



Appeal Decisions

Hearing held on 10 October 2023

Site visit made on 10 October 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal A Ref: APP/M0933/W/22/3306111

Land off A595, School Road, Kirkby-In-Furness, LA17 7TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Marc Charnley of Charnleys Home & Garden against the decision of South Lakeland District Council.
- The application Ref SL/2022/0453, dated 16 May 2022, was refused by notice dated 22 July 2022.
- The development proposed is new horticultural buildings, including glasshouses and polytunnels, for a horticultural nursery and a temporary dwelling, including landscaping works, the formation of a revised site access and access track to the nursery buildings.

Appeal B Ref: APP/M0933/C/22/3307949

Land off A595, School Road, Kirkby-In-Furness LA17 7TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Marc Charnley of Charnleys Home & Garden against an enforcement notice issued by South Lakeland District Council.
- The notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - i. Operational development including the formation of a site access track on to the A595 within the area outlined red on the plan attached to the Enforcement Notice which has occurred within the last four years.
 - ii. Operational development including the formation of earth bunds, excavation works and changes to the site levels within the area outlined in red on the plan attached to the Enforcement Notice which has occurred within the last four years.
- The requirements of the notice are to:
 - (A) Permanently remove from the Land, the area of access situated within the red line boundary on the plan attached to the Enforcement Notice.
 - (B) Permanently remove from the Land, the earth bunds and materials excavated within the red line of the plan attached to the Enforcement Notice.
 - (C) Permanently remove from the Land all building materials, all rubble and associated materials arising out of compliance with (A & B).
 - (D) Restore the Land to its condition before the breach took place by re-profiling the ground to the level it was at prior to the breach taking place and re-seeding it with grass.
- The period for compliance with the requirements is 13 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C Ref: APP/M0933/C/22/3307360

Land off A595, School Road, Kirkby-In-Furness, LA17 7TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Marc Charnley of Charnleys Home & Garden against an enforcement notice issued by South Lakeland District Council.
- The notice was issued on 24 August 2022.

- The breach of planning control as alleged in the notice is:
Without planning permission:
 - i. Material change of use from agricultural to use for storage purposes of glass, fencing, scaffolding, palettes, metal, stones and equipment within the area outlined in red on the plan attached to the Enforcement Notice, which has occurred within the last ten years.
 - The requirements of the notice are to:
 - A) Permanently remove from the Land all glass, fencing, scaffolding, palettes, metal, stones and equipment used in connection with the unauthorised storage use within the red line on the plan attached to the Enforcement Notice.
 - The period for compliance with the requirements is 13 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A is dismissed.
2. Appeal B – It is directed that the enforcement notice is corrected by the deletion of the words *earth bunds* after *formation of* in section 3.1 ii of the notice and the substitution with *an earth bund*.
3. Subject to this correction, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the formation of a site access track on to the A595 and the formation of an earth bund, excavation works and changes to the site levels at land off A595, School Road, Kirkby-In-Furness, LA17 7TL as shown on the plan attached to the notice.
4. Appeal C - It is directed that the enforcement notice is corrected and varied by:
 - 1) Substituting the site plan attached to the issued enforcement notice with the one attached to this decision.
 - 2) The deletion of “palettes” and, “and equipment” from the allegation set out in section three of the notice – the matters which appear to constitute the breach of planning control.
 - 3) The deletion of requirement (A) in section 5 of the Notice – what you are required to do, and its substitution with the following requirement:

(A) Permanently cease the use for storage purposes of glass, fencing, scaffolding, metal and stones and permanently remove from the Land all glass, fencing, scaffolding, metal and stones.
5. Subject to these corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

Appeal A

6. The main issues are (i) whether there is an essential need for the proposed development in this location, and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Location

7. Policy DM25 of the South Lakeland Development Management Policies Development Plan Document Adopted Version 28 March 2019 (DMPD) relates to agricultural buildings and states that new agricultural buildings will be supported where there is a demonstrable essential need in relation to the functional operations of an existing farm or agricultural business. It sets out that an appraisal will be required which clearly establishes an essential functional need for the building. It also requires that new agricultural buildings should be located within or adjacent to the existing farm or agricultural building complex unless it can be demonstrated such a location is not achievable or suitable.
8. In the supporting text it is stated that proportional evidence will be required depending on the nature of the proposal and is likely to contain details of land holdings, details of existing buildings and agricultural activities undertaken on the site.
9. At the Hearing the Council clarified that there is no dispute in respect of the viability of the proposed enterprise and the benefits associated with it. Moreover, there is no dispute that the proposed buildings and temporary dwelling (caravan) would be necessary in association with the proposed nursery. The Council clarified that the dispute relates to the need for the development in this location.
10. The appeal site consists of an area of agricultural land comprising around 3.7 acres with two modest agricultural buildings however, these could not be reasonably described as forming an existing farm or agricultural building complex. At the Hearing there was discussion about whether the land is used for agricultural purposes. The appellant stated that they cultivate turf from the land and keep some sheep to help with grass management. They stated, and it seems that the proposed buildings would be used in association with the cultivation of turf however, it was agreed that the requirement for the buildings relates to the proposed nursery.
11. The appellant stated that he has no other land available for the nursery. He explained that he has been looking for a site for around 10 years and that his search has been for sites located within a 20-mile radius of his garden centre business. The appellant explained he has been constrained to some extent by landscape designations, the Lake District National Park boundary being close, and since farmers don't want to sell land. Moreover, any site would need to have reasonable access to a road given the need for large vehicle movements.
12. The search radius and need for access seem logical requirements, particularly since the plants grown would be to supply the appellant's garden centre in Dalton, around a 10-minute drive from the site, and any carbon reduction benefits would be reduced with increased distance from the site.

13. In support, the appellant submitted three letters in respect of approaches he has made in an attempt to secure land. One is from his solicitor in respect of land he was to acquire adjacent to his garden centre, and two others from local farmers who he has approached regarding the purchase of land.
14. Whilst it was suggested that farm complexes do come to the market, there must be a reasonable prospect that the cost associated with such a purchase would outweigh any benefits to and would make the proposed business unviable.
15. The supporting text to Policy DM25 states that proportional evidence will be required. I acknowledge the evidence is limited; however, I have no reason to doubt the appellant's efforts. Since the need for the buildings is accepted and as the appellant has demonstrated that he has no existing farm or agricultural building complex where the buildings could be located, there would be no conflict with Policy DM25 of the DMPD.

Character and appearance

16. The appeal site is located within the open countryside, broadly east of the settlement of Sandside and south of Kirkby-in-Furness, around 180m away from and broadly west of the A595, from where access to the site is taken. Outside of settlements, development in the landscape is scarce, limited to isolated dwellings and farmsteads. To the west of the site, the land slopes fairly steeply down to the village of Sandside. Although located near the settlement and dwellings broadly west of the site, the hedging and trees on the western boundary physically and visually separate the site from the built environment such that the site reads as forming part of the countryside.
17. The site and surrounding land are not subject to any landscape designations, nor do they form part of a 'valued' landscape that the National Planning Policy Framework (the Framework) advocates should be protected and enhanced. Nevertheless, this does not mean the land is without value and it is undoubtedly locally valued for its rural character.
18. The appeal site is located within the West Cumbria Coastal Plain National Landscape Character Area (LCA). In general, it is described as a coastal plain of varying widths, particularly narrow where the application site is situated, with predominant coastal views to the west and mountain backdrops to the east. The Cumbria Landscape Character Guidance and Toolkit (CLCGT) describes the site as within landscape character type 2(c) *Coastal Plain* sub type of landscapes that occur in South Cumbria around Morecambe Bay, Walney Island, and here, alongside the Duddon Estuary. The characteristics of which include flat and slightly undulating coastal plain, long and narrow fields in undulating areas with larger fields in flat areas, intersected by shallow rivers and watercourses. Hedges form the main field boundaries with scarce tree cover.
19. The appellant's surrounding land consists of agricultural fields laid out in characteristically long rectangular parcels divided by large hedgerows and/or stone wall boundaries, in keeping with these landscape characteristics.
20. The application site is situated on gradually undulating land ranging in height from approximately 27m to 38m AOD, which was according to the appellant a disused quarry. It is not devoid of development, as already stated there are

two modest agricultural buildings however, these could not be reasonably described as forming an existing farm or agricultural building complex.

21. The proposed buildings would be situated in a local depression in the landform which would screen some views. Some excavation works have been carried out and it seems likely that further cut and/or fill would be required to provide level surfaces for the buildings, hardstanding and parking areas however, the section drawings show that they would, with the exception of the caravan, occupy a lower ground level than the existing buildings.
22. The proposed buildings, in particular the glasshouse and polytunnels, are recognisably horticultural in nature and designed for that purpose. Horticulture falls within the definition of agriculture¹ and the proposed development would be a functional agricultural development within an agricultural landscape. There would be no change of land use and in this way, it would be contextually appropriate. However, this does not mean that the agricultural landscape cannot be sensitive to new agricultural development.
23. I have had regard to the assessment in the submitted Landscape Statement, which does not seek to demonstrate that the site would be invisible, nor that there would be no landscape harm. It is acknowledged that the introduction of the proposed buildings is expected to change the existing landscape character of the locality to a small degree, with local residents being the most sensitive to the changes on the site. It is also acknowledged throughout that the site will be visible in long range views but is considered it is not likely to be viewed for long periods by large numbers of people, and not to a significant degree when it is visible.
24. In broad terms the Landscape Statement seeks to demonstrate that the landscape can accommodate the development, with mitigation in the form of landscaping, on the basis that it is a type of development which is not uncommon in the local landscape setting.
25. I viewed the site from various viewpoints used within the Landscape Statement and from Sandside Lane, Askew Gate and the A595. I also visited those viewpoints suggested by the Council – which included elevated views from Kirkby Moor.
26. Views from a broadly northerly direction would be limited and obscured to a large extent by existing topography. Similarly in medium range views from broadly south and approaching from the south along the A595, the proposed buildings would be largely screened from views due to the topography.
27. The proposed buildings would be visible from a small number of properties broadly southwest of the site who are elevated above and sited along Sandside Lane, although I acknowledge that those views would be filtered to an extent by existing and proposed planting.
28. However, whilst I acknowledge the presence of existing hedgerows, the proposed development would be visible from the A595 broadly east of the site, to both pedestrians and drivers, more so in the winter months when the hedges are bare. I accept that vehicle drivers passing are most likely to be focussed on the highway however, their passengers are more likely to take an interest in their surroundings. Whilst the relatively low height of the buildings

¹ Section 336 of the Town and Country Planning Act

and landform would limit and restrict views and some views might be oblique, their overall scale and the modern horticultural appearance of the glasshouses and polytunnels would sit uncomfortably in this relatively unspoilt part of the countryside.

29. Kirkby Moor is located broadly east of the site and includes designated open access land and a number of rights of way, which according to the Council and third parties are well used. Indeed, at my visit it was overcast and drizzly and I saw walkers and cyclists. It seems to me that such recreational users, who will be actively engaging with the countryside landscape, are likely to have a heightened sensitivity to changes, particularly those familiar with the area. Whilst the distance from the site to Kirkby Moor is around 1.5km, I observed that the site is visible, and it seems probable that it would be even more so on a clear day.
30. The appellant has drawn my attention to other farms that are viewed in the same landscape context. However, those I saw tended to be more clustered and many had the benefit of established landscaping. Moreover, many of those buildings are of a typical, albeit modern agricultural appearance. As already acknowledged the proposed buildings are recognisably horticultural in nature however, in the absence of contrary evidence, such buildings are not typically seen in this agricultural landscape which would add to their incongruity in views.
31. From elevated positions on Kirkby Moor, the distances and area seen is large and the dramatic views across the estuary and Duddon Valley dominate the scenery to a large extent. As recognised other built form would also be seen including farms and settlements, accordingly, the effects upon the LCA as a whole would not be significant. Overall, considering the scale of landscape and distances from the site, I consider the visual effects of the proposal would be moderately harmful.
32. The analysis so far has not considered the proposed landscaping. Clearly this would take some time to come to maturity and to achieve the result anticipated by the appellant. Furthermore, in general terms, it would be poor planning to rely solely on planting to hide unsatisfactory development.
33. The Landscape Statement concludes that the changes to field boundaries and sizes on site would not be contrary to the historic partitioning and reductions or field shape alterations near settlements, and I have no reason to take a different view.
34. However, the proposed landscaping includes and relies to a large extent on the provision of a relatively significant earth bund, the position of which would not correspond to a landscape feature, but rather would be a response to the provision of buildings on the appeal site. As an artificial landform earth bunds can appear discordant, whilst appropriate planting with native trees and shrubs may increase its assimilation to some degree over time, there is an unacceptable risk that it would retain a predominantly unnatural appearance as a man-made element of the local landscape.
35. Moreover, whilst the exact nature of any planting could be secured by condition and in the longer term may soften and screen the proposed development, such landscaping measures would take a considerable period to become fully

established and harm to the character and appearance of the area would result in the meantime.

36. Although the proposed development would be located close to the existing buildings, it would add substantially to the built form and would unacceptably affect the contribution that the site makes to the character and appearance of this part of the countryside. I recognise that the proposed buildings would be positioned in a depression in the land which would help to mitigate some views. However, in views from the east, the proposed buildings would appear incongruous and harm this largely undeveloped open landscape. I am not satisfied that landscaping would satisfactorily mitigate these effects.
37. The proposed development would therefore cause material harm to the character and appearance of the area contrary to Policies DM1 and DM2 of the DMPD and Policy CS8.10 of the South Lakeland Local Development Framework Core Strategy. Together these require that development ensures the protection and enhancement of the district's natural, environment qualities and its distinctive landscapes, including their public visual amenities through good design, and responds appropriately to local context, landscape and built and natural environment setting. Moreover, that the siting, design and scale of all development should be of a character which maintains or enhances the quality of the landscape. It would also fail to accord with the landscape protection aims of the Framework.

Other Matters

38. The appellant referred to other sites near the appeal site, where the Council have granted permission for agricultural buildings however, limited details were provided. In any event, the Council stated that those permissions relate to one or two new buildings or extensions to buildings, which are smaller and, in many cases, related to an existing agricultural complex. Accordingly, it seems these are not directly comparable to the appeal proposal.
39. The appellant provided details of a planning permission granted by Chorley Council for the erection of a glasshouse. That permission relates to a single building of smaller dimensions, sited next to a dwelling. It is not therefore comparable to the appeal scheme and is a matter of little weight.
40. The appellant's misgivings about the Council's handling of the application are separate matters which have no bearing on the planning merits of the proposal.

Overall conclusion

41. The need to support the development and diversification of agricultural and other land-based rural businesses; is strongly supported by the Framework as is the transition to a low carbon future. However, the Framework also requires that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and ensuring that economic development in rural areas is sensitive to its surroundings.
42. The proposal is a response to the demand for ornamental plants due to an increase in gardeners, in part due to the pandemic and a move towards healthier lifestyles. As a result of the pandemic and Brexit the appellant's garden centre business has faced issues in relation to supply. There is support

from the Horticultural Trades Association and the proposed nursery would enable the appellant to supply plants to their garden centre business, with the intention of the garden centre becoming 80% self-sufficient.

43. The garden centre currently employs 57 people and the appellant stated that the nursery will enable a year-round supply of plants for the business, thus ceasing the buying-in and importation of plants and ensuring a continuity of stock and securing the future of the garden centre. Undoubtedly there would be benefits to the garden centre, and the security of 57 jobs is a matter capable of attracting significant weight in the overall balance however, the submitted business plan relates to the proposed nursery and not an assessment of the appellant's wider business's viability. Accordingly, this is a matter of modest weight.
44. Other businesses would also benefit from supply and there would be modest benefits associated with the employment of five people, two full time and three part time when established.
45. There would be environmental benefits associated with lowering the carbon footprint of the garden centre. Evidence submitted by the appellant demonstrates that the proposed development will reduce carbon emissions by 55.7 tonnes a year, compared to its current practice by which plants and turf are transported from Italy, the Netherlands and the UK. This is equivalent to a carbon reduction of 446 tonnes by 2030 and 1,560 by 2050.
46. It is evident that the appellant and family have the skills required to establish and operate such a business however, this would be expected and is therefore a neutral matter.
47. That, subject to conditions, there would be no harm in respect of highway safety, protected species and the living conditions of nearby residents in respect of noise and disturbance is also a neutral matter.
48. There would be economic, social and environmental benefits associated with the proposed development. However, these benefits do not outweigh the harmful impacts to the character and appearance of the site and locality, to which I attach substantial weight. These environmental harms would be permanent and could not be fully mitigated or compensated. Consequently, the advanced considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

Appeal B on ground (a) and the deemed planning application

49. The main issue is the effect of the developments on the character and appearance of the area.
50. It does not appear that there were any significant excavations involved in the construction of the access track, and it largely sits at the same level as adjoining land. It has a functional appearance and purpose, enabling the appellant to access the existing buildings on the land. It is not unduly prominent in views and does not materially diminish the surrounding rural characteristics.
51. The excavated areas are largely located to the rear of and in close association with the existing buildings. These areas and the changes in site levels are

screened by the buildings and existing hedgerows and are not therefore widely visible.

52. In respect of the bund, the notice relates to that to the front of the newest agricultural building, and I shall correct the allegation to reflect that the development is a bund, not bunds. The bund reinforces my views about the man-made appearance of such development, nevertheless in this case the bund is located parallel with and appears relatively modest in scale when viewed against the backdrop of the fairly tall building behind. It has grassed over and viewed alone, it causes no material harm to the character and appearance of the area.
53. Overall, for the reasons given, these developments are not materially harmful to the character and appearance of the area or wider landscape. Accordingly, there is no conflict with the design and landscape protection aims of Policies DM1 and DM2 of the DMPD and Policy CS8.10 of the South Lakeland Local Development Framework Core Strategy or the Framework.
54. No conditions are necessary since the developments are complete.

Appeal C

The Enforcement Notice

55. The Government's Planning Practice Guidance (PPG) advises that an enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.
56. The appellant's case on ground (c) was in part made on the basis that the notice is ambiguous since it relates to the entire landholding, and as such it is not clear which items within the land are required to be removed.
57. Following discussion at the Hearing, the Council and appellant agreed a corrected plan, which identifies a smaller area of land. Given the agreement between the parties I shall correct the notice by substituting the plan attached to the notice with the one attached to this decision.
58. The allegation refers to the use for storage of specific items/materials, some of which are shown in photographs in the Council's submissions, and I saw at my visit. However, it is not clear what "equipment" the notice refers to and the notice is unclear in this respect. I shall therefore correct the notice to delete the reference to "equipment."
59. The requirements should square up with and follow logically from the allegation. In this case the notice does not require the use to cease, only that the items/materials be removed. I shall therefore vary the notice to require the use to cease and the materials to be removed, to bring the requirements in line with the allegation. There would be no injustice to the appellant since there is nothing to indicate that they did not understand what the notice intended to achieve.

The appeal on ground (c)

60. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant

to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.

61. Section 55(1) of the 1990 Act defines development as including the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
62. There is no dispute between the parties that the lawful use of the land is for agriculture. The appellant's case on this ground is that the items as listed are all used in association with the management of the agricultural/horticultural holding and the agricultural/horticultural business operating from the site.
63. Further, that the glass within the building and metal is the dismantled framework of a glasshouse which is being stored in anticipation of the grant of planning permission for the erection of buildings on the site. Whilst these materials might have a use in the construction of a building on the site in the future and that such a building might have an agricultural use, the storage of these materials and the scaffolding and crowd control and Heras type fencing on the site does not, in the absence of substantive evidence, serve the everyday agricultural activities that take place within the appellant's landholding.
64. The stone appears to be that resulting from the excavations which have taken place, subject of Appeal C, and the appellant did not explain how this is related to the agricultural use of the land.
65. With regard to pallets, the appellant explained that these are used for transporting turf cuttings. Since it seems likely that these are used in connection with agricultural activities on the site, I am satisfied that the use of the land for the storage of these items is incidental to the agricultural activities.
66. The storage use is relatively small in scale however, I have no evidence of how the site appeared, or the level of any agricultural activities that were taking place, prior to the storage use commencing. Noting the character of the surrounding land, I consider the use has resulted in a definable change in the character of the appeal site and therefore amounts to development as there has been a material change in the use of the land.
67. The appellant has failed to demonstrate that the use for storage purposes of glass, fencing, scaffolding, metal and stones, alleged in the notice as corrected, does not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it.
68. However, on the balance of probabilities the pallets are used for agricultural purposes. To this limited extent, the appeal on ground (c) succeeds.

The appeal on ground (g)

69. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
70. The period given for compliance within the enforcement notice is to allow for the use to cease and the items/materials to be removed. In the absence of substantive explanation and since there would not be any complex operations involved in removing the items/materials, I consider 13 weeks, as specified in

the notice, is a reasonable and proportionate period to undertake the works required by the notice. The appeal on ground (g) therefore fails.

Conclusions

71. Appeal A is dismissed.

72. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the formation of a site access track on to the A595 and the formation of an earth bund, excavation works and changes to the site levels as described in the notice as corrected. The appeal on ground (g) does not therefore fall to be considered.

73. For the reasons given above I conclude that Appeal C should succeed on ground (c) in so far as it relates to the pallets. Otherwise, I shall uphold the notice with corrections and a variation.

Felicity Thompson

INSPECTOR

Plan

This is the plan referred to in my decision dated: 06 December 2023

by Felicity Thompson BA(Hons) MCD MRTPI

Land off A595, School Road, Kirkby-In-Furness LA17 7TL

Reference: APP/M0933/C/22/3307360



APPEARANCES

FOR THE APPELLANT:

Mr Marc Charnley
Mr Anthony Atkinson Acorus Rural Property Services Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Charlotte Pinch Senior Specialist Level 3 (Development Management)