

**Planning Committee: 8th July 2008**

**Item Number:**

**Appeal refs: as set out below**

**Parish Council: Bishops Tachbrook  
Case Officer: David Edmonds**

**Sites at Greys Mallory/ Spinney Farm, Banbury Road, Bishops  
Tachbrook, Warwick CV34 6SX – Summary of Appeal Decisions**

This report is being presented to Committee to summarise recent appeal decisions issued in respect of Spinney Farm. This has been a complex enforcement case related to a site which members visited prior to authorising enforcement action, with further appeals scheduled to take place later this year. In order to update members on the current position, it is considered that a “position statement” type report is warranted. The following recent decisions have been received.

**Appeal A: Against Enforcement notice regarding erection of buildings and yards used as pig fattening pens within Half Moon Plantation.**

**Appeal B: Against Enforcement notice regarding erection of building currently used as a pig farrowing house – adjacent to north west boundary**

**Appeal C: Against Enforcement notice regarding mixed residential/ agricultural use and associated caravan – adjacent to north west boundary.**

- Committee decision to take enforcement action on the 3 cases – 14/03/07
- Enforcement notices all issued 30<sup>th</sup> April 2007
- WDC Ref. ACT 254/5/07, ACT256/25/07 & ACT/300/30/06
- Appeal Ref. APP/T3725/C/07/2047557
- Conjoined Public Inquiry on 12 – 14/02/08. Appeals decisions – 01/04/08.

**APPEAL A DECISION:** Appeal allowed on a corrected enforcement notice and planning permission granted subject to a number of conditions summarised thus:

1. Unless within 6 months of the decision the proposed junction improvement in accordance with planning permission W07/0330 is implemented, the development shall be entirely removed within a further period of 6 months in accordance with the enforcement notice method statement.
2. Development shall be removed in accordance with same method statement within 6 months of the failure to meet any one of the following requirements:
  - Within 3 months of the decision, a woodland management and habitat creation scheme within Half Moon Plantation including a western extension to the woodland and landscaping of north–west boundary be submitted to the Council for approval
  - Within 11 months of the decision, the scheme shall have been approved by the Council or a valid appeal made to the Secretary of State
  - If such an appeal is made the submitted scheme shall have been approved by the Secretary of State.

- The approved scheme to be implemented in accordance with approved timetable.
3. Approved landscaping to be implemented in first planting season follow

**Reasons:**

- Trees within Half Moon Plantation assist in integration of the buildings which can be supplemented by further planting, through conditions
- The loss of 5 trees in the context of a 1.5 hectare woodland would be insignificant, particularly with the implementation of a woodland management and landscaping scheme.
- Low height and functional design appropriate in surroundings, notably existing Edwardian buildings on north-west boundary.
- Accepted that they are within curtilage of a listed building; but setting not harmed because not in same visual perspective as Greys Mallory House.
- Increased use of gated access junction harmful but can be overcome by conditions requiring implementation of planning permission W07/0330

**APPEAL B DECISION:** Appeal Dismissed and corrected enforcement notice upheld to give two alternatives summarised as follows :

- ***Either:*** Remove the building and resultant materials from the land.
- ***Or:*** Alter the building so that it accords and complies fully with that adapted building shown on plans approved by the Council under planning permission W07/0060.

**Reasons:**

- Inappropriate roof materials and colouring draws attentions to domestic design
- Planning permission W07/0060 is a fall back position which if implemented would enable it to fit in with the landscape and adjacent buildings.
- Accepted that they are within curtilage of a listed building; but setting not harmed because not in same visual perspective as Greys Mallory House.
- Increased use of gated access junction, harmful; but can be overcome by conditions requiring implementation of planning permission W07/0330

**APPEAL C DECISION:** Appeal dismissed and corrected enforcement notice upheld

**Reasons:**

- Broadly satisfied of intention but not satisfied of ability to develop a farming enterprise.
- Number of sows present, albeit within cramped accommodation, demonstrates a functional need for a full time agricultural worker at short notice.
- Viability, in long term, inconclusive; but sufficiently satisfied in the short term for a temporary caravan,
- Not been shown that alternative accommodation within the appellants control is either unsuitable or unavailable for occupation by an agricultural worker.
- Overall insufficient justification for continued siting of residential caravan in accordance with the criteria in Planning Policy Statement (PPS) no. 7, Annex A.

**'Other matters'** (raised in evidence to the Inquiry)

- Council's contention that farrowing house is inappropriate for its intended purpose, not accepted – largely a matter of personal preference
- Concerns about design for a potential non agricultural purpose is not a further reason for withholding planning permission for farrowing house. Conversion cannot lawfully take place without planning permission
- Cannot vary the enforcement notices further as there are no detailed drawings showing partial adaptation of the property.

**COSTS DECISION:** (Relating to application made by appellant for a partial award)

- The late raising of information and evidence regarding size of agricultural unit and the extent of agricultural permitted development rights was not a matter of great substance relating to the issues considered at the Inquiry and did not significantly extend the duration of the Inquiry.
- No grounds to allege unreasonable issue of the enforcement notices and inadequate supporting evidence at the appeal stage.
- *'The issue of effect on the setting of a listed building was supported by a cogent proof of evidence which, notwithstanding the conclusions I have reached in my appeal decisions, explained the reasons for the Council taking a fresh stance.'*
- *'..I find nothing of any particular significance in respect of the relevant Committee report concerning the farrowing house which would suggest that the Council took a perverse decision in respect of enforcement action'.*

**COMMENT:**

**Introduction.** Many members may have read the full text of the decision, which should have been routinely communicated to them by e-mail. However since it is a complex case, it is appropriate to provide this summary, to interpret the reasons and consider the implications. Also, those members who were part of the previous planning committee may recall there was extensive e-mail communication between Mr Holton, (the appellant) and the case officer that was copied to the whole of the Planning Committee, prior to the consideration of the enforcement items relating to Spinney Farm at successive Committees. In summary, these communications implied that the assessment of the issues by the Council's officers was unreasonable to the applicant and excessive in terms of the adverse impacts of the various developments

**Appeal decisions:** Although the outcome of the appeals was somewhat mixed, it is considered that the positive aspects outweigh the negatives.

**Appeal A Fattening pens:** Whilst the Inspector allowed the appeal, the permission is the subject of particularly stringent pre-implementation conditions, notably junction improvements and landscaping, which if there is any default, would render the development open to further enforcement action. It is considered that the fact that these have been imposed by the Inspector rather than the Council will assist in maintaining a firm stance.

**Appeal B Farrowing House:** The Inspector has dismissed the appeal and refused planning permission for fewer reasons than were raised by the Council. The appellant has submitted a planning application (ref. W08/0836) which proposes the retention of the farrowing house with a changed roof colour. The interpretation of the reasons for the inspector's decision is being actively considered in consultation with Legal Services and this application will be considered on its merits in the normal way..

**Appeal C: Residential caravan:** The Inspectors reasons indicated that, whilst there was sufficient temporary functional need for a residential presence, the additional temporary residential caravan was not justified, particularly in the context of the 6 other individual dwellings within the grounds of Greys Mallory under the applicants control.

**Other Matters:** The Inspector took the view that extent of the setting of the listed building was restricted mainly to the visual envelope, notwithstanding the evidence that the grounds were laid out at the same time as the house by the same architect. There are implications of this reasoning in respect of the extant appeals in respect of the refusal of planning permission for a 2<sup>nd</sup> range of fattening pens (Ref. W07/0723) and for non determination of the application for and extension to the access road within the grounds with associated lighting (Ref. W07/1172) which will be heard, along with at least 3 other appeals at a public inquiry commencing on 21<sup>st</sup> October 2008, currently scheduled to sit for 3 days. Your officers consider that there are reasonable grounds to distinguish between the enforcement notice appeal developments and these further proposed developments and proposals which would extend the farm's hub more towards the rear of (western side) of Greys Mallory house rather than restricting it to the north- west boundary. Also, it is intended to do further research to establish if the provenance of the grounds justifies them being added to the list of locally registered historic parks and gardens which would be acknowledged as worthy of protection in accordance with WDLP DAP 11.

**Costs decision:** Some members will recall the allegations made by Mr Holton about the assessment of the various developments by the case officer, prior to the Committee decision to take enforcement action. In this context, the Costs decision summarised above has demonstrated that neither the case officer in recommending, nor the Council in endorsing, enforcement action, acted unreasonably or in a perverse manner.

#### **OTHER OUTSTANDING MATTERS:**

The public inquiry commencing on 21<sup>st</sup> October 2008 will consider three other appeals:

- Refusal of application for a Certificate of Lawful Proposed Use or Development (CLOPUD) for the erection of an agricultural barn using structures and materials from part of enforcement notice 'barn' for the purposes of accommodating livestock and storage of agricultural materials. (WDC Ref. W07/0226)
- Non determination of application for retention of the building used as a pig farrowing house, in variation of condition 1 of planning permission W07/0060, which required the building to be removed if the proposed scheme for alterations of the gated junction of the access track with Banbury Road is not implemented.
- Non determination of application for retention of buildings used for sow and gilt pigs in variation of condition 1 of planning permission W07/0060, which required the building to be removed if the proposed scheme for alterations of the gated junction of the access track with Banbury Road is not implemented.

There is also the prospect that two new appeals will be conjoined at the same inquiry:

- Non determination of application for a CLOPUD for the proposed erection of an office for use ancillary to the agricultural use of the land within the agricultural unit (WDC Ref W08/0279)
- Non determination of an application for a CLOPUD for the proposed erection of a 'silage clamp'.

NB The validity of the appeals against these final two applications is currently being assessed by the Planning Inspectorate since it is uncertain as to whether “permitted development “ rights apply to the holding due to queries over its actual size.

Finally, papers are currently being prepared for a potential prosecution case in respect of the non-compliance with the enforcement notice regarding the large metal clad building previously dismissed on appeal, adjacent to the north-west boundary. This has followed legal advice that issues surrounding the implementation of the claimed fall back positions of the 3 agricultural notifications for barns which would result in the enforcement notice metal clad building being dispersed within the estate, do not provide an impediment to prosecution.

### **RECOMMENDATION**

1. That this summary report be noted.