

Chronology – Barn adjacent 67 Main Street Swithland

Date	Reference	Details	Comments	Attachments and Appendix number
	Key to reference no: E/03/0134 P/04/0373/2 P/04/0374 E/08/0241	Enforcement case in relation to unauthorised creation of access and culvert works Prior Notification for erection of barn Planning application for retention of access Enforcement case – enforcement notice and subsequent appeal.		
17 th November 2003	E/03/0134	Complaint received by the Council that works had been carried out to remove trees create access, including works to culvert onto land off Main Street Swithland	Investigated by the Council and a breach of planning legislation was confirmed.	
18 th November 2003	E/03/0134	Planning Contravention Notice (PCN) served	In relation to the unauthorised work.	Copy of Planning Contravention Notice (PCN) served <i>Appendix 1</i>
4 th December 2003	E/03/0134	Response from Mr White to PCN in relation to the unauthorised works	Response stated the “land is to be eventually grassed and will become pony paddocks”.	
20 th January 2004	E/03/0134	Letter from Council to Mr White	Explaining a number of points, including the need to obtain planning permission as Mr White had failed to submit the appropriate certificates and plans under the Prior	Copy of letter <i>Appendix 2</i>

			Notification of Agricultural Development procedure (PN).	
3 rd February 2004	P/04/0373/2	Prior Notification of Agricultural Development (PN)	<p>PN submitted by Mr Charles White of 54 Woodland Drive Leicester LE3 3EB that he intended to build a new stone barn.</p> <p>Application details were declared as:</p> <p>Area of agricultural holding – 5.01 ha</p> <p>Barn dimensions - 30m x 15.5m</p> <p>Construction materials - Swithland stone or similar/welsh slate graduated layers</p> <p>A copy of Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995) is attached from which it can be seen that the developer has responsibility for ensuring that the conditions of the GPDO 1995 are met in terms of: relating to an agricultural holding of 5 hectares or more; development not to exceed 465 square metres; development being needed for agricultural use; development being designed for agricultural purposes.</p> <p>It should be noted that the agricultural area of more than 5 hectares does not necessarily have to be in applicant's ownership and can be under their control, and/or can be for a proposed development.</p>	<p>Copy of completed form;</p> <p>Explanatory letter dated 26th January 2004;</p> <p>Plan Drawing No SWBN01;</p> <p>Plan Section of Land;</p> <p>Photograph of aerial view. <i>Appendix 3</i></p> <p>Copy of Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995). <i>Appendix 4</i></p>
3 rd February 2004	P/04/0374/2	Retrospective Planning Application for Widening of vehicular access, positioning of access gates, construction of vehicular crossing over stream and removal of embankment and deposit of material within adjacent meadow.	Retrospective Planning Application submitted by Mr Charles White of 54 Woodland Drive Leicester LE3 3EB which was approved on 10 th June 2004.	Copy of Planning Application and Approval. <i>Appendix 5</i>
3 rd	P04/0373/2	Receipt for PN	Applicant's address had been	Copy of

February 2004		fee posted to applicant	input onto planning system as 52 Woodland Drive and therefore this letter was sent to wrong address. The letter was not returned as undelivered.	receipt. <i>Appendix 6</i>
9 th February 2004	P04/0373/2	Letter sent stating that PN incomplete as no site plan had been included	<p>Applicant's address had been input onto planning system as 52 Woodland Drive and therefore this letter was sent to wrong address. This letter was not returned as undelivered.</p> <p>The Planning Inspector acknowledges in the Appeal Decision (para 7) that the letter was sent within the 28 day period as required by the legislation. The Planning Inspector concludes that this letter does not amount to a determination of the application and therefore the applicant was entitled to rely on the legislation for deemed consent. The Planning Inspector goes on to say (para 8) that his conclusion does not in itself mean that the development benefits from permitted development rights conferred by Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995).</p>	<p>Copy of letter. <i>Appendix 7</i></p> <p>Copy of Appeal Decision. <i>Appendix 8</i></p>
16 th February 2004	P/04/0374/2	Email from Mr White	In response to Council's letter of 12 th February 2004 regarding creation of access.	Copy of email. <i>Appendix 5</i>
17 th February 2004	P/04/0374/2	Email from Council	Confirmation that access had not been widened, confirmation that culvert works had been removed, confirmation that remainder of works still required permission.	Copy of email <i>Appendix 5</i>
3 rd March 2004	P/04/0374/2	Letter from Council	Request for additional information in respect of Retrospective Planning Application.	Copy of letter <i>Appendix 5</i>
22 nd March 2004	P/04/0373/2	Telephone call from Mr White regarding PN and copy of letter dated 9 th February sent to	Applicant's address had been input onto planning system as 52 Woodland Drive and therefore this letter was sent to wrong address. This letter was not returned as undelivered.	Copy of annotated letter. <i>Appendix 9</i>

		Mr White	Upon realising that the original letter dated 9 February 2004 had been sent to the wrong address, a copy of that letter with the correct address but with the date left as 9 th February 2004 was re-sent. The file copy of the letter was annotated by hand and that is the letter that appears on the Council's website.	
31 st March 2004	P/04/0373/2	Letter from Rich & Carr Solicitors acting on behalf of Mr White	Stating that as no response had been received within the 28 days required under PN, their client would be proceeding with the development.	Copy of letter. <i>Appendix 10</i>
2 nd April 2004	P/04/0374/2	Further details received from Mr White	In response to Council's letter of 3rd March 2004 regarding his retrospective application for an access.	
5 th April 2004	P/04/0373/2	Letter to Mr White	At this point the Council confirmed that it had raised no objections within the 28 day timescale and therefore the development could go ahead. There was a proviso in the letter that the development should be constructed in accordance with the details included in the PN form Mr White had submitted and should be used for agricultural purposes only. This letter was considered by the Planning Inspector (PI) during the Inquiry process and the PI was unable to concur with the Council's view at the Inquiry that the application was invalid. Therefore, the letter of 5 th April 2004 was concluded by the PI to be correct.	Copy of letter. <i>Appendix 11</i>
1 st June 2004	P/04/0373/2 P/04/0374/2	Letter to Mr White	Raising the following concerns: That the agricultural unit was less than the 5 hectares stated by Mr White (P/04/0373/2); The need for a separate PN for the vehicular access over Swithland Brook (P/04/0374/2); Use of the agricultural land for pony paddocks (P/04/0373/2); The need for the building to be reasonably necessary for	Copy letter. <i>Appendix 12</i>

	P/04/0373/2		<p>agricultural purposes (P/04/0373/2); The provisions in the GPDO 1995 for demolition of the building should the agricultural use cease (P/04/0373/2).</p> <p>Under GPDO 1995, the onus of proof that the requirements of the GPDO 1995 have been met, is on the person making the declaration. As the PN was held by the Council as invalid, the Council had not considered the PN. The reason the Council was asking for further information was to see the extent of the whole site, and the area that comprised 5.01 hectare, as this information had not been submitted as part of the PN. Mr White had said in the PN that his holding amounted to 5.01 hectares but that holding was not shown on a plan.</p> <p>This letter was part of the formal post-notification process and was effectively an indication of the Council's concerns and a warning that the development did not meet the requirements of the GPDO 1995.</p>	
	P/04/0373/2			
10 th June 2004	P/04/0374/2	Retrospective planning permission granted for an access.	<p>Subject to 4 conditions: Surface the access (10 metres from highway boundary) within 2 months; No gates within 5 metres of highways boundary; Details of gate piers to be submitted within two months; Shut other access.</p>	Copy of decision notice. <i>Appendix 5</i>
9 th March 2005	P/04/0374/2	Letter to Mr White	Regarding non-compliance with conditions of planning permission. Mr White had failed to submit details before carrying out the works. The works carried out were, however, acceptable and therefore no further action was proposed.	Copy of letter. <i>Appendix 5</i>
11 th December 2006	FP/06/2060/2 Submitted on 15 th June 2006 with additional information	Building regulation approval granted	A person who carries out building work is required by law to employ a Building Control Body, which may be the local authority or a private sector	Copy of Building Regulation Inspection Report.

	<p>submitted on 27th October 2006</p>		<p>Approved Inspector, to authorise and approve the work under the requirements of the The Building Act 1984 and Building Regulations made thereunder. In this instance, Mr White chose to use the Council's Building Control service, which operates as a separate business unit, to provide this service.</p> <p>The Council's Building Control service received an application showing the construction details of the barn. This application was considered by Building Control in relation to the Building Regulations and approval was granted.</p> <p>It should be noted that the processing of applications for Building Regulations approval is unrelated to the determination of applications for planning permission, as it operates under separate legislation and technical guidelines. Approval under the Building Regulations does not therefore confer any rights under planning control legislation and doesn't mean that permission under planning legislation is also granted either expressly or in respect of GPDO rights.</p> <p>Note 1. of the Building Regulation Notice confirms that the approval is for the purposes of building regulations only and is not an approval under the Town and Country Planning Acts or for any other statutory provision.</p> <p>The Council's Building Control function also has to operate on a commercial basis as it endures competition from the private sector for the delivery of this service. One of the many consequences of this is that the Council has to ensure that the service is delivered independently from its Planning function, as evidence shows that perceived interaction between the two has the anti-competitive</p>	<p><i>Appendix 13</i></p> <p><i>Copy of Building Regulation Approval Appendix 14</i></p>
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			consequence that developers will ultimately tend to opt for private sector Building Control Bodies where this cannot happen.	
13 th /14 th May 2007	P/04/0373/2	Work started on site	Complaints were received from residents regarding the development that had recently commenced and was taking place on the site.	
14 th May 2007	P/04/0373/2	Site visit conducted by Senior Planning Enforcement officer	<p>Evidence of site being cleared. The builder (Mr Curzon) agreed to contact Mr White and cease work.</p> <p>The site was being marked out for the barn, and this marking out indicated that the barn did not comply with the dimensions submitted in the PN. The builder showed the Council's enforcement officer the plans to which he was working (which had not been submitted as part of the PN process) and which indicated that the barn was larger than permitted in the GPDO 1995 and which was considered by the enforcement officer to be more ornate than a barn would necessitate.</p>	Copy of site visit notes. <i>Appendix 15</i>
15 th May 2007	P/04/0373/2	Letter to Parkinson Dodson Associates	Stating that development believed to be unauthorised as it was not being constructed in accordance with the details submitted as part of the PN.	Copy of letter. <i>Appendix 16</i>
31 st May 2007	P/04/0373/2	Meeting with Mr Dodson (Agent), Mrs H Robinson (Senior Enforcement Officer) and D Watson (Principal Planning Officer)	<p>Regarding proposals put forward to Building Control.</p> <p>Areas of concern:</p> <ul style="list-style-type: none"> Size – larger than details submitted as part of PN; Use of cavity walls; Design of building; Specification of construction; Size of doorways; Layout of building; Doors off of grain store; Need for agricultural use. <p>All of these issues raised concerns as to the use of the building for agricultural use.</p> <p>Clarification was sought as to the agricultural activity that had</p>	Notes of meeting. <i>Appendix 17</i>

			<p>taken place on the land or would in the future take place. Mr Dodson claimed that Mr White had equipment in Norfolk and the building was designed to house a harvester and two tractors.</p> <p>This again was an indication of the concerns that the Council had and a warning that the Council did not consider that the building was being constructed for agricultural purposes.</p>	
7 th June 2007	P/04/0373/2	Letter from Parkinson Dodson Associates	Confirmed that development was larger than detailed in the PN, the reason being that it cannot be constructed in the materials specified in the PN at the size specified.	Copy of letter. <i>Appendix 18</i>
13 th June 2007	P/04/0373/2	Letter to Parkinson Dodson Associates	Advising that the development required planning permission and stating the reasons.	Copy of letter. <i>Appendix 19</i>
13 th July 2007	P/04/0373/2	Letter from Rich & Carr Solicitors	<p>Stating that development would be altered to the correct size and that the sleeping quarters would be removed.</p> <p>The Council considered taking formal action based on officer's perception that the building did not look like a barn on the plans but decided against that course of action at that point based on the following: Only the foundations had been laid and it would have been relatively easy for the builder to make the alterations stated by Rich & Carr; The stated intention in the PN was for use of the building as a barn and the Council had no evidence to the contrary at that point; Legal advice was that unless the building was occupied or furnished for occupation no enforcement action could be taken at that stage.</p> <p>The Planning Inspector in his decision (para 25) agreed with the view the Council took at that time and said that the</p>	Copy of letter. <i>Appendix 20</i>

			building was capable of functioning as an agricultural building.	
23 rd July 2007	P/04/0373/2	Letter to Rich & Carr	Detailing concerns regarding design of building and advising that no further action would be taken at that time but that the development would be closely monitored and action could be taken in future if necessary.	Copy of letter. <i>Appendix 21</i>
16 th January 2008	P/04/0373/2	Site visit	Prompted by complaints from local residents that building work had re-commenced. The building appeared to be within the 30 metre x 15 metre dimension allowed by the GPDO. The walls were about 1-1.5 metres high and appeared to be constructed in accordance with the plans.	Photographs taken during site visit. <i>Appendix 22</i>
July 2008	P/04/0373/2	New builder started on site.	Building work stalled between January and July 2008 and when building work re-commenced complaints were received from local residents.	
7 th October 2008	P/04/0373/2	Site visit conducted by Senior Enforcement officer	There were features that became more evident during construction of the building, significantly the inner blockwork skin at floor level and positioning of Oak beams within. The inner blockwork skin was not shown on the plans but it raised concerns in that this inner wall could have been used for an inner skin on the development and as a consequence cavity wall construction more in accordance with a dwelling than an agricultural building. The Oak beams inside the structure were positioned against this inner blockwork wall and the positioning of the beams suggested conversion at a later date could be more readily achieved.	Photographs taken during site visit on 07.10.09. <i>Appendix 23</i>
28 th October 2008		Site visit by Senior Enforcement officer and Solicitor	Further to the site visit on 7th October 2008, the Council's Senior Enforcement Officer and Locum Solicitor conducted a further site visit which confirmed officer's opinion that the land claimed to be in use by	

			<p>Mr White for agricultural purposes was no longer being used and despite the evidence provided by Mr White in the past of his 5.01 hectare holding, no agricultural activity had been witnessed on the site for some months. As a result officers were not satisfied that the building was needed for agricultural purposes.</p> <p>These factors and the details of the build observed on site led to the further consideration of formal action and despite the fact there was felt to be a risk involved it was considered appropriate to challenge the position of the developer on the grounds of whether or not the building was designed for agricultural purposes and whether there was indeed a need for such a structure. In order to allow Mr White an opportunity to appeal and the Planning Inspectorate to independently consider the situation formally, the decision was taken by the Interim Director of Governance and Procurement to pursue formal enforcement action by exercising his Delegated Powers.</p>	
12 th November 2008	P/04/0373/2	Authority received from Interim Director of Governance & Procurement	For action to be taken including service of an Enforcement Notice.	
13 th November 2008	E/08/0241	Enforcement Notice served	<p>To take effect on 18th December 2008.</p> <p>Photographs taken at the time the Enforcement Notice was served show that the slate roof tiles had not arrived on site. Officers were aware that they were on order from China.</p>	Copy of Enforcement Notice. <i>Appendix 24</i>
17 th November 2008	E/08/0241	Senior Planning Enforcement officer telephoned Mr White in response to a message left by him	To discuss Enforcement Notice. Senior Planning Enforcement officer confirmed that the Enforcement Notice had been issued as the Council did not believe that the development was necessary for agriculture due to:	Copy of notes of the telephone conversation. <i>Appendix 25</i>

			Its design; lack of activity on the land; amount of land in Mr White's control.	
17 th November 2008	E/08/0241	Locum Planning Solicitor emailed Mr White in response to his email	To give an explanation of the Planning legislation under which the Enforcement Notice had been served.	Copy of email from Mr White and response from Locum Planning Solicitor. <i>Appendix 26</i>
11 th February 2009	E/08/0241	Appeal submitted	Confirmed valid by Planning Inspectorate.	
25 th August 2009	APP/X2410 /C/09/2093440	Planning Inspectorate Appeal Decision	<p>Appeal Decision received which dismissed the Appeal on the following grounds:</p> <p>Appeal on Ground (c) Failed Prior Approval: The inspector found that the additional information requested by the Council was not necessary to validate the application and therefore the application was valid and the Council's failure to determine the application within 28 days resulted in the applicant being entitled to rely on the legislation for deemed consent. The Inspector goes on to say that "the foregoing does not in itself mean that the development ... benefits from the permitted developments rights In this respect, 4 further matters are in contention: firstly, whether the building has been erected in accordance with the details submitted to the Council; secondly, whether the building was erected on agricultural land; thirdly, whether the disputed development is reasonably necessary for the purposes of agriculture and; fourthly, whether the building was designed for agricultural purposes.</p> <p>The inspector found as follows: Firstly: Details submitted - Development as carried out accords with details submitted. Secondly: Agricultural land</p>	Copy of Appeal Decision. <i>Appendix 8</i>

			<p>– Land is in agricultural use Thirdly: Reasonably necessary – Building was not reasonably necessary Fourthly: Designed for agricultural purposes – Building was not designed for agricultural purposes.</p> <p>The inspector's conclusion was that the erection of the building did not benefit from Deemed Consent under Part 6 Class A Schedule 2.</p> <p>Appeal on Ground (a) Failed Appeal on Ground (f) Failed Appeal on Ground (g) Succeeds (extension of time given to remove development and reinstate land).</p> <p>Decision: Appeal should not succeed. Enforcement Notice upheld and planning permission refused.</p>	
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