

IN THE MATTER OF ENFORCEMENT NOTICES CONCERNING LAND AT
HIGH PARK FARM, ALCESTER ROAD, BEOLEY, REDDITCH B94 5JB

GROUND OF APPEAL AND STATEMENT OF CASE

Introduction

1. The Council has issued three Enforcement Notices in respect of land at High Park Farm, Alcester Road, Beoley, Redditch B94 5JB ("the Farm"). Each notice relates to a one of the group of four buildings at the Farm. Therefore three of the four buildings in the group have been enforced against. The enforced against barns are numbered 2, 3 and 4.
2. The Farm (and therefore each of the three buildings enforced against) is owned jointly by Mr G G Gilbert, Mr T W Gilbert and Mr E G Gilbert. They purchased the Farm in late 2014. There are air photos from June 2013 showing the approximate condition of the buildings when purchased.
3. The Farm (and therefore each of the three buildings enforced against) is occupied by Woods Farm Christmas Trees of which Mr G T Gilbert and Mr G R Gilbert are the owners. They are the fathers of Mr G G Gilbert, Mr T W Gilbert and Mr E G Gilbert.
4. The Appellants in the case of each Enforcement Notice are therefore:
 - a. Mr G G Gilbert,
 - b. Mr T W Gilbert,
 - c. Mr E G Gilbert, and
 - d. Woods Farm Christmas Trees.
5. It would appear that due to an administrative error instead of serving one copy of each of the three notices on each of Mr G G Gilbert, Mr T W Gilbert and Mr E G Gilbert, the Council served three copies of the same notice on each of them. Further, no notice has been received by Woods Farm Christmas Trees as required. However, as everyone who should have been served now has a copy of each notice, there is no Ground (e) appeal.
6. Notices were also said to have been served on Real Christmas Trees Ltd, but have not been received. However, this company (another family company of the Gilberts) has no interest in the land and does not occupy it.
7. Each of the three Notices alleges operational development without planning permission, namely "the erection of a new building".
8. Each Notice is appealed on Grounds (b), (c), (d), (a), (f) and (g).

Ground (b)

9. As a matter of fact, no “new building” has been “erected”. Rather, the following works have been undertaken to each building:
 - a. Interior dividing walls have been removed (these are visible in the April 2016 air photo).
 - b. Interior block walls have been added and other internal works have been carried out.
 - c. The exterior walls have been repaired not wholly rebuilt. The openings in the walls remain as originally in place.
 - d. The metal roofs have been first repaired (barns 2 and 3) and then later the roof sheets were replaced with tiles (all three barns). (The April 2016 air photo shows the works to the roofs underway.)
10. If this is accepted, then the Notices should be quashed. This case is not one in which the defect in the Notices could be cured by variation. For reasons which will be explained below, the Council has only ever considered the expediency of taking enforcement action on the basis that there has been a ‘rebuild’; indeed, in March 2019 it was content that the works did not require enforcement action so long as they remained in agricultural use (which remains the case).

Ground (c)

11. The internal configuration of the buildings was altered. Internal dividing walls were removed in order to meet the Appellants’ requirement for larger ‘open-plan’ space rather than the existing multiple rooms. This is not development – see s55(2)(a)(i) of the TCPA 1990.
12. The floor of each building is concrete. This was poured in 2016. This is not development – see s55(2)(a)(i) of the TCPA 1990.
13. In order to better support the roof, internal block walls were inserted inside the building. The blocks are laid on the poured concrete. The concrete does not extend underneath the external brick walls. This is not development – see s55(2)(a)(i) of the TCPA 1990.
14. The exterior walls were repaired. The original openings into the former smaller ‘rooms’ were retained. This is not development – see s55(2)(a)(ii) of the TCPA 1990.
15. The roofs were repaired. New internal wood trusses were fitted and, in the case of barns 2 and 3, covered with new metal sheeting. This is not development – see s55(2)(a)(i) and (ii) of the TCPA 1990.
16. The metal sheeting was found to be sub-optimal in the ‘open-plan’ internal layout with large façade openings. It was prone to ‘lift off’ in high winds. The decision was therefore made to replace the metal roof sheeting with tiles. It is accepted that this is development for the purposes of s55 TCPA 1990 (a material alteration to the external appearance of the building) and is considered further below.

Ground (d)

17. To the extent that any of the works relied on under ground (c) do amount to development, the following were completed more than 4 years before the Enforcement Notices were issued on 25 April 2023:
- a. Removal of internal walls – on all three barns.
 - b. Pouring of concrete floors – on all three barns.
 - c. Replacement of roof trusses – on all three barns.
 - d. Installation of steel sheet roof on Barns 2 and 3 is shown complete on air photos dated April 2017 and April 2018. In spring 2018 photos show these two barns were in use for lambing.
18. It is accepted that the replacement of metal roofs with tiled roofs as a result of storm damage did occur within 4 years of the issuing of the Enforcement Notices (April 2020) and is thus not immune from enforcement. The metal roofs are still shown in place on barns 2 and 3 in the air photo dated May 2019. This is dealt with further below.
19. It is also accepted that in barn 4, no new metal roof was ever installed. The first ‘new’ roof was the tile roof installed within 4 years of the issuing of the Enforcement Notices which was complete by April 2020.

Ground (a)

20. To the extent that any of the arguments relied on above as being works not amounting to development (ground (c)) or as being immune from enforcement (ground (d)) are not accepted, then the Appellants submit planning permission should be given.
21. Further, even if the arguments relied on above are accepted, the Appellants accept then need for planning permission in respect of the tile roofs on all three barns.
22. The site has a long-established agricultural use that has been accepted by the Council:
- a. A previous enforcement investigation reference 17/00174/AGHENF ended on 4 March 2019. An email of 9.41am on that date stated: “I can advise that the above planning enforcement case has been closed with Ward Member support. This is based on the buildings being used for agricultural purposes only.”
 - b. In appeal ref APP/J3720/W/20/3259605 (decision dated 14 May 2021) it was common ground that the barns were in agricultural use. The issue between the parties was whether the need for an on-site presence / dwelling was seasonal or year-round. The inspector decided there was insufficient justification for a year-round presence, but no one questioned the agricultural use of the land and the buildings on it. Further, no-one suggested that instead of building a new dwelling on the site, one of the existing barns should be converted to residential use. The inspector conducted an accompanied site visit and took photographs of the barns.
 - c. In the delegated report ref 21/03773/COUQ (in respect of refusal of prior approval under Class Q in January 2022), the Council was “satisfied that the buildings have most recently been in agricultural use prior to the specified date of 20th March 2013” having “checked the planning history of the site and historic aerial photographs” and (under comments

on CIL) the “buildings have been in lawful use for 6 continuous months of the previous 36 months”.

- d. In the delegated report ref 22/01456/COUQ (in respect of refusal of prior approval under Class Q in July 2022), the Council by this time did not dispute the use of the buildings but instead took the view that the works that had been carried out (see above) went beyond repairs or alterations and were tantamount to a ‘new build’. However, no doubt was cast on the ongoing use of the buildings for agricultural purposes.

23. The decision to take enforcement action is something of a *volte face* on behalf of the Council given that it was apparently satisfied that no enforcement action was expedient in March 2019 on the basis that the barns were in agricultural use (see above).

24. The “reasons” given on the face of the Notices for issuing them refer to:

- a. The scale and design of the buildings not being justified to serve an agricultural function. However:
 - i. The scale of the buildings is unaltered from that over many years.
 - ii. The design of the building is perfectly ‘normal’ for agricultural use.
- b. The scale and design of the buildings (with domestic opening, construction materials and features) not being justified to serve an agricultural function. However:
 - i. The openings have not been altered.
 - ii. The inner block wall (which apparently so concerns the Council) was installed to support the roof given the removal of the existing partition walls in order to create a large open-plan interior.
 - iii. The scale of the buildings remains as they always were. There is no change in their impact in the landscape or their footprint.
 - iv. While the roofing material has changed to tiles, this is because the Appellants had ready access to used tiles. Tiles are not uncommon on traditional agricultural barns.
 - v. The barns are all used for forestry and agricultural purposes and have been since acquisition in 2014. Therefore, the scale and design is justified to serve an agricultural function which the Council have previously accepted.
- c. The Council fears that the physical condition of the barns suggests they are intended to be used as residential accommodation and not for agricultural purposes. However:
 - i. As the Council accepts, no such change of use has taken place. There are no mains services or utilities on the site.
 - ii. The Council has never invited the Appellants to enter into a planning obligation restricting the use of the builds to agriculture unless planning permission is first granted for an alternative use.
 - iii. This is plainly the real concern of the Council and explains why enforcement notices were issued in such haste without dialogue with the Appellants.

25. The retention of the barns is wholly in accordance with Core Strategy policy AS.10(o).

26. There is no breach of policy CS.9 “design and distinctiveness”.

27. There is no breach of policy CS.12 “special landscape area”.

28. It is only the feared residential use of the barns that is said on the face of the Notices to give rise to any breach of policy CS.10 "green belt". In particular, there is no breach alleged of CS.10b – new/altered buildings not to be materially larger than the one replaced.

Ground (f)

29. A previous enforcement investigation 17/00174/AGHENF ended on 4 March 2019. An email from the Council of 9.41am on that date stated: "I can advise that the above planning enforcement case has been closed with Ward Member support. This is based on the buildings being used for agricultural purposes only."

30. The Appellants do not understand why it is necessary or expedient that the Notices now require the demolition of the barns. They remain in agricultural use and the Appellants have no plans to make any material change of use without a grant of planning permission.

31. If exception is taken to the to the tiled roofs, the notice could be varied to require a non-tiled roof.

32. Demolition is excessive in all the circumstances, especially since the barns have been in agricultural and forestry use since 2014 and are continuing to be so used.

Ground (g)

33. If demolition is necessary, 12 months is required in order to carefully salvage all materials.