The Planning Inspectorate

Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 2938
Customer Services:
0303 444 5000

Email: teame1@planninginspectorate.gov.uk
www.gov.uk/planning-inspectorate

Planning Appeals
Wiltshire Council
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

Your Ref: 20/00563/ENF
Our Ref: APP/Y3940/C/21/3275084

27 May 2022

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr Jonathan Hill
Site Address: Land adjacent Hobbs Bottom Farm, Box, CORSHAM, Wiltshire, SN13 8JH

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Daniel Engel
Daniel Engel

https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - https://www.gov.uk/appeal-planning-inspectorate

The Planning Inspectorate

Appeal Decision

Hearing held on 8 March 2022 and 7 April 2022

Site visit made on 9 March 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Appeal Ref: APP/Y3940/C/21/3275084
Land adjacent Hobbs Bottom Farm, Norbin, Box, Corsham, Wiltshire, SN13 8JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jonathan Hill against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 15 April 2021.
- The breach of planning control as alleged in the notice is; Without planning permission, operational development comprising the erection of a building in the approximate location hatched in blue on the attached plan titled "Location Plan" and shown in the attached document titled "Enforcement Notice Photographs".
- The requirements of the notice are to
  a) demolish the building shown in the approximate location hatched in blue on the attached plan titled "Location Plan" and shown in the attached document titled add "Enforcement Notice Photographs"
  b) permanently remove all material resulting from requirement a) from the land
- The period for compliance with the requirement is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (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.

Decision

1. It is directed that Paragraph 6 of the enforcement notice headed "Time for Compliance" is varied by deleting "*4 months"* as the period for compliance and substituting it with "*7 months"*.

2. Subject to the variation, the appeal is dismissed, 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.

Applications for costs

3. An application for costs was made by Wiltshire Council against Jonathan Hill and an application for costs was made by Jonathan Hill against Wiltshire Council. These applications are the subject of a separate Decision.

Preliminary Matters

4. The allegation relates to operational development only namely the erection of a building. As the wording of the allegation forms the deemed planning

application (the DPA) under ground (a), the use of the building is not a matter before me. For that reason, I find Saved Policy E10 of the West Wiltshire District Plan 1st Alteration 2004 which is relied upon by the Council and relates to equestrian facilities and changes of use to be not relevant to the appeal. Policy CS48 of the Wiltshire Core Strategy is relied upon by the appellant as he considers that the development falls within the spirit of that policy. However as the policy relates to conversion and re- use of rural buildings, it is also not relevant to the appeal.

Background Matters

5. Planning permission[1] was granted in October 2018 (the 2018 permission) for a stable block and self-service milk machine at the appeal site. A subsequent non-material amendment to that permission allowed for an increase in the height of the approved stable block to around 5.6 metres.

6. An application[2] for retrospective planning permission for the construction of a stable block and self-service milk machine including alterations to existing access was refused by the Council on 4 February 2021.

7. The Council relied upon Section 70C of the 1990 Act to decline to determine a further planning application[3] which was submitted after the service of the notice for a stable block with vending machine (revision to 20/08373/FUL) change of use of land from agriculture to equestrian and associated works.

The Notice

8. The appellant considers that the notice should have alleged a breach of condition 3 of the 2018 permission, namely a failure to carry out the development in accordance with approved plans, rather than alleging the erection of a building without planning permission. However, the development the subject of the notice has been constructed around 9 metres from the location of the approved building. As well as being in a different location, the development is of a different size, design, and materials and in my view is appropriately described as the erection of a building without planning permission. Works to commence the 2018 permission by digging of trenches during the course of the appeal also supports the Council's argument that the erection of the appeal building is entirely separate to the 2018 permission.

9. The appellant has also alleged that the reasons for the notice do not comply with Regulation 4(b) of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2000 in failing to refer to certain policy matters which were referred to in the planning application refused on the 4 February 2021. However, that application was for a different proposal which went beyond operational development as it included use and the parties agree that the appeal building is outside the Green Belt. I therefore do not consider that the notice is defective or invalid as alleged by the appellant.

The appeal under ground (e)

10. An appeal under ground (e) alleges that the enforcement notice was not served upon everyone with an interest in the land. Section 172(2) of the Act states

[1] Ref 18/03944/FUL
[2] Ref 20/08373/FUL
[3] Ref: PL/2021/06451

that a copy of the enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority is materially affected by the notice.

11. Section 176(5) of the 1990 Act then provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve.

12. Prior to the service of this notice, the Council undertook Land Registry searches and also served a Planning Contravention Notice (the PCN). As a result of those enquiries, the Council served the notice upon the appellant and Mr Desmond Kenneth King as they are the executors of the Will of Michael William Hill who died in 2018 and the appellant is the sole beneficiary of the appeal site under the terms of his father's Will.

13. The appellant's Summary Grounds of Appeal refers to Section 172(2) and the need to identify all persons to be served and alleges that a failure to serve Esso has caused substantial prejudice. There is a caution registered at Land Registry by Esso Petroleum Company Limited (Esso) which relates to an easement and right to lay and maintain an underground oil pipeline which crosses Hobbs Bottom Farm. The Council was aware of the nature of Esso's interest prior to service of the notice but did not consider that Esso had an interest which was materially affected by the notice.

14. The appellant did not provide any evidence or explanation during the course of the appeal to support the allegation that Esso had an interest that was materially affected or that Esso or the appellant had been substantially prejudiced by a failure to serve. The Council did communicate with Esso and the company stated that as the building was outside their easement they did not wish to be consulted about the appeal and that providing a copy of the notice that had already been issued was an error. The extent of Esso's interest appears to be a requirement for the landowner to notify Esso of any works within a certain distance of the pipeline. Irrespective of the outcome of the appeal, that responsibility remains with the owner.

15. I do not consider that Esso was required to be served under the provisions of Section 172(2) of the Act. However, even if I had found that Esso fell within that provision, there is no evidence before me that either the appellant or Esso has been substantially prejudiced by any failure to serve. The appeal under ground (e) therefore fails.

The appeal under ground (a) and the DPA

Main Issue

16. The main issue is the effect of the development on the character and appearance of the area

Reasons

17. The appeal site is a field in the countryside to the eastern side of the B3109 to the south of the village of Box which forms part of a farm holding of around

130 hectares. The appellant lives and works with his family in the wider farm complex which includes a farmhouse. The character of the area is distinctly rural with expanses of fields and hedgerows within farm settings and built development where it exists is limited to agricultural buildings and farmhouses.

18. There are two agricultural buildings within the appeal site which roughly form an L shape with the larger of the two buildings being in proximity of the B3109. The two buildings have open fronts and were in use for hay storage at the time of my site visit. They are of a simple functional design with low pitched roofs and are typical of buildings to be found in an agricultural landscape.

19. On site, the trenches that were dug to implement the 2018 permission are clearly visible and are not far from the access into the appeal site off the B3109. The appeal building is then beyond those trenches further into the appeal site. The boundary of the Green Belt designation runs through the appeal site and there is no dispute between the parties that the appeal building is outside the Green Belt and the building approved pursuant the 2018 permission would be within it.

20. The appeal building is rectangular with two gable front extensions with pale stone walls and a red pitched roof and a large number of window openings. Apart from the gable fronts, the rest of the front of the building is open apart from a dividing wall. From the front, the building appears as two storey due to the presence of two large feature window openings which are above ground floor windows and extend to the roof. Whilst the parties disagree about how those particular windows and the number of windows relate to any proposed stable use, the allegation relates only to the erection of a building not the use. The use of stone walls and a tiled roof together with the number of window openings and the gable fronts does result in a domestic appearance which is in contrast to the functional appearance of the agricultural buildings usually found in rural locations.

21. Views from the road of the appeal building will vary depending upon the speed and direction of travel and the height of the hedgerow along the B3109.The Council refers to a brief glimpse of the appeal building when travelling by car south towards the appeal site. The presence of the agricultural buildings does provide some screening when travelling north towards the appeal site. Within the site, the appeal building does stand out due to its location, size and the nature and colour of the materials used. There are public footpaths within the wider farm setting and views from the stiles back towards the appeal site also emphasise the contrasting nature of the rural setting, with the two agricultural buildings, and the appeal building.

22. The appellant has questioned the lack of evidence of impact on the character of the surrounding area. However, the appeal site is clearly in the countryside where development is limited. The character of the area is that of pastoral fields with hedges and apart from the agricultural buildings, the farmhouse is the nearest building and that is set down and not particularly visible from the appeal site is the nearest building. The design, materials and size of the appeal building which does not resemble an agricultural building are incongruous in this otherwise rural setting.

23. The appellant considers that the approved building represents a strong fall-back position and that the appeal building is more acceptable in planning terms due to its location outside the Green Belt. However, the appeal building is

located further away from the B3109 where there is screening provided in the form of hedges and trees and is therefore in a more exposed location. The buildings are also not comparable in terms of their appearance with the appeal building being higher, longer and of a different design. The height of the appeal building at around 7 metres together with its width and length is in contrast to the more modest low profile single storey approved building. The approved building was also designed to serve a specific functional purpose as a stable block and a self-service milking machine.

24. The Council in granting the 2018 permission was satisfied that both the design and use of the approved building were appropriate in the Green Belt. The appeal building is therefore not more acceptable in planning terms than the fall-back position of the approved building. A signed unilateral undertaking was submitted by the appellant which sought to ensure that there would be no further work carried out with regard to the 2018 planning permission in the event of planning permission being granted for the appeal building. However in light of my findings this is not a matter that I need to consider further.

25. The appellant has sought to rely upon Paragraphs 83 and 84 of the National Planning Policy Framework which collectively refer to supporting a prosperous rural economy. Although these Paragraphs largely assess what uses may be appropriate in rural areas, they also refer to "well–designed new buildings" and ensuring that "development is sensitive to its surroundings." In terms of appearance, I do not find that the development would be consistent with Paragraphs 83 and 84.

26. With regard to conditions overcoming harm, given the exposed location of the development, it is not clear how landscaping could address the visual harm from the development or be in place in a reasonable time when the development already exists. Whilst submitting new plans showing external cladding and fenestration of all the walls was suggested, there are around eighteen windows of varying sizes in the existing building including the large feature windows. It is not clear if removal or boarding of up some windows would occur. Altering materials of the building by itself would not overcome the harm that I have found and in reality the extent of the changes that would be required would effectively result in a new building which would be more appropriately dealt with by way of a new planning application with appropriate consultation.

27. The appellant has suggested a number of alternative options in the event of the appeal building being found to be unacceptable in its current form. Although raised under ground (f), the appellant proposes reducing the size and height of the appeal building to accord with the 2018 permission. However, these matters are more appropriately assessed under ground (a) as the appellant is asking for permission to be granted for this alternative.

28. Section 177(1)(a) of the Act states that planning permission can be granted for the matters constituting a breach of planning control in relation to the whole or any *part* (my emphasis) of the development. Reducing the height of the appeal building would involve removing the roof as well as at least part of the front gable extensions as they are integral to the roof and of the same height. Similarly at least one, if not both side walls would need to be demolished and further work would be required including a reduction in the number of windows for the appeal building to resemble the approved building. Given the extent and

nature of the work and the amount of new work that would be involved, I do not consider that what is suggested can be considered to be part of the development for the purposes of Section 177(1)(a) of the Act.

29. At the reconvened hearing, the appellant submitted Plan No 965:P:23A dated March 2022 which the appellant considered to be an illustrative drawing of how the appeal building could be altered if it is not found acceptable in its current form. The appellant is of the view that for the drawing was an example of what could be achieved with an appropriately worded condition. Whilst noting that the plan is illustrative, the extent of the work required to alter the appeal building is significant. The work involved in reducing the height and size of the appeal building would be similar to the steps outline in the appellant's previous suggestion. The roof and gable ends would need to be removed to address the height issue. Whilst the external appearance of the building would change to cladding, the appellant is likely to rebuild the end walls to provide a watertight structure inside the cladding. In terms of appearance, the illustrative drawing bears little resemblance to the existing building. Imposing a condition for a revised scheme with no certainty as to what the appellant would ultimately submit lacks certainty and would be more appropriately addressed by way of a new planning application

30. The appellant sought to rely upon an appeal decision[4] which he considered set a precedent of requiring details of a revised scheme to be submitted and approved, however the only decision provided in full[5] related to a different matter. In any event, whilst there may be instances where an element of a building could be addressed by way of a condition requiring a revised scheme, what is proposed by the appellant would represent significant changes to provide a very different building. The appellant has not suggested that such changes could be considered to be "part of the development" and the proposed illustrative changes would clearly fall outside that definition due to their nature and extent.

31. For the reasons given, the development does adversely affect the character and appearance of the area. It is therefore contrary to Policy CP51 of the Wiltshire Core Strategy which states that development should protect, conserve and where possible enhance landscape character. It is also in conflict with Policy CP57 of the Wiltshire Core Strategy which refers amongst other things to new development being expected to be complementary to the locality.

The appeal under ground (f)

32. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is therefore necessary to consider whether the purpose of the notice is to remedy the breach of planning control or remedy any injury to amenity.

33. As the requirement of the notice is to demolish the building and to remove the demolished materials, the purpose of the notice is to remedy the breach of planning control. The appellant has referred to allowing the use of the building

[4] APP/Q3630/C/21/3266381
[5] APP/D3830/C/19/3243862/63/64/65/66/67

for an agricultural use or equestrian use being consistent with the 2018 permission. However, allowing a use of the appeal building would not by itself remedy the breach when the breach is the erection of a building and that building would remain in its current form.

34. The appellant's proposal to reduce the size and at least the height of the building to match the 2018 permission has been addressed under ground (a) as this is a request for planning permission. Alterations in size would not in any event remedy the breach when the requirement is demolition. I have also addressed the use of conditions under ground (a). None of the appellant's proposals would remedy the breach of planning control when the requirement is to demolish the appeal building. The appeal under ground (f) therefore fails.

The appeal under ground (g)

35. An appeal under ground (g) is that the period of compliance is too short. The notice provides for a compliance period of four months although the Council indicated at the hearing that they would not object to a compliance period of 6 months. The appellant considers that a period of eight months would be more appropriate. The appellant explained at the hearing that he would be carrying out the bulk of the demolition work himself and has farming commitments particularly over the summer period. The appellant would need dry conditions to dismantle and in practical terms no work is likely to be carried out once there are adverse weather conditions and hard ground.

36. In the circumstances, a compliance period of 7 months is an proportionate balance between the public interest of compliance and the personal circumstances of the appellant. The appeal under ground (g) succeeds to that extent and I will vary the notice accordingly.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:	
Christian Hawley	Barrister at No 5 Chambers
Jonathan Hill	Appellant
Rebecca Moreton	Solicitor Thrings LLP
Charlotte Watkins	Planning Consultant LP Planning
`	
FOR THE LOCAL PLANNING AUTHORITY:	Wiltshire Council
Daniel Tyrell	Planning Enforcement Officer
David Cox	Planning Officer
Dorcas Ephraim	Senior Solicitor

Documents received during or after the hearing
Plan No 1803 -3 dated June 2017 (NMA elevations and floor plan)
The Will of Michael William Hill
Signed Unilateral Undertaking
Conditions agreed in part
Plan No 965:P:23A dated March 2022

The Planning Inspectorate

Costs Decisions

Site visit made on 9 March 2022
Hearing on 8 March 2022 and 7 April 2022

By Eileen Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Costs applications in relation to Appeal Ref: APP/Y3940/C/21/3275084
Land adjacent Hobbs Bottom Farm, Norbin, Box, Corsham, Wiltshire SN13 8JH

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Wiltshire Council for a partial award of costs against Jonathan Hill and by Jonathan Hill against Wiltshire Council.
- The appeal related to a enforcement appeal relating to the erection of a building

Decisions

1. The application for a partial award of costs by the Council against Jonathan Hill is allowed in the terms set out below.

2. The application for a partial award of costs by Jonathan Hill against the Council is dismissed.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The claim by the Council

4. Whilst costs claims can be procedural or substantial, the Council's claim covers both elements as the Council's claim is that the appellant's ground (e) appeal had no prospect of success and it should have been withdrawn and the failure to withdraw the ground (e) is unreasonable and has resulted in unnecessary expense for the Council.

5. The ground (e) appeal related to the Council's failure to serve a copy of the enforcement notice upon Esso who have an easement for an underground oil pipeline in the vicinity of the appeal site. The decision letter sets out why the appeal under ground (e) fails.

6. The summary grounds lodged with the appeal form stated that there was substantial prejudice due to lack of service on Esso but did not elaborate on why that was the case. No reasoning has been subsequently provided by the appellant. The appellant's Statement of Case refers to a failure to serve

Desmond Kenneth King with a notice dated 17 February 2021 but the notice, the subject of the appeal is dated the 15 April 2021. The appellant did not address ground (e) at all in final comments although the Council provided details in its final comments of service upon Desmond Kenneth King of the notice issued on 15 April 2021.

7. In May 2021, the Planning Inspectorate informed the Council of the ground (e) appeal and asked for comments. In response, the Council produced details of exchanges with Esso which did not support the appellant's ground (e) appeal.

The claim by the Council

8. The Council indicated on 23 June 2021 that it did not consider that Esso was prejudiced by the lack of service and that it would be pursuing a claim for costs against the appellant unless the appeal under ground (e) was withdrawn.

9. In response, the appellant asked for extensions of time as he had not had a response from Esso and was chasing the company. As no further response was received from the appellant on this point, ground (e) remained as a ground of appeal.

10. The appellant's view is that its position on ground (e) has been clearly set out through the course of the proceedings and that a difference of opinion on prospects is not unreasonable. However, there is a distinction to be drawn between a difference of opinion and a lack of information or evidence to support a ground of appeal. Similarly whilst there is a statutory right of appeal, the PPG states that the aim of the costs regime is to encourage parties to follow good practice including "the presentation of full and detailed evidence to support their case". [1]

11. The appellant states that extensions of time were in reality extensions of time for the appeal to be held in abeyance pending determination of the application which the Council declined to determine under Section 70 C of the Act. However if the appellant wanted to delay the appeal for a specific reason, he needed to make a specific request to do that. At no stage in the appeal process did the appellant provide any correspondence with Esso to support his view that the failure to serve Esso resulted in substantial prejudice to Esso or the appellant.

12. Therefore, I do find that the appellant was unreasonable in pursuing a ground (e) appeal which had not been substantiated with any reasoning or supporting evidence.

13. The appellant considers that the Council has not identified any additional work and no wasted expense and indicates that preparatory work in defending a ground (e) would always have been necessary. However, any preparatory work would relate only to the specific grounds of appeal being pursued. In addition, the appellant was clearly asked whether it wished to pursue ground (e) at an early stage and made a decision to proceed. As a result, the Council had to address matters relating to ground (e) throughout the appeal process including deal with the confusion over the service upon Mr Desmond Kenneth King of the notice, which are costs that would have not been incurred had the ground (e) claim not been pursued which is wasted expense.

[1] Paragraph 028 Reference ID 16-028-20140306

14. I therefore find that unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of ground (e) and that a partial award of costs is justified.

The claim by the appellant

15. The claim by the appellant relates to the costs incurred in having to respond to the costs application of the Council.

16. As I have found that the appellant was unreasonable in pursuing a ground (e) appeal, responding to that claim is part of the procedure and not the result of unreasonable behaviour on the part of the Council.

17. The appellant's claim for costs is dismissed.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Jonathan Hill shall pay to Wiltshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with the ground (e) appeal, such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The Council is now invited to submit to Mr Jonathan Hill, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

E. Griffin

INSPECTOR