



## Appeal Decisions

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 06/06/2024

Appeal references: CAS-02914-W8W9L1 and CAS-02915-T0R0V1

Site address: Land at Farram Lodge, Hen Parc Lane, Upper Killay, Swansea SA2 7JL

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### Appeal A Ref: CAS-02914-W8W9L1

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991. The appeal is made by Mrs C Henson against an enforcement notice issued by the City and County of Swansea Council.
  - The enforcement notice, numbered ENF2019/0451 was issued on 26 July 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of a barn/storage building (the approximate position is marked with an 'A' on the attached plan) and a pole barn (the approximate position is marked with a 'B' on the attached plan).
  - The requirements of the notice are to:
    - i. Demolish the barn/storage building and pole barn (including any building slabs and foundations works)
    - ii. Remove from the Land all of the building materials and/or rubble arising from requirement i above.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
  - A site visit was made on 22 March 2024.
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### Appeal B Ref: CAS-02915-T0R0V1

- 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 Mrs Clare Henson against the decision of the City and Council of Swansea Council.
- The application Ref 2020/2391/FUL, dated 18 November 2020, was refused by notice dated 8 March 2023.

- The development proposed is retention of agricultural building.
  - A site visit was made on 22 March 2024.
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## Decisions

### Appeal A Ref: CAS-02914-W8W9L1

1. The appeal on ground (f) succeeds in part and the enforcement notice is varied by the deletion of the words after “barn” in requirement 5(i) of the notice namely, “(including any building slabs and foundations works)”.
2. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of “6 months”, and the substitution of the following: “9 months in relation to requirement 5(i) and 12 months in relation to requirement 5(ii)” as the periods for compliance.
3. Subject to these variations the appeal is dismissed, and the enforcement notice is upheld.

### Appeal B Ref: CAS-02915-T0R0V1

4. The appeal is dismissed.

## Appeals A and B

### Procedural matters

5. Appeal A (the enforcement appeal) relates to two agricultural buildings identified as building A the barn/storage building and building B the pole barn. Appeal B (the planning appeal) relates to building A on its own. Both buildings are within the identified agricultural unit and grounds of Farram Lodge but are in separate areas of the appeal site. I have considered each proposal on its merits, but I have dealt with the two schemes together, except where otherwise indicated, to avoid duplication. Separate decisions are made on each appeal.

### Appeals A and B - the ground (a) appeal, the deemed application, and the planning appeal

6. The main issues in these appeals are as follows:
  - Whether there is an agricultural justification for the development having regard to the farming enterprise, and
  - The effect of the development on the character and appearance of the area.

#### *Agricultural justification – first issue*

7. The appellant indicates that the agricultural holding comprises 5.68 ha. This includes an area of woodland (2.3 ha), rough grazing, enclosed paddocks, the property and garden, access tracks, and area of open pasture which is 2 ha. Approximately 1 ha of the woodland is protected by Tree Preservation Order. The appeal site is a registered agricultural holding, and the 2 ha of open pasture is used to produce hay. The holding has 10 ewes and 6 horses, and the appellant has begun to harvest timber from 1.3 ha of unprotected woodland. The activities are within the definition of agriculture as set out in Section 336 of the Act and the Council does not dispute this point.
8. Building A is some 200 m<sup>2</sup>. Building B is open sided and is some 90 m<sup>2</sup>. The appellant has provided a breakdown of the floorspace needed to accommodate farm machinery, domestic and miscellaneous machinery, and farming produce. This is based on the agricultural production of the holding capable of producing hay and the need for storage of firewood and dry feed products.

9. The production of hay is calculated as a yield of 100 bales per acre based on the 2ha of open pastureland which is available on the unit. The Council questions whether this is achievable, but also raises concern on the figures which were given for Appeal B during the application. The application for Appeal B referred to a larger holding of some 16ha, 9ha of which was rented from the adjacent landowner, but this agreement was terminated. The Council disputes this matter because by its own investigation the adjacent landowner had at no time rented this land to the appellant. Whilst this matter cannot be conclusively determined, the issue raised by the Council is that the production figures for the hay produced is inflated and are unlikely to be sourced from this holding.
10. The appellant indicates that two hay cuts per year would be achievable on the unit. The first cut would produce 30 large bales accounting for 39 m<sup>2</sup> of floorspace needs. The second cut would yield fewer bales with an average of 75% production of the first cut, producing a further 23 large bales. This would equate to some 30 m<sup>2</sup> additional floorspace. The appellant asserts that the floorspace requirements for both cuts together with the listed requirements for storage of other items and produce would exceed the available space for Building A and would justify the additional storage in Building B.
11. As a percentage of the total floorspace area available for Building A, farm machinery accounts for some 42.5% space, production of hay, wood and feed is about 27% space, domestic machinery some 7.5%, and other storage and manoeuvring space approximately 23%. The appellant asserts that the second hay cut storage space would take the required space over the available size of Building A.
12. However, the Council questions the figures as now presented since these have changed significantly from that put forward when the planning application for Appeal B was considered. It queries the yield figures from the available productive land on the holding of 2 ha that would produce 494 small bales or 30 large bales. The Council compares this yield information from the planning application submission (Appeal B) which stated that 270 small bales was produced in 2020 from a holding of 13.5 ha. As a result, the Council questions the validity of the claims in relation to the productive output of the farm and the resulting storage requirements for the development.
13. The Council also questions the extent of storage need for equipment and machinery, where it observed that a third of the floorspace within Building A was given over to storage of domestic paraphernalia, domestic mowers and motorcross motorcycles.

#### *Assessment*

14. From my inspection of the appeal buildings and the land it is unclear from the available evidence as to the extent and location of the productive land on this holding.
15. There is a field to the rear of Building B which appears in agricultural use. This field appears to have been prepared for production from the visual signs of pasture coverage, and its size, with no obvious impediment or physical constraint.
16. However, except for this field which would account for approximately a hectare of land, no other comparable area of land on the holding has the characteristics of improved pasture or is otherwise unrestricted by physical constraints.
17. From my visit the field to the side of the dwelling had been fenced-off from the remainder of the land and used as a paddock, as horses were being kept in this area. The remainder of the field which lies to the rear of the paddock and domestic curtilage was interspersed with trees, tussock grasses, reeds and scrub which shows soil containing higher levels of water within it. This area on the balance of probability is less favourable to the production of a hay crop given the constraints outlined. This is not an indication that hay crops have not been grown here in the past or in future years as the paddock could be reverted to

productive land and the grass between the trees improved. However, based on the evidence of my inspection in its current condition and with several mature trees in this area it is less probable that this land contributes to the productive hay pasture for this holding.

18. The area of the holding to the west adjoining the golf course is dense woodland and scrub. No hay production is likely to have taken place at this location. The only other open field was immediately behind the ménage area where the sheep flock was grazing. This area was not an extensive track of land and is likely to have been left over from the construction of the ménage, which is a recent permission.
19. Having regard to the foregoing, as a matter of fact and degree, it is less than probable the holding would provide 2 ha of land as open pasture for hay production. It therefore raises the question whether 30 large bales could be produced from this holding in the initial cut and is the deemed application for two buildings of this size reasonably necessary for the size, and production needs of this holding.
20. The appellant contends that the initial hay cut would need 39 m<sup>2</sup> (30 large bales) and an additional 30 m<sup>2</sup> for the second hay cut (23 large bales). In my view, given my conclusions on the available land for production the field to the rear of Building B accounts for about 1 ha, halving the production figures for hay to a total of 26 large bales (first and second cut) and reducing the need for storage to some 34 m<sup>2</sup> instead of 69 m<sup>2</sup>.
21. Turning to the other storage requirements of the holding. At the time of my visit, I observed that there were some 10 storage crates of wood in building A, and about 18 in building B. The appellant has indicated that harvesting of timber has begun on 1.3 ha of unprotected woodland. It is unclear whether the present storage of firewood is the product of the holding as these were not shown in the Council's photographs. About a third of Building B was taken by the wood crates, and the same proportion of area for Building A.
22. Some 15 m<sup>2</sup> of Building A is used for domestic equipment. The Council note that several motorbikes were present in Building A as seen in the photographs. Most of Building A was taken for the maintenance of farm machinery and equipment with the inclusion of a ramp and work benches and tools. The motorcycles were not present when I made the visit, but it was noted that there was a cement mixer, quads and lawn mowers stored in this building.
23. In my overall calculation, farm machinery would take up 84 m<sup>2</sup>, the revised total for farm produce (inclusive of the reduced area of productive land, the first and second cut of hay, firewood, and dry feed) would amount to 48 m<sup>2</sup>, and other storage and manoeuvring space 45 m<sup>2</sup>. This would total a need for 177 m<sup>2</sup> excluding the need for domestic items and machines.
24. In my opinion this would equate to a storage need which amounts to 88.5% of the floor area of Building A, which is proportionate to the need for one building of the size of 200 m<sup>2</sup>. Building A is justified in relation to its size for the holding, but Building B is not.
25. Building B is about half the size of Building A and is open-sided and provides no secure storage of valuable machinery and equipment.
26. I conclude that Building A is justified for agricultural purposes having regard to the farming enterprise in accordance with Swansea Local Development Plan 2010-2025 (LDP) Policy CV 2.
27. I conclude Building B is not justified for agricultural purposes having regard to the farming enterprise and fails to accord with LDP Policy CV 2.

*The effect of the development on the character and appearance of the area - second issue*

28. The appeal site is situated in the Gower Area of Outstanding Natural Beauty (AONB). Part of the land is within a Tree Preservation Order (TPO) mixed oak woodland order. An area of some 1.8 ha is designated Ancient Semi Rural Woodland which forms part of the TPO. The Council indicates that 4.3 ha of the overall holding (land to the north) is within the Fairwood Lodge Site of Interest for Nature Conservation (SINC). Farram Lodge lies outside the settlement boundary as defined in the LDP. The appeal site lies adjacent to Fairwood Park Golf Club.
29. LDP Policy PS 2 indicates that development should enhance the quality of places and spaces and respond positively to aspects of local context and character. The policy refers to a list of criteria having regard to the nature, scale, and siting of the proposal. Policy CV 2 is a policy of rural restraint outside defined settlement boundaries and lists exceptions, one of which, refers to the purposes of agriculture. Policy ER 4 indicates that development in the AONB must have regard to the purpose of the designation to conserve and enhance the natural beauty of the area. Amongst the criteria listed is that the development must be of a scale, form and design that is compatible with the character of the AONB and, be designed to a high standard to integrate with the existing landscape.
30. The Placemaking Guidance for the Gower AONB Supplementary Planning Guidance (SPG) was adopted in 2021. Module 5B of the SPG provides guidance on agricultural development in the AONB.

*Building A*

31. Building A is situated on the western boundary of the holding adjacent to the golf course. A circular access track travels around Building A, the ménage and next to Building B and a stable block and returns to the track which provides access to the dwelling from the main road. Adjoining the dwelling and off-set from it is a dilapidated structure. Its roof and parts of the rear wall are demolished. The Council refer to this as the former stable.
32. Building A is not visible from the main road, it is obscured from view by the former stable and the single storey dwellinghouse. Building A would be seen by the few receptors who are on the golf course. Built on the upper slope of the site within the wooded enclave of the TPO area, Building A is a sizeable gable roof building with a ridge height of just under 5 metres. Built in a gap between the cluster of trees, on the upper slope of the site and of a size and disposition that is exposed to receptors of the golf course, is divorced from the remainder of the holding and the core of buildings on the unit, is visually intrusive to the high design requirements of the AONB.
33. Planning Policy Wales Edition 12 (PPW) indicates that National Parks and AONBs are of equal status in terms of landscape and scenic beauty and must be afforded the highest status of protection from inappropriate developments. Proposals in National Parks and AONBs must be carefully assessed to ensure that their effects on those features which the designation is intended to protect are acceptable.
34. The AONB seeks to conserve and enhance the natural beauty of the area. The SPG in the first instance seeks to minimise the impact of the massing of new buildings, and the need to site buildings within or close to existing groups of buildings. In this regard the SPG encourages that 'stand-alone' buildings avoid open or unscreened sites and should be carefully detailed in relation to height, colour, and landscape screening. The siting of large buildings should account for topography usually positioning larger buildings lower down slopes to limit their impact.

35. I conclude that Building A does not respond well to the holding in relation to its siting and is located as a stand-alone building on the higher parts of the slope of the site which is visible to receptors of the golf course. The development fails to accord with the aim to conserve the natural beauty of the AONB, and conflicts with the SPG guidance on siting and design contained in Module 5B, and conflicts with LDP Policies PS 2 and ER 4. I therefore consider, given these factors of visual separation, scale, and massing on the higher slope of the land, Building A on the holding is visually incongruous and discordant.

36. I therefore consider that Building A harms the character and appearance of the area.

*Building B*

37. Building B has not been justified for agricultural purposes as being reasonably necessary for the needs of the enterprise. Whilst one building on this unit in my view is reasonably necessary, Building B would not serve that purpose since it would be too small to accommodate the storage requirements which are in the region of 177 m<sup>2</sup> and is functionally inappropriate to provide secure storage given its open character. The appellant's submission has regarded Building B as the second option for additional storage or overspill storage, and no justification has been put forward for it as was the case made in detail for Building A.

38. I nevertheless will consider the impact of Building B from a character and appearance perspective. Building B is situated closer to the group of buildings on the holding and is framed by dense vegetation at the rear. The materials are wood sides and sheeting with timber posts on the open front elevation. In all respects I consider that Building B is in keeping with its surroundings and the AONB landscape designation. It is also subordinate in scale, is formed of appropriate materials and finishes and is sensitively sited.

39. I therefore consider that Building B does not harm the character and appearance of the area and does not conflict with LDP Policies PS 2, ER 4, and SPG guidance.

*Other matters*

40. The appellant refers to the grant of planning permission (Ref: 2022/2037/FUL) for a stable/agricultural building at Sandy Haven. This was for a larger building than Building A on a holding which was smaller (3.4 ha). The Council indicates that this permission is not comparable to these appeals since the justification for the Sandy Haven development was on animal welfare grounds. In the case of the appeal site the stable is a separate building which was granted with the ménage under (Ref: 2020/2438/FUL). Given that there were issues concerning animal welfare associated with the Sandy Haven permission, I consider that this differentiates that decision from these appeals.

41. I note that the base of Building A was there prior, and this existed as a site of a building in World War II and is considered as brown field. Although previously developed, that does not indicate acceptance of the form of building without scrutiny over its ultimate design and scale.

42. I also note that the holding benefits from agricultural development permitted development rights. The appellant merely records this point without explaining the fallback position arising from it. However, I note that prior approval would be needed for siting, design, and external appearance of any agricultural building under these provisions.

***Conclusions on the Appeals A and B – in relation to the planning appeal and the deemed application***

43. In relation to Appeal A, I find the following:

44. Building A accords with the agricultural justification for it in relation to the holding. However, it is not acceptable in relation to its impact on the character and appearance of

the area. In my view, the harm to the character and appearance of the area given its high status of AONB outweighs the compliance with the first issue.

45. The planning balance is against allowing Building A.
46. Building B is unacceptable in relation to the agricultural justification for it, but otherwise is acceptable on the second issue. As there is no present justification for Building B the development is not reasonably necessary for the holding.
47. I have found the development would comply with the development plan policies relating to the character and appearance of the area. This matter is neutral in the final balance as this is expected of all developments.
48. The planning balance is against allowing Building B.
49. In relation to Appeal B, this relates to the planning application solely for Building A. My conclusions are identical to Appeal A for Building A.
50. The planning balance is against allowing the planning appeal for Building A.
51. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective to make our cities, towns, and villages even better places in which to live and work.
52. Appeal A on ground (a), and the deemed application is dismissed, and the enforcement notice is upheld.

53. Appeal B, the planning appeal is dismissed.

#### **Appeal A - The ground (f)**

54. The ground of appeal is that the steps required in the notice to be taken, exceed what is necessary to remedy any breach of planning control or, to remedy any injury to amenity which has been caused by any such breach.
55. The appellant indicates that the removal of the buildings' slabs and foundations works is excessive. The appellant contends that the reasons for issuing the notice related to visual harm and as a result the removal of the slabs/foundations which remain unseen is excessive. Further, it is argued that the remaining slabs could provide hard standing areas for open storage.
56. Having regard to the requirements of the notice it appears that the purpose of the notice is to remedy the breach of planning control, by removing everything associated with the buildings. The purpose of the notice would appear to fall within section 173(4)(a) of the Act as amended. The Council disputes that the sole reason for the enforcement notice was visual harm and refer to the need to justify the development for agricultural purposes.
57. The appellant also indicates that the base for Building A was likely to be already in place as it was used for a building in the Second World War. The Council asserts that the removal of the slab is necessary to return the land to its original state.
58. I noted during my inspection that there were several areas on the site where bases and foundations were present which may be remnants of the previous development and history of the appeal site. The purpose of the enforcement notice must be remedial, and it is unclear whether these works were installed to facilitate the previous buildings on the site. In any event, the remedial action should be proportionate in the sense being the minimum necessary to remedy the breach. In my view, the removal of the hard standings if they existed prior to the alleged development would be excessive and I am required to

consider whether there is a lesser step which would achieve the purpose of the notice with less cost and disruption.

59. I therefore conclude that the removal of the slabs and foundations is excessive, and this should be removed from the enforcement notice. The ground (f) appeal succeeds to this limited extent. I shall vary the requirement accordingly.

### **Appeal A - The ground (g)**

60. The ground of appeal is that any period specified in the notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

61. The appellant's ground of appeal is that both buildings retain a high second-hand value and six months to find alternative storage, demolish the buildings and sell and recoup some value is an inadequate timescale. The appellant seeks 12 months as the time for compliance.

62. The Council acknowledge that the removal of the land all the building materials and the onward sale of the second-hand buildings could take longer than 6 months. It is agreed to the variation of the enforcement notice to allow 6 months for requirement 5(i) and 12 months for requirement 5(ii).

63. It is noted that the Council is willing to accept 12 months as a period of compliance in relation to requirement 5(ii) and I shall vary the notice accordingly. Despite that less work would result from the limited success under the ground (f), I consider that 9 months for the period of compliance for requirement 5(i) is proportionate given the need for storage on the site for one building has been justified in part under the ground (a) appeal and the deemed application. I consider that 9 months for requirement 5(i) would be proportionate when considering the conflicting matters of the public interest against the private interests of the appellant. This would allow time to prepare a planning application for a building within the site but bearing in mind the advice contained in PPW (section 6.4) on biodiversity and ecological networks.

64. To this extent the appeal on ground (g) succeeds.

### **Conclusions**

65. For the reasons given, Appeal A is varied accordingly, but subject to these variations the appeal is dismissed, and the enforcement notice is upheld.

66. For the reasons given, Appeal B is dismissed.

*Iwan Lloyd*

INSPECTOR