much more open to the extent that the presence of the building is readily apparent, especially to passers-by travelling in a westerly direction along Main Street. The building also appears as a very prominent feature when viewed from the public footpath that runs on the site's eastern edge. Rather than blending into the landscape, I consider the building appears as an excessively prominent and obtrusive feature that seriously detracts from the quality of the landscape within the APAC that surrounds this part of Swithland. In my opinion, the development has had in the words of Policy CT/1 "a significant adverse environmental impact". For essentially the same reasons I find it contrary to Policy CT/7; the building appears as a very incongruous incursion into the local countryside. Additional planting could help to ameliorate the impact of the building to some extent. But, while this could be required by condition, this would not be sufficient to overcome my concern.
35. Given the nature of the proposed enterprise, the building could help facilitate the diversification of the rural economy so, in which case criterion ii) of Policy CT/1 would be met. Much research and planning appears to have gone into the appellant's enterprise, and the associated business plan and profit and loss forecast¹³ give grounds for optimism. Nevertheless, it seems to me that much rests upon a relatively novel and largely untried and untested venture in the form of the production of oriental vegetables, the cultivation of which is yet to commence. Despite the appellant's confidence in his project proving successful, and his hopes to expand it further, as things stand at present, I find it difficult to conclude that the disputed building is, in the words of Policy CT/1 i) "essential for the efficient long-term operation of agriculture." I see this as another disadvantage which adds to my concern.
36. I acknowledge that the provisions of Part 6 of Schedule 2 of the GPDO could facilitate the erection of another agricultural building on the site. However, while this is a credible fallback position, this is not a matter to which I attach a great deal of weight in this instance. In such an eventuality, it seems highly probable that the Council would require prior approval of the siting, design and external appearance with a view to ensuring that such development was assimilated into its surrounds in a satisfactory manner.
37. My overall conclusion is that the development in question has had an unacceptably adverse effect upon the character and appearance of the area and is contrary to the relevant provisions of the development plan. The planning obligation would help allay the fears that have been expressed about the building being put to another use for the foreseeable future at least. But, neither this, nor conditions, including ones on the lines of those aired at the inquiry, are sufficient to overcome my concern.
38. In the light of the foregoing, the appeal on ground (a) fails and planning permission will not be granted.

¹³ Appendices 2 and 9 to Mr White's proof of evidence.

Appeal on Ground (f)

39. It is perhaps self-evident that the alternative measures suggested by the appellant such as blocking up certain openings, including personnel doors and smaller windows, would be less onerous than the requirements set out in the notice. That said, these essentially cosmetic measures fall well short of addressing what I regard as the well-founded objections to the building as a whole. As I see it, the requirements of the notice represent a reasonable response to the breach of planning control alleged therein. I do not find them excessive.
40. The appeal on ground (f) therefore fails.

Appeal on Ground (g)

41. In many instances 4 months would be a perfectly adequate period to facilitate the removal of a building of this scale. However, I see much merit in allowing as much of the materials used in the construction of the building to be salvaged as is practicable, and I accept that this is likely to be a much more painstaking and time consuming process than mere demolition of the structure. In so saying, I am also mindful that the appellant's detailed schedule of the works involved was not challenged. In the light of this, I find that the 8 month compliance period sought by the appellant would be more reasonable. I shall vary the notice accordingly. To this extent therefore, the appeal on ground (g) succeeds.

Conclusion

42. For the reasons given above, and having regard to all the other matters raised I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the deemed application.

Formal Decision

43. I direct that the enforcement notice be:
- A. Corrected in section 5 c) by the deletion of "conditions" and the substitution therefor by "condition".
 - B. Varied in section 6 by the deletion of "4 months" as the period for compliance and the substitution therefor by "8 months".
44. Subject to this correction and variation, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector

DOCUMENTS

General

- 1 List of persons present at the inquiry.
- 2 Letters (2) of notification.

Submitted by the Appellant

- 3 Section 106 undertaking.
- 4 Model determination form.
- 5 Statement by Mr T Dodson and attached letter from Mr Curson.
- 6 Amended Section 106 undertaking.
- 7 Details of remedial works to 'as cast' foundation.

Submitted by Charnwood Borough Council

- 8 List of suggested conditions.
- 9 Email from Mr White dated 19 July 2007.
- 10 Charnwood Borough Council Prior Notification application form.
- 11 Extract from PPG7.
- 12 Garland v MOH&LG & Anther (1969) P & CR 93.

Other Document

- 13 Floor plan annotated by Mr Curson.