

Planning Committee: 20th/ 21st February
Investigation Number: ENF 300/30/06

Item Number:

Town/Parish Council: Bishops Tachbrook

Case Officer: David Edmonds
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Spinney Farm, Banbury Road, Bishops Tachbrook.

1. Alleged unauthorised use of land as a mixed use of part agriculture and part residential with the associated stationing of a caravan
2. Alleged unauthorised erection of two floor building described as a pig farrowing house and two blocks of buildings with associated feed yards used for pig fattening

Owner: Mr Martin Holton

Members will recall that an enforcement report was brought before committee on 11th January 2007, when it was deferred principally to allow further discussion between the site owners and the Council's agricultural advisers. An interim update report was brought before the Planning Committee of 1st February 2007 to advise of progress in assessment of the various issues. This current report now provides for members an updated report following the results of the site meeting between the advisers and your officers and further comments from consultees.

RELEVANT PLANNING HISTORY

The Spinney Farm/ Greys Mallory site has a complex recent planning history much of which is illustrated on the two composite plans attached to this committee report. This planning history can be summarised as follows:

- **Sep 2002:** Application for proposed erection of large agricultural barn adjacent to the north–west boundary of the blue land on the composite plan, (ref. W2002.1408). It comprised the two rectangular footprints of the later applications – W05/125 and W05/1169, plotted on these composite plans. The application was withdrawn to avoid refusal on grounds of lack of agricultural justification.
- **Nov 2002** Complaints that the same building that had been the subject of application W2002.1408 was being erected without planning permission.
- **Sep 2003:** Application for retention of erection of agricultural barn, (Ref. W2003.0428) (resubmission of planning application Ref. W2002.1408). It was refused taking account of a report from Paul Rhodes, the, then, Warwickshire County Council Rural Estates Manager, because it did not fulfil any agricultural need based on the lack of farming activity, original design and its inadequacies for stated purpose and impact on character and appearance of the area.
- **April 2004** Enforcement notice issued requiring removal of same building, to take effect on 17th May 2004, (ref. ACT 439/46/02). Notice appealed before taking affect

- **January 2005:** Enforcement Notice Appeal decision following public inquiry. Appeal dismissed. The Salient points made in the inspectors decision letter were :
 - Para 9 *'appearance is more industrial rather than agricultural'*
 - Para 18 - *'this results in a building of greater mass that would otherwise be the case with purpose designed buildings...there is little evidence to justify this height of building over the whole of its floor area. Its livestock need would be limited. It is argued that buildings may be erected as permitted development up to 12m in height but that is only where they are reasonably necessary for the purposes of agriculture within that unit ... there is little evidence to justify a building this height over the whole floor area.'*
- **April 2005** Approval of Agricultural notification for agricultural barn for 'food store, farming equipment, hay, straw' for a retention of broadly 3.75 bays of enforcement notice building i.e. 17m long x 27.4m wide x 10m, (ref. W05.0125AG)
- **Nov 2005:** Refusal of planning application for alterations and retention (in part) of existing enforcement notice building for agricultural use, (ref. W05.1169). The reasons related to size, scale, bulk and mass which would substantially alter the scale of that part of the building that is permitted by the notification approval (W05/0125) causing unacceptable harm to character and appearance of rural landscape.
- **Feb 2006:** Approval of Agricultural notification for agricultural barn for hay straw, machinery - 17m long x 27m wide x 10 metres ridge height - relocated to a site close to the western boundary of blue land ownership, (ref W05/2041AG)
- **Mar 2006:** Submission of agricultural notification application for 'Erection of new barn 15m long x 27 m wide x 10m ridge height for *'livestock housing storage'* (comprising the relocation of the remainder of the enforcement barn), (ref.W06.0480AG) The application was not determined within the 28 day period set down in the General Permitted Development Order; but since it is not accepted that it benefited from agricultural permitted development rights, particularly in the context of cumulative affect of the successive notifications, the applicant was notified that the application was "not duly made", in August 2006. This conclusion is the subject of ongoing dispute with the owner, Mr Holton and his advisers.
- **July 2006:** Head of Legal Services notified the owners solicitor that a summons for non compliance with the enforcement notice ACT 439.46.02 is not about to be served, in view of the agricultural notifications and the pending appeal outcome on application ref. W05/1169.
- **Oct 2006:** Inspectorate notified Council that appeal on application ref. W05/1169 would be determined by public inquiry.
- **Nov 2006:** Refusal of application for a Lawful Development Certificate for existing use of certain land at Greys Mallory use as a vehicle sales business and associated storage and display of vehicles for sale, (reference W06/1076). Enforcement Notice issued requiring cessation of this use over the whole of the blue land for the same use, (ref. ACT 457/49/02).

SITE & SURROUNDINGS & DESCRIPTION OF DEVELOPMENTS

The enforcement sites are located in open countryside, on the west side of the A452 Banbury Road, approximately 300m to the south of the Europa Way/Banbury Road/ Warwick by pass roundabout junction. They lie within the Greys Mallory estate, owned by Mr Holton, which comprises a large Grade II listed building in residential use, set in extensive landscaped grounds,

including a mature established woodland called 'Half Moon Plantation', and an agricultural holding known as Spinney Farm on the north west side of the estate.

The vehicular access to the sites where development has taken place is via a track of modest width leading from Banbury Road. It is separate from the access to the residential Greys Mallory listed building. In recent years the field access has been made secure with the introduction of brick piers and large electrically controlled metal gates.

The original farm buildings at Spinney Farm comprised a linear range of single storey buildings adjacent to the north-west boundary of the estate, but apart from two single storey brick and tile buildings, the remainder have been demolished.

The developments comprise:-

Pig farrowing house - this has been built on the site of one of the demolished buildings albeit with a larger footprint. It is a single storey building with a steeply pitched roof that provides a first floor in the loft space. There is also a new range of single storey brick, sow and gilt housing which has also been built, without planning permission or agricultural notification.

Pig fattening buildings and associated feed yards - a single storey range of breeze block construction, have been built within the Half Moon Plantation, served by a new hardcore access track as shown on the composite plans. The excavated materials for the foundations have been spread on the woodland floor adjacent to the building and this part of the woodland is also being used for intensive outdoor pig rearing. Hence the boundary of the proposed enforcement notice site has been drawn more widely. Half Moon Plantation is a broad leaf, semi natural woodland but one that is not recorded as 'Ancient Woodland'.

The **Caravan** used for full time residential occupation by the agricultural worker managing the pig rearing business is stationed adjacent to the south west end of the large building, the subject of the extant enforcement notice, reference ACT.439/46/02. It is set within a rectangular enclosed compound and is bounded by conifer hedging and fence panels. However, since some of the area around the compound and the access to it is used for parking, manoeuvring and access for the residential use, the site area of the alleged mixed residential/ agricultural use encompasses additional land including the access track.

RELEVANT POLICIES

Planning Policy Guidance Note 7: Sustainable Development in Rural Areas

Regional Planning Guidance for West Midlands, 2004.

- PA15: Agriculture and farm diversification
- QE8: Forestry and Woodlands

Warwickshire Structure Plan, 1996-2011. Adopted 2001.

- RA3: Housing and Industrial Development & Hierarchy of Settlements
- ER1: Natural and Cultural Environmental Assets
- ER4: Protection and Enhancement of the Landscape

Warwick District Local Plan, 1989 – 2001, Adopted 1995

- (DW) ENV3: General Principles

- (DW) ENV12: Setting of Listed Buildings
- (DW) ENV27: Nature Conservation/ tree protection
- (DW) H9: Open Countryside settlement policy
- (DW) H10: Agricultural Workers' Dwellings
- (DW) C1: General Countryside Policy

Warwick District Local Plan: 1996-2011, Revised Deposit Version, 2005

- DP1: Layout and Design.
- DP3: Natural and Historic Environment and Landscape
- RAP1: Development Within Rural Areas
- RAP2: Directing New Housing
- RAP6: Housing for Rural Workers
- DAP6: Protection of Listed Buildings

SUMMARY OF CONSULTATION RESPONSES

WDC Agricultural Adviser – original report made the following substantive points:

Pig fattening Houses in Half moon Plantation.

These buildings are reasonably necessary for the purposes of agriculture but there are detailed concerns about their siting. Moreover, the buildings have not been designed satisfactorily regarding the interruption of drainage of rainwater run-off through the woods and in respect of liquid and solid muck emanating from the fattening houses.

Pig farrowing house incorporating farm office on first floor

There needs to be a farrowing building for the current pig herd of 30 sows and the existing traditional buildings do not provide the best animal welfare conditions. However, the building is of a domestic appearance of brick walls and pitched tile roof above, with domestic styled doors and windows of stained pine with domestic style brass fastenings. The inside was unfinished with two farrowing crates present but not installed. The single thickness un-rendered brickwork and domestic doors would be insufficiently strong and difficult to clean and it appears to lack agricultural drainage provision. Therefore, given the inadequacies of design and construction, the farrowing house is not fit for purpose. There is also no need for office provision on the first floor, or within any farm buildings at Spinney Farm, given the office provision that could be made within the owners own dwelling, Greys Mallory House.

Mobile Home

It is occupied by Mr Holton's farm worker whose primary duties are running the pig herd. The assessment in accordance with PPS7, Annex A is based on an analysis of the holding based on the observations of this and previous site visits.

Paragraph 12i Intentions and ability to develop: Whilst farming, notably pig rearing, has started, its status as a business is not yet quantified, by reference to a trading plan or business accounts.

Paragraph 12ii 'Functional need': Even at the highest level of 30 sows, the functional need for permanent presence at the site is not proven; whilst the small suckler herd and lambing flock do not significantly contribute to the

overall functioning need for a permanent presence. The unit's labour requirement is less than half of one full time worker's labour.

Paragraph 12iii – Financial need: There has never been a clear, unambiguous statement as to the business objectives – business plan or supporting information

Paragraph 12 iv – Functional need fulfilled elsewhere: The current and future needs of the stock housed at Spinney Farm can be accommodated in the principal dwelling or the other ancillary dwellings within the Greys Mallory estate, all owned by Mr Holton

Conclusion: a residential presence does not satisfy the guidelines in PPS7, Annex A and accordingly a residential presence is not required.

Site Owners agricultural advisers response

Members will recall from the Interim report that the site owner commissioned his own agricultural consultant to respond to the Council's advisers assessment. The following is asserted:

- *Fattening accommodation* in the woodland can be justified and that the arrangements for handling surface and foul water are adequate.
- *Farrowing accommodation* is not built to a residential standard but to a standard suitable for the purpose. A farm office is required on site.
- *The mobile home:* can be justified as the site requires 1.4 staff which needs to be on the agricultural site rather than the existing Greys Mallory accommodation
- *Solid waste:* Current situation not acceptable – a concrete base is required.

The WDC Agricultural adviser has further responded as follows:-

Labour requirement

- There is no formal business plan or trading accounts to meet the requirements for a financial test of the need for a dwelling
- There is currently no accommodation for prospective increases in the pig herds
- There is no full time functional need for the mobile home and there is suitable alternative accommodation under the ownership/ control of Mr Holton.

Fattening accommodation

- Was not designed with integral drainage, with drainage works being installed as an afterthought
- There is a pollution problem regarding the muck storage heap

Farrowing accommodation

- External foul drainage has been fitted retrospectively leading to what appears to be an existing underground tank.
- Tank is difficult to empty and appears to rely on arrangement with adjoining farmer
- Not appropriate to withstand mechanical damage and disinfection regimes
- Does not have the appearance and features of a modern farrowing house which has been designed for that purpose
- Office of the size of the first floor accommodation not required.
- Medicines can be stored in a secure cabinet

- Farm office can be accommodated in one of the other buildings on the Greys Mallory estate in the ownership/ control of Mr Holton

Leisure & Amenities:

Pig fattening buildings in Half Moon Plantation:- there are concerns about damage to tree roots that may have already occurred during construction and objection is raised to the current development which causes

- Loss of permeable surface - loss of access to moisture and oxygen
- Ongoing damage to soil structure caused from puddling outdoor run area

Since the original report, the Strategy Officer (Arboriculture) has visited the site and has concluded that a Woodland Tree Preservation Order is necessary. The justification for it is that it is a prominent feature in the Feldon Parklands landscape situated on rising ground that can be seen from a number of surrounding vantage points. The recent unauthorised developments have had an adverse impact on both the trees and other vegetation. As the current development involves potential damage to rather than felling of trees, the Forestry Act does not provide adequate protection. In addressing the suggestion of the Forestry Commission that individual trees should be the subject of TPO's, (see later comments from Forestry Commission) it is considered the amenity is provided by the woodland as a whole not by individual trees within it. A woodland TPO should not serve to inhibit good management of the woodland since the Council can grant rolling consents for all work connected with the implementation of a management plan

Forestry Commission:

The settings of a number of the trees within the Half Moon Plantation have been adversely affected by the development in various respects including:

- Covering of roof plates with over-burden soils from the track construction and from digging foundations for this new structure
- Damage of tree roots through excavation work
- Covering of areas of woodland floor with concrete
- Compaction of the soil structure as a result of pigs being grazed in the woodland at inappropriate population levels
- Anaerobic conditions created in the soil structure from washing out the sty's

Whilst the woodland is not recorded as 'Ancient Woodland' this does not mean that it does not have any Ancient Woodland characteristics. The loss of trees through inappropriate management is contrary to the Forestry Act 1967. Therefore the Forestry Commission supports enforcement action to remove this inappropriate development.

The Forestry Commission (FC) have responded again to further clarify their original comments as follows:

- Confirm their main remit is to ensure appropriate woodland management is undertaken
- If the Council consider there is just cause to remove the development from the woodland then the FC fully support this action since there is a general presumption against the conversion of woodland to other land uses unless there are overriding public benefits. The FC is unable to support the development given that it would result in the permanent loss of ancient woodland habitat

- If a planning application was submitted for such a built development it would object for the same reason
- The FC does not consider there is a persistent risk or threat to the woodland environment to justify a woodland TPO and would prefer that TPO's are placed on individual trees.
- The FC notes Mr Holton's intentions to undertake a silvicultural management plan for the whole woodland

Warwickshire County Council (Ecologist):

A large part of Greys Mallory estate is within Ecosite 9/26 'Grey's Mallory', which is described as a mixed site with broad leaf semi natural woodland plantations and pools. The pig fattening buildings in Half Moon Plantation are also within a pSINC (**P**otential Site of Importance for Nature Conservation). However, whilst there are some areas of interesting flora, it is not of SINC quality. In the event that planning permission was granted, the ecologist suggests imposing a condition requiring a management plan. The existence of a pond within 100 metres of the site is noted and the potential affect of the pig buildings on the great crested newt habitat, is highlighted.

Environment Agency (EA):

Have made a number of comments about the potential pollution effects of the development and in particular state that the manure piles should be relocated onto an impermeable base drained into a sealed tank. they accept that there are no adverse effects on the pond or the nearest licensed abstraction point They conclude that a public foul sewer connection would be the normally preferred means of disposal of effluent. Alternatively, a septic tank may be considered acceptable but the onus is on the applicant to demonstrate that this is the only feasible alternative. They are unable to provide definitive advice, therefore, in the absence of detailed information to enable proper assessment of the development against the criteria in Circular 3/99 on Non-Mains Sewerage Systems.

Highway Authority:

In view of the increased traffic movements associated with the developments on this part of the Greys Mallory estate, recommend improvements to access width and radii with setting back of any gates by 20 metres to ensure vehicles accessing the site can do so safely and without compromising the highway safety of users of the public highway.

ASSESSMENT OF PLANNING ISSUES

The main issues in respect of the pig rearing buildings are the effect on the natural and historic environment and landscape, the effect on the setting of a listed building and the effect on the longevity of the affected part of the woodland. The main issue in respect of the residential use is whether it conflicts with housing and settlement policy within the development plan and the effect of the use on the character and appearance of the rural area.

Pig Rearing Buildings:

The site lies within open countryside, which the Warwickshire Landscape Guidelines (WLG), classifies as the Feldon Regional character area and

Feldon Parklands landscape type. General Development guidelines within the WLG, applying to all areas, include preventing suburbanising influences associated with new development, conserving the historic nucleated settlement patterns and protection of character of country roads. The overall management strategy for the Feldon Area is to conserve and maintain the historic, rural farmed character of the region. Within the Feldon Parklands landscape type, the overall management strategy is to conserve and enhance the overall structure and well wooded character of the landscape. This is characterised by isolated brick farmsteads and large country houses set in mature parkland, which is typified by the Greys Mallory estate.

In this context, the domestic scale and appearance of the pig farrowing house does not harmonise with traditional farm buildings in the landscape area, or the character and appearance of the Greys Mallory estate. In this respect, it conflicts with the WLG and also harms the setting of the listed buildings on the estate. It would therefore also conflict with the natural and historic environment policies in the Development Plan and the emerging local plan, together with the WLG, which has been adopted as Supplementary Planning Guidance. Moreover, taking account of the Paul Rhodes report, the functional need for this building for agricultural purposes is in considerable doubt.

Also, in this context, the retention of a range of blockwork pig fattening buildings within the woodland does not harmonise with the traditional brick farm buildings of the landscape area. It also seriously erodes both the wooded character of the countryside and the parkland setting of the Greys Mallory estate. In this respect the harm to the woodland identified by most of the consultees, conflicts with the thrust of policies to protect and enhance woodland areas in both the Development Plan and the emerging local plan. The combination of the proximity of the pig fattening buildings to the listed buildings of the estate and the serious erosion of the associated woodland harms the setting of the listed buildings, as well as conflicting with the WLG.

Residential Use:

Taking account of the specialist agricultural advice, I consider there is insufficient functional and financial need for a full time residential presence on the site, and given the extent of accommodation available elsewhere on the estate, whatever functional need there is, can be satisfied using existing buildings. Therefore, the residential use conflicts with Planning Policy Statement 7 "Sustainable Development in Rural Areas" and the thrust of housing settlement policy within the Development Plan and the emerging local plan highlighted under Relevant Policies, above.

Moreover, the retention of a temporary caravan and its associated fenced and hedged enclosure would not harmonise with the character and appearance of the surrounding countryside, or that of the Greys Mallory Estate. It would therefore conflict with the general principles and landscape protection policies, highlighted above.

Other Issues:

In recommending enforcement action for these specified breaches of planning control, it should be noted that it is not recommended that enforcement action be taken in respect of the range of new single storey, brick built sow and gilt buildings, also adjacent to the north-west boundary of the Greys Mallory estate, shown on plan 2. It is accepted that this range of buildings fulfils a

functional need, is fit for purpose and harmonises with the character of the landscape and the Greys Mallory estate. Therefore, although they do not benefit from either planning permission or have been the subject of an agricultural notification, it is considered that a grant of planning permission for their retention would be justified. In accordance with the Good Practice Guide to Enforcing Planning Control, within Circular 10/97, it would not be appropriate to enforce solely to regularise acceptable development.

In respect of the pig farrowing house, it is not accepted that the design and appearance would fall within the scope and limits of the GPDO permission for agricultural buildings on farm holdings. (The GPDO requires that buildings are "designed" for agricultural purposes). In any event, there has been no prior notification in accordance with the conditions of the GPDO permission for this type of agricultural building. Similarly, in respect of the pig fattening houses, there has also been no prior notification, and there are concerns about the design and siting of the buildings. Moreover the two previous GPDO prior approval notifications W05/0125 and W05/2041, plotted on the composite plan, already offer scope for alternative livestock accommodation for the current and future needs of the farm holding.

CONCLUSIONS

Taking account of the exchange of views between the agricultural advisers and the further views of consultees, I conclude as follows:-

- **fattening accommodation** has and is continuing to cause damage to the woodland and the absence of integral drainage has caused pollution, albeit with unproven harm and there is no information to show that the development complies with the requirements of Circular 03/99.
- **farrowing accommodation** has not been designed for the agricultural purposes, Circular 03/99 requirements have not been met and the first floor office accommodation is not required. The scale and appearance of the building also harms the character and appearance of the area.
- **Caravan**, there is no justification for a permanent residential presence on the site as required by PPS 7.
- **Highways**: It is also clear that the current structures serve to intensify traffic using an access which does not meet highway criteria in terms of width, radii and set back of gates. The limitations of the access provide further justification for taking enforcement action to remove the various structures.
- **Other pig rearing buildings**: whilst there are concerns in respect of the other unauthorised pig rearing buildings on the site boundary given that they also have unknown drainage effects and contribute to the intensification of the use of the substandard junction of the track with Banbury Road, the submission of a planning application for these structures would enable these issues to be resolved by the imposition of conditions.

In respect of the fattening and farrowing accommodation and the caravan, I consider that these developments cause substantial harm to the planning issues highlighted such that they cannot be satisfactorily ameliorated by conditions, attached to any valid planning applications that may be

forthcoming. The recommendation below is thus unchanged from my original report.

RECOMMENDATION

That enforcement action be authorised requiring:

Pig Farrowing building

1. Remove brick and metal tile building used for pig farrowing, in its entirety, from the land
2. Remove all materials arising from the works undertaken in 1

Fattening buildings in Half Moon Plantation

1. Remove the range of block buildings and associated feed yards used for pig fattening, in its entirety, including hardstandings and foundations, from the land
2. Remove hard-core track from the land
3. Remove all materials arising from works undertaken in 1 and 2
4. Cease use of associated land for storage of solid waste and the deposition of waste material from excavation of foundations and remove all materials and waste products from the land

Residential Use:

1. Cease the use of the land for residential purposes
2. Remove caravan stationed on the land
3. Remove fence panels partly enclosing compound surrounding the caravan.

The period of compliance for each enforcement notice to be 6 months.
