

Report of the Director of Planning and Regeneration Service

ITEM NO. SUBJECT

1 Appeal Decision – Dismissed

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120 building on land adjacent to Honeysuckle Cottage, Morthen
Road for Mr. Brett Ainsworth (Reference EN2010/231CU).

Appeal Decision – Dismissed

Appeal against refusal of retrospective application for change of
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caravan & car parking areas, landscaping & improved vehicular
access and use of existing building as ancillary offices & toilets
for Mr Brett Ainsworth (Reference RB2010/0254)

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Appeal against refusal of planning permission for the demolition
of an existing dwelling and the erection of 4 two-storey dwellings
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Appeal decision – Dismissed

Appeal against refusal of planning permission for the demolition
of an existing dwelling and the erection of 3 two-storey dwellings
with rooms in the roof space and associated garages at 7, Manor
Road, Wales.

Item 1

Appeal Decision – Dismissed

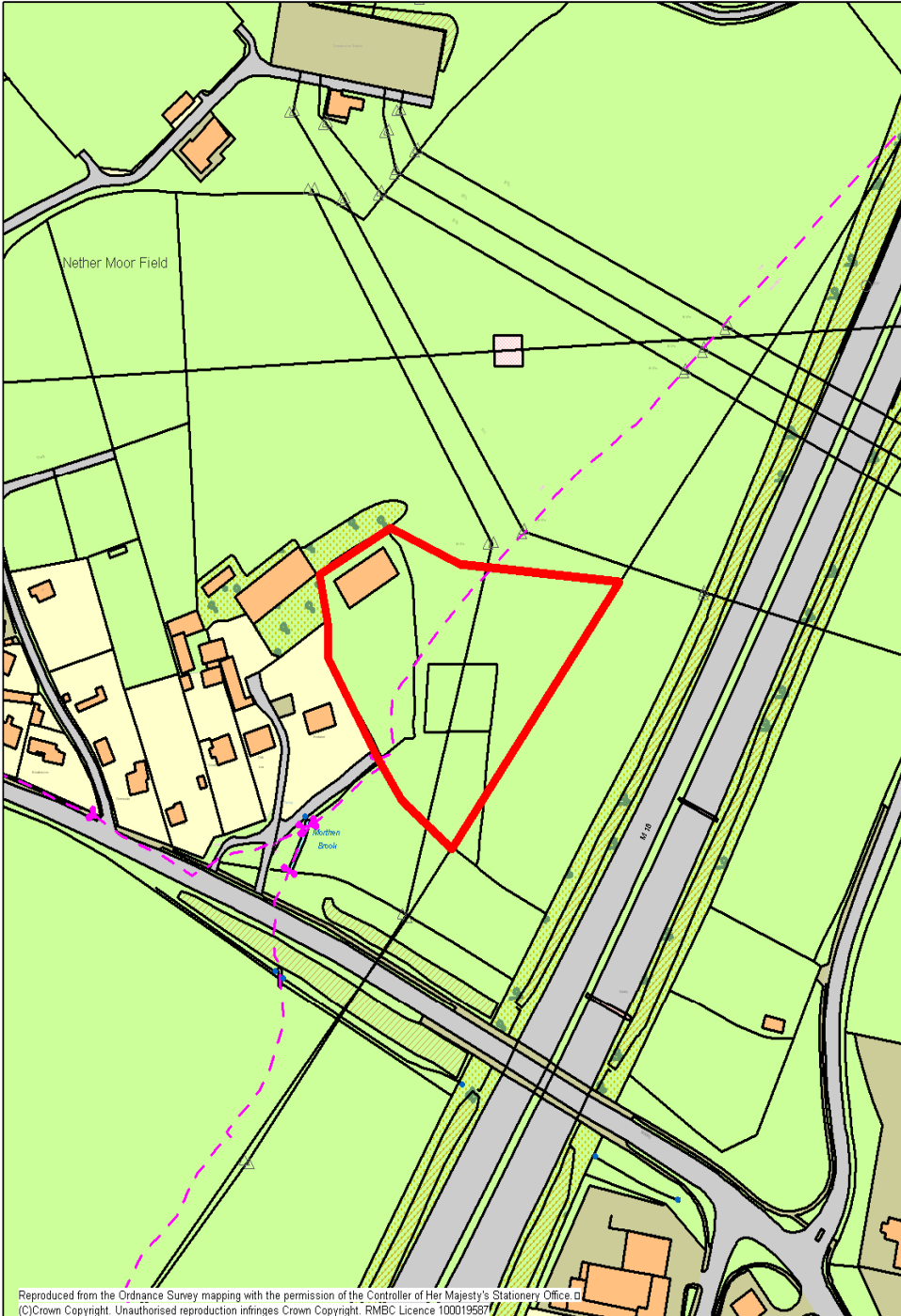
Appeal against Enforcement Notice requiring the demolition of building on land adjacent to Honeysuckle Cottage, Morthen Road for Mr Brett Ainsworth (Reference EN2010/231CU).

Appeal Decision – Dismissed

Appeal against refusal of retrospective application for change of use of agricultural land to dog agility centre with ancillary caravan & car parking areas, landscaping & improved vehicular access and use of existing building as ancillary offices & toilets for Mr Brett Ainsworth (Reference RB2010/0254)

Recommendation

That the decision to dismiss the appeals be noted.



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Background

There have been a number of applications relating to the site, including a Prior Approval application for an agricultural building which was approved in 2006 (RB2006/1852). The building subsequently constructed did not resemble the plans approved, primarily as the materials were different and as it included windows and doors and had more of an appearance of an industrial building than an agricultural one. In addition, the building was being used for commercial storage purposes. An enforcement notice was served requiring the cessation of the use of part of the building as an office and a subsequent appeal was dismissed.

However, the building continued to be used for commercial purposes, and two applications were refused in 2008 for alternative uses of the building (RB2008/0520 and RB2008/0521).

Members may recall that application RB2010/0254 (subject to the current appeal) was considered at Planning Board in September 2010 for the retrospective change of use of agricultural land to dog agility centre with ancillary caravan & car parking areas, landscaping & improved vehicular access and use of existing building as ancillary offices & toilets. Members refused planning permission for the following reason:

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The existing large building on site is unauthorised and is significantly larger than that required for office and toilet/shower facilities in connection with the dog agility operations. The retention of this utilitarian and unattractive building would materially harm the character and appearance of the surrounding area and the openness of the Green Belt. As such, the proposal is contrary to Policy ENV1 'Green Belt', ENV3.1 'Development and the Environment' and Policy CR2.5 'Proposals for New Outdoor Sport and Recreation in the Countryside' of the Rotherham Unitary Development Plan and guidance contained in PPG2: Green Belts.

Members also authorised enforcement action, and an Enforcement Notice was subsequently served on the owners of the site (Mr and Mrs Ainsworth) requiring them to demolish the building, with a compliance period of 3 months.

Appeals were submitted against the refusal of planning permission and against the Enforcement Notice and the Planning Inspectorate combined the two appeals and considered them at an informal Hearing held on 10th May 2011. The Council has now been informed of the Planning Inspector's decision, which was to dismiss both appeals and vary the Enforcement Notice to extend the compliance period from 3 months to 6 months.

Finally, a further planning application for the use of the building in connection with 'flyballing' activities associated with the dog agility use of the site was refused in March 2011 (RB2011/0027) as once again it was noted that the existing large building on site is unauthorised and the erection of this building to provide internal dog agility show facilities is not considered to be essential

for the use of the site as a whole for outdoor recreational use. As such, the proposal represents inappropriate development and has an adverse impact on the openness of the Green Belt and no very special circumstances were demonstrated to justify the development. In considering the appeal against the refusal of the previous application, the Inspector gave little weight to evidence relating to the 'flyballing' activities as they did not relate to the application subject to the appeal.

Inspector's Decision

I have now been informed that the appeals have been dismissed.

There were two elements to the appeal. One was an appeal against the refusal of planning permission, the second element was an appeal against the service of the Enforcement Notice requiring the demolition of the building on the site. The decision on the planning application will be considered first.

Appeal against refusal of planning permission (RB2010/0254):

The Planning Inspector noted that from his inspection of the site and its surroundings, and the representations made at the hearing and in writing, that the main issues were as follows:

- Whether the building or the proposed use represents inappropriate development in the Green Belt for the purposes of Planning Policy Guidance: Green Belts (PPG2);
- The effect of the development on the openness of the Green Belt;
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

The Inspector noted that the erection of a new building within the Green Belt is inappropriate development unless it satisfies the exceptions set out in paragraph 3.4 of PPG2. Such exceptions include buildings required for agriculture. However, the appeal building never appears to have been used solely for agriculture and is of a size sufficient for the appellant to introduce a completely new use in a significant proportion of the building and to propose a toilet/shower area in part of the grain store.

The Inspector stated that buildings that provide essential facilities for outdoor sport and recreation and which preserve the openness of the Green Belt can be acceptable. The Inspector considered that although the use of the site for dog agility activities would not conflict with the purposes of including land within the Green Belt, the size and scale of the building fails to preserve its openness and the facilities cannot all be described as being essential to support the outdoor activity, whether these are for office purposes, for the benefit of people engaged in the dog agility events, or indeed carrying out events indoors in adverse weather conditions.

The Inspector therefore considered that the building represented inappropriate development in the Green Belt and that it adversely affects the openness of the Green Belt.

The Inspector noted that the building is prominent from public views from Kingsforth Lane to the east of the site. Its size, scale and appearance is that of a commercial building, not that of an agricultural building or that of modest structures providing essential facilities to support outdoor dog agility activities. The Inspector considered that the building had an adverse impact on the visual amenities of the Green Belt.

The Inspector noted that the appellant states that there is a definite need for the building for agricultural purposes, particularly for the drying and storage of grain and for the storage of equipment. Whilst the Inspector accepted that there may be a need for such facilities, it is evident that this could be accommodated in a much smaller building, otherwise the appellant would not have used a significant proportion of it for other purposes or be proposing the conversion of the rear of the grain store for toilet/shower facilities.

The Inspector noted further that the appellant has sought to diversify his farm activities through the dog agility events and refers to Planning Policy Statement 4: Planning for Sustainable Growth in this respect and also to the economic benefits brought to the area by visitors. The appellant states that some 12-15 events are held each year with training evenings in the summer and on Sunday afternoons in the winter. Whilst there could potentially be benefits to the local economy, the Inspector considered that no detailed evidence was put before him to establish the economic effects of the business. The Inspector considered that in any event, the jobs that the two part time jobs that the dog agility business supports would not necessarily be threatened should the dog agility activities continue as outdoor activities. The Inspector noted that the appellant did not solely rely on the farming activities for his income and this was one of the other business interests that he was involved in.

The Inspector noted that there were no highway objections to the development and that, additionally, the Council indicated that the use of the site for outdoor dog agility activities and ancillary use as a caravan site would generally be acceptable and consequently did not deem it necessary to include such uses in the allegation in the Enforcement Notice.

The Inspector noted that the appellant referred to Policy CR2.6 of the Rotherham Unitary Development Plan (UDP) relating to indoor recreation but considered that the development fails to satisfy all the criteria of that Policy.

The Inspector concluded that the harm caused by the inappropriateness of the development and its effect on the openness and the visual amenity of the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. Consequently the proposed development fails to accord with national policy relating to Green Belts in PPG2 and to Policy ENV1 of the UDP which

generally reflects national Green Belt policy. It is also contrary to UDP Policy CR2.5 relating to proposals for new outdoor sport and recreation in the countryside in respect of the effect on the open character of the Green Belt.

For the reasons given above the Inspector concluded that the appeal against refusal of planning permission should fail.

Appeal against the Enforcement Notice:

A number of appeals were made under the Enforcement Notice appeal including under Ground (a) that planning permission should be granted for what is alleged in the notice. In this instance Ground (a) has been considered above under the appeal against refusal of planning permission for the same development and the Inspector's decision does not need repeating. However the other elements of the enforcement appeal will be considered below:

Ground (c) - That there has not been a breach of planning control:

The Inspector noted that where legal grounds of appeal are argued the burden of proof is on the appellant to demonstrate that, on the balance of probability, a breach of planning control has not occurred. The appellant's case on Ground (c) is brief and based on there being a continuing agricultural use of the building. However, the Inspector considered that the appellant ignores the decision of the Inspector in the 2008 enforcement appeal who found that the building required planning permission.

The Inspector stated that the Town and Country Planning (General Permitted Development Order), (the GPDO), only grants permitted development rights for works for the erection of a building which is reasonably necessary for the purposes of agriculture within the unit and for no other purpose. The Inspector noted the letter of Mr Burden confirming his knowledge of the use of the building and the farming activities on the holding. However, the Inspector considered that the building had not been used wholly for agricultural purposes since its construction, having been used for the stone import business and for purposes associated with the dog agility activity.

The Inspector noted that where prior approval is not required, the development should be in accordance with the submitted details and in this respect there are differences in the materials used. He also noted that development is not permitted by the GPDO if it would involve the provision of a building not designed for agricultural purposes.

The Inspector concluded that whilst parts of the building are suitable for agricultural purposes, he found that the building has not been designed solely for agricultural purposes. The building represents development for which planning permission is required and it does not benefit from permitted development rights in the GPDO.

As such, the Inspector stated that the appeal should fail on Ground (c).

Ground (f) - That steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections:

The Inspector noted that although the appellant refers to the height of the building being necessary for agricultural purposes and that partial demolition would not be acceptable, he has failed to suggest any lesser steps. The Inspector noted that the Council considers that the steps are necessary to remedy a breach of planning control, as the building is excessively large to provide for the accommodation of facilities ancillary to the dog activity centre and grain storage. The Council consider that the construction of modest office and toilet/shower facilities could be acceptable in principle as essential facilities for use in connection with the dog agility activities but it would be up to the appellant to apply to the Council to construct more suitably sized buildings.

The purpose of the requirements of a notice is to remedy the breach by restoring the land to its condition before the breach took place. It is necessary for the requirements to match the matters alleged and therefore the Inspector considered that the requirements of the Notice in this case do not exceed what is necessary to remedy the breach. The Inspector considered that the appeal on Ground (f) failed.

Ground (g) – That the time given to comply with the notice is too short.

The Inspector noted that the appellant considers that a compliance period of 3 months would be inadequate to secure and move to alternative premises for the sporting and agricultural uses and he considers that a 6 month compliance period would be appropriate. As the Council at the hearing indicated that they were prepared to accept a 6 month compliance period, the Inspector considered that he saw no over-riding reason to go against the Council's wishes.

For the reason stated above the Inspector concluded that a reasonable period for compliance would be 6 months, and the Inspector considered that he would vary the Enforcement Notice accordingly. As such, the appeal under Ground (g) succeeds to that extent.

Conclusion

The Inspector concluded that the building represented inappropriate development in the Green Belt and had a detrimental impact on the openness and visual amenity of the Green Belt, and that there were no very special circumstances to justify the development. He dismissed the appeals against the refusal of planning permission and against the serving of the Enforcement Notice, though extended the compliance period for demolishing the building from 3 to 6 months. This period expires on 2nd December 2011 and the site will be inspected after that date to ensure that the Enforcement Notice has been complied with.

Item 2

**RB2010/0739 (Appeal A)
Appeal decision – Dismissed**

Appeal against refusal of planning permission for the demolition of an existing dwelling and the erection of 4 two-storey dwellings with rooms in the roof space and associated garages at 7, Manor Road, Wales.

**RB2010/1090 (Appeal B)
Appeal decision – Dismissed**

Appeal against refusal of planning permission for the demolition of an existing dwelling and the erection of 3 two-storey dwellings with rooms in the roof space and associated garages at 7, Manor Road, Wales.

Recommendation:

That the decision to dismiss the appeals be noted.



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 Date: 21/06/2011
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Rotherham MBC

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Background

Outline planning permission for three houses including the siting, means of access and landscaping was approved in March 2008 (RB2007/1094) subject to conditions.

An application for the erection of three detached houses on the land was submitted in 2010 and subsequently withdrawn (RB2010/0009).

A further application for the erection of four detached houses on the site (RB2010/0739) was submitted and refused permission under Delegated powers in August 2010 for the following reasons:

1. The Council considers that the proposed development would result in overdevelopment of the site by virtue of the overall number of dwellings and its cramped uniformed linear layout and as such results in a poor relationship with adjoining development and the street scene in general, contrary to Policies ENV3.1 'Development and the Environment', and HG5 'The Residential Environment' of the Unitary Development Plan and national planning guidance in PPS1 'Delivering Sustainable Development'.
2. The Council further considers that the proposed appearance of the dwellings by virtue of their height, scale, massing and design along with the location of the garages in front of the houses and the amount of hard surfacing proposed represents a poor standard of design, unsympathetic to the context of the site and the street scene in general and further fails to take the opportunities available for improving the character of the area. The proposal is thereby contrary to Policies ENV3.1 'Development and the Environment', and HG5 'The Residential Environment' of the Unitary Development Plan and national planning guidance in PPS1 'Delivering Sustainable Development'.

Finally an application for the erection of three dwellings on the site (RB2010/1090) was refused permission, also under Delegated powers, in November 2010 for the following reason:

1. The Council considers that the proposed appearance of the dwellings by virtue of their elevated position, scale, and massing represents an unacceptable cramped form of development, and would be a dominant and incongruent element in the street scene, which fails to take the opportunities available for improving the character of the area. The proposal is thereby contrary to Policies ENV3.1 'Development and the Environment', and HG5 'The Residential Environment' of the Unitary Development Plan and national planning guidance in PPS1 'Delivering Sustainable Development', and PPS 3 'Housing'.

Appeals against the refusal of both the proposal for 4 houses on the site (RB2010/0739) and the proposal for 3 houses (RB2010/1090) were subsequently submitted.

Inspector's Decision

The Inspector considered that the main issue in both appeals is whether the proposals would be a cramped and over dominant form of development which would fail to make a positive contribution to the street scene.

The Inspector is of the opinion that the existing dwelling is unsympathetic to the area, on a site which is unkempt and uncared for. The development offers an opportunity to enhance the quality of the residential environment, an outcome encouraged by Unitary Development Plan Policy HG 4 the Residential Environment, and reinforced by Policy ENV 3.1 Development and the Environment and advice is PPS 1 Delivering Sustainable Development.

Regarding Appeal A (for 4 houses) the Inspector held that the scheme was deficient in a number of respects: That the layout would be sterile and unimaginative, having four similar houses, with a significant proportion of the frontage taken up by hard surfacing or garages. The houses close together at a higher level than the highway would give the impression of a solid wall of development, would appear cramped, and have an overbearing appearance on the street scene. Consequently, the Inspector concluded that the scheme fails to capitalise on the opportunity to enhance the quality of the environment.

Regarding Appeal B (for 3 houses) the Inspector concludes that the houses have a little more variety than those in Appeal A, and points out that the garages at the front of the site have been omitted. Notwithstanding this, he is of the opinion that there would be no reduction on the proportion of the site's width taken up by buildings, and any improvements resulting from the varied elevations would be offset by having wider projecting gables and by positioning the houses closer to Manor Road. The Inspector once again is of the opinion that the scheme would have an overbearing impact on the street scene and fails to capitalise on the opportunity to enhance the quality of the environment.

The Inspector concludes that the attempt to fit four large or three very large houses into such a small site would result in a development that would unacceptably dominate its surroundings.