



Appeal Decisions

Inquiry held on 3 July 2007

Site visit made on 3 July 2007

by **Stuart M Reid** D Arch (Hons) RIBA

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
24th August 2007

Appeal A: APP/J3910/C/06/2028711

Langley Green, Langley Burrell, Chippenham, Wiltshire SN15 4LL

- 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 Ms H Fairfax against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD3016.
- The notice was issued on 7 September 2006.
- The breach of planning control as alleged in the notice is the erection of a blue stained timber shed and raised gardens including brick and railing retaining structures.
- The requirements of the notice are to remove the blue stained timber shed and raised gardens, including brick and railing structures and restore the land to its original condition, as it was immediately prior to the unauthorised development having taken place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the *Town and Country Planning Act 1990* as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/J3910/C/06/2028718

Langley Green, Langley Burrell, Chippenham, Wiltshire SN15 4LL

- 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 Ms H Fairfax against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD3017.
- The notice was issued on 7 September 2006.
- The breach of planning control as alleged in the notice is the material change of use of land from residential and agriculture to a mixed use of residential, agriculture and equestrian use and the construction of wooden stables/sheds, gallop and paddocks enclosure, pond and bridges, play equipment and road.
- The requirements of the notice are to:
 1. Cease the use of the land cross-hatched for residential curtilage and/or equestrian use.
 2. Remove the operational developments and other materials associated with the unauthorised development including: the gates and fencing setting out the gallop and paddocks enclosure, the pond and bridges, the play equipment, the road leading up to the north-eastern corner of the outbuildings from the Crossing Lane and the wooden stables/sheds.

3. Restore the natural contours of the ground from which development and materials have been removed and ensure that the surface comprises only topsoil to a depth of at least 300 mm.
- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the *Town and Country Planning Act 1990* as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Appeal C: APP/J3910/F/06/2028710

Langley Green, Langley Burrell, Chippenham, Wiltshire SN15 4LL

- The appeal is made under section 39 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended by the *Planning and Compensation Act 1991*.
- The appeal is made by Ms H Fairfax against a listed building enforcement notice issued by North Wiltshire District Council.
- The Council's reference is AD3015.
- The notice was issued on 7 September 2006.
- The contravention of listed building control alleged in the notice is the erection of a metal arch and railings on the northern elevation of the main building and the addition of concrete and plastic cubes to roof of the outbuilding to the east of the main house.
- The requirements of the notice are to:
 1. Remove the metal arch and railings from the northern elevation of the main house.
 2. Remove the concrete and plastic cubes from the roof of the outbuilding restoring the roof area they are removed from to its previous condition.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1)(c) and (i) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Summary of Decision: The appeal is dismissed and the listed building enforcement notice is upheld with a correction.

Applications for costs

1. At the Inquiry an application for costs was made by North Wiltshire District Council against Ms H Fairfax, and by Ms H Fairfax against North Wiltshire District Council. These applications are the subject of separate Decisions.

Procedural matters

2. It was confirmed at the opening of the inquiry that the appeals against Appeal A and Appeal B would both be made additionally on ground (d), and thus all of the evidence was taken on oath. No appeals on ground (a) were made, but the fees were paid for the deemed planning application to be considered for both Appeal A and Appeal B.
3. It was agreed at the inquiry that the enforcement notice for Appeal B incorrectly referred to "gallop and paddocks enclosure" in Schedule 2 whereas it should have referred to "paddocks enclosures". In Schedule 4 the same error occurs. As I can correct this without injustice to the parties, I shall do so.

4. The Council accepted that there was an error in the plan attached to the listed building enforcement notice, as part of one of the buildings was excluded. Again I can correct that without causing injustice by attaching a corrected plan to the notice.

Appeal A

The appeal on ground (d)

5. For this ground of appeal to succeed it is for the appellant to show that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged in the enforcement notice.
6. Section 171B(1) of the *Town and Country Planning Act 1990* as amended states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The enforcement notice was issued on 7 September 2006, so it is necessary to show that the operations were substantially complete on or before 7 September 2002.
7. The burden of proof in a ground (d) appeal is on the appellant. The appellant has put forward no evidence to support her view that the shed was in position on or before 7 September 2002. Indeed, a photograph put in by the appellant and dated by her 2002 appears to show it in another position and unpainted.
8. Similarly, she has put forward little evidence to support her view that the raised garden is at the "original" level, and that the brick and railing structures were constructed 4 years or more before the date of issue of the enforcement notice. The appellant stated that she would call evidence from 2 or 3 witnesses about the original level, but did not do so.
9. She stated that the brick and railing structures were built to retain the bank. Whilst it may be that the garden is at the original level, it could well be true that the land around it has been lowered, which gives it the impression of being a raised garden, and needing the retaining structures. Either way, it makes no difference to my conclusions on this ground of appeal.
10. The appellant added that she had applied for planning permission for the brick and railing structures in 2004, but the letter from AW Francis to the Council dated 8 September 2004 (Document 5) makes it clear that the brick and railing structures were part of a group of other works for which further planning and listed building applications would be made, as they were not within Mr Francis' definition of the listed building consent application for "conversion of outbuilding to student accommodation and alterations to the adjacent barn". The June 2003 Block Plan shows this area as a Nursery. The listed building consent granted on 21 January 2005 was for the "conversion of outbuilding to provide student accommodation", and clearly not for the brick and railing structures.
11. The appellant refers, in her bundle related to this matter, to a "builders invoice" as showing that the brick and railing structures were out of time.

However, the document, dated 18 March 2002, which is a request for a delivery date from a manufacturer to a builder's merchant and not an invoice, does not state what the materials to be delivered are, or when they were delivered, or what they were used for, and I do not therefore find it to be at all helpful. Elsewhere in the evidence she has written on another copy of this document that this was for the "second lot of cobbles", and thus apparently unrelated to this matter. The Council's photographs of 6 April 2004 show what would appear to be work in progress in this area.

12. On the balance of probability, I do not consider that the shed has been in its present position sufficiently long to prevent enforcement action being taken. I also do not consider that the raised gardens and the brick and railing structures have been present from on or before 7 September 2002. The appeal on ground (d) therefore fails.

The deemed planning application

13. Langley Green House was listed in Grade II on 29 February 1988. It is situated within the Langley Burrell Conservation Area.

Main issue

14. From my inspection of the site and its surroundings, and from the representations made at the inquiry and in writing, I consider that the main issue in this appeal is the effect that the erection of a blue stained timber shed, and raised gardens including brick and railing retaining structures, have on the special architectural and historic interest of the listed building, and thus on the special character of the Langley Burrell Conservation Area within which it is situated, bearing in mind its location in the countryside.

Planning policy

15. The Development Plan includes the Wiltshire and Swindon Structure Plan 2016 and the North Wiltshire Local Plan 2011. Policy HE7 in the Structure Plan and Policies C3, HE1 and HE4 of the Local Plan are relevant to the appeal. They seek to ensure that development respects the natural and historic environment, that it preserves or enhances the character or appearance of conservation areas, and that it preserves or enhances the listed building, its setting and any features of special architectural or historic interest that it possesses.
16. In determining this appeal I shall also take into account relevant Government advice that is contained in Planning Policy Guidance: *The Countryside - Environmental Quality and Economic and Social Development* (PPG7) and Planning Policy Guidance: *Planning and the Historic Environment* (PPG15).
17. As the appeal involves a listed building, I am required to take account of section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
18. Similarly, as the appeal building is in a conservation area, I am required to take account of section 72(1) of the *Planning (Listed Buildings and*

Conservation Areas) Act 1990 as amended which states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Reasons

19. The listed building is an attractive and distinguished building, with a domestic setting of gardens and outbuildings. The shed, raised gardens and brick and railing structures are insensitive additions to its setting, and are jarring and discordant. They fail to respect the special architectural character of the listed building and its setting by being so out of keeping with it, and they physically and visually damage an important part of our historic heritage.
20. It follows that the shed, raised gardens and brick and railing structures have a similarly harmful effect on the agricultural and rural character of the area as they do on the listed building and its setting as well as on the Conservation Area, because they are equally out of keeping with the locality. The appellant has suggested painting the shed another colour, but no colour could prevent the harm that this cheap and unattractive shed does to the setting of this significant historic building.
21. The shed, raised gardens and brick and railing structures are thus contrary to national and local policy which seeks to preserve listed buildings, as well as the advice in PPG15. For the very same reasons they are contrary to national and local policy which seeks to preserve or enhance the character or appearance of conservation areas, and they also do not respect the natural environment. The deemed planning application does not succeed.

The appeal on ground (f)

22. Ground (f) is that the appellant considers that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
23. The appellant has suggest no lesser steps, and I do not consider that any lesser steps would overcome the objections to the harm that these matters are causing. The appeal on ground (f) fails.

Appeal B

The appeal on ground (c)

24. For this ground of appeal to succeed it is for the appellant to show that those matters (if they occurred) do not constitute a breach of planning control.
25. The listed building consent granted on 21 January 2005 clearly does not authorise anything other than the "conversion of outbuilding to provide student accommodation", that is works to the building. It specifically excludes a change of use to the building. The change of use of the land and the operations which have taken place on it do not have planning permission, nor are they permitted development under *The Town and Country Planning (General Permitted Development) Order 1995*. There is a clear change of character between the rural character of this land and the domestic curtilage and outbuildings to the listed building. In policy terms the land is in the

countryside and is not a residential curtilage, and has a very similar rural character to Long Summers, the adjoining field.

26. The evidence put forward by the appellant of an orchard use which was not commercial, and of tea parties taking place on the land, even if it were to be supported rather than asserted, is not sufficient to establish a change of use. Many areas of land in the countryside are used for picnics and even tea parties, but that does not alter their planning classification as being in the countryside in policy terms. Furthermore, whether the fruit growing activity is "commercial" or not is not relevant. If the land was used for fruit growing it would fall to be considered as an agricultural activity within the definition in section 336 of the 1990 Act. It is evidently agricultural land in the countryside, to which national and local countryside policies apply.
27. The non-residential use is as an equestrian use. Equestrian uses are not agricultural uses, although some horse activities may be agricultural. That is not the case here, and the equestrian use does not have planning permission. The operations include gates and fencing for the paddocks, and wooden stables/sheds, for which again there is no planning permission. The pond and bridge do not have planning permission, nor does the play equipment and road. Furthermore, none of these matters are permitted development under the terms of *The Town and Country Planning (General Permitted Development) Order 1995*.
28. As a matter of fact and degree this ground of appeal does not succeed.

The appeal on ground (d)

29. Section 171B(1) of the *Town and Country Planning Act 1990* as amended states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
30. Section 171B(3) of the Act states that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The enforcement notice was issued on 7 September 2006, so it is necessary to show that the change of use had occurred on or before 7 September 1996 and that the operations were substantially complete on or before 7 September 2002.
31. Dealing firstly with the change of use, the appellant stated that she bought the Dartmoor ponies last year to eat the weeds, and for her to ride. There are a total of 6 ponies, and she stated she had applied for planning permission for a livery yard. Whilst there might have been equestrian activity in the past on the appeal site, no firm evidence was put to me to show that such a use had continued for a period of 10 years at a similar level to that which was present at the time of issue of the enforcement notice. Moreover, there are many other ways to deal with weeds without the need for this harmful use, contrary to policy.
32. Turning to the operations, the pond had been moved about 20m, the appellant stated, from its historic position. It was not disputed that the present pond

was a new pond. She stated that it was started about 1998 or 1999, and a bridge constructed in about 2002. Photographs put in by the appellant show a roughly circular trench with a little water in, the approximate shape of the pond, forming an island in the middle of it, with a bridge structure being built. The appellant has written on "2002", which she relates to a visit of her brother who is in the photograph. Clearly there was no finished pond on that date.

33. The Council's photographs of 6 April 2004 show the bridge. The relative lack of water in the pond, and the state of the ground around it and on the island, make the area look like a construction site, albeit with some planting on the island, as though work was still continuing to complete the pond and island. The appellant thought that the pond was probably completed in 2004, presumably some time after April that year.
34. It certainly looked rather different in the Council's photographs sent in with their Statement of Case in January 2007, and when I saw it at my site visit, as it looked like a pond with an island and a bridge, and with its planting and other features settled in. It would seem that the pond and bridge were therefore not substantially complete, as they are required to be to avoid enforcement action, by 7 September 2002.
35. Although the play equipment has been moved, it has not been disputed that it was on the land and there is no evidence to support it having been there for the requisite period. Similarly, no evidence has been put forward to support the road having been in that precise position and of that precise length for the requisite number of years, although it is not disputed that an access has existed in that general locality for some while, albeit in a different position and with a shorter length, and ending in a different place. Although the appellant stated that she would call a witness to support her case she did not, in fact, do so.
36. On the balance of probability, I consider that the change of use of land from residential and agriculture to a mixed use of residential, agriculture and equestrian use and the construction of wooden stables/sheds, gallop and paddocks enclosure, pond and bridges, play equipment and road are not immune from enforcement action, and the appeal on ground (d) therefore fails.

The deemed planning application

Main issue

37. From the representations made at the inquiry and in writing, I consider that the main issue in this appeal is the effect that the change of use of land from residential and agriculture to a mixed use of residential, agriculture and equestrian use and the construction of wooden stables/sheds, gallop and paddocks enclosure, pond and bridges, play equipment and road have on the special architectural and historic interest of the listed building, and thus on the special character of the Langley Burrell Conservation Area within which it is situated, bearing in mind its location in the countryside.
38. There can be no doubt that the appeal site is agricultural land in the countryside. It is outside the settlement framework and is thus defined in policy terms as countryside. It is therefore not part of the residential curtilage, nor do I find any reason in the evidence before me to suggest that it is within

the listed building's curtilage. The equestrian use represents a harmful loss physically and visually of agricultural land and rural character.

39. In addition, the paraphernalia on the site is harmful in this attractive area. The stables/sheds intrude into the countryside, which is harmful. The paddocks are not an appropriate rural use and are damaging to the agricultural nature of the locality. The pond is large and unsightly with a domesticated design, and a man-made character, and does not look like a modest rural pond with an island such as one might find in the countryside. The bridge adds further man-made harm to the area. The play equipment, a swing, is clearly out of place as a piece of domestic paraphernalia in the countryside. Finally, the road is intrusive and out of keeping with the rural character.
40. I therefore consider that the change of use of land from residential and agriculture to a mixed use of residential, agriculture and equestrian use and the construction of wooden stables/sheds, gallop and paddocks enclosure, pond and bridges, play equipment and road are damaging to the rural, agricultural character of the area. For the same reasons they are harmful to the listed building and its setting, which they clearly fail to preserve. In consequence they neither preserve nor enhance the character or appearance of the Langley Burrell Conservation Area. They fail to accord with relevant national and local policy and the advice in PPG15. The deemed planning application does not succeed.

Appeal C

The appeal on ground (c)

41. For this ground of appeal to succeed it is for the appellant to show that those matters (if they occurred) do not constitute such a contravention.
42. The appellant asserted that listed building consent had been granted for these works, and that planning permission had been granted in 1992, reference N.91.2389.F, for the metal arch and railings. However, part of that application (which in any case was not for listed building consent) was for alterations to a boundary wall in association with tourist accommodation, and was refused.
43. Furthermore, the metal arch is not shown on the drawings that were put to me, and the railings that have been erected are entirely different to those shown on the drawings, so if listed building consent had been granted for the railings it would not have been for those which have been erected. No copy of the grant of listed building consent for the arch or railings that have been erected was put to me. I conclude that no listed building consent has been granted for the metal arch or railings.
44. Section 7 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended requires authorisation, that is listed building consent, for any works for the alteration (or extension) of a listed building in any manner which would affect its character as a building of special architectural or historic interest.
45. The question to be addressed in this ground (c) appeal is whether the works alleged in the notice, namely the erection of a metal arch and railings on the northern elevation of the main building, and the addition of concrete and

plastic cubes to the roof of the outbuilding to the east of the main house, have affected the architectural or historic character of the listed building.

46. This legal test is not one of harm, and not whether the works have a positive or negative effect. It is solely concerned with whether the works affect the character of the listed building. They are (or were) all plainly visible on the listed building and on the outbuilding, which falls to be treated as part of the listed building by virtue of section 1(5)(b) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended. They therefore affect the character of the listed building by reason of their visibility, as they are all prominent in views of these 2 buildings from the surrounding area.
47. As a matter of fact and degree, I consider that the appearance of the listed building has been materially altered by the works, and that the architectural and historic character of the listed building has been affected. It follows that the appeal on ground (c) does not succeed.

The appeal on ground (i)

48. For this ground of appeal to succeed it is for the appellant to show that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose.
49. The appellant states that she has removed the plastic cubes, but it would not be right to remove them from the listed building enforcement notice as they could be put back, and the Council would have to issue a further listed building enforcement notice to seek their removal. The appellant's view that the concrete cubes assist the balance of the structure is unwarranted, as they are plainly visually very unattractive and damaging to the listed building, and they harm its original design unacceptably.
50. Although concerns were expressed about possible structural difficulties removing them, it seems to me from what I saw at my site visit to be straightforward to remove what has been recently put there without harm. The appeal on ground (i) fails.

Conclusions

51. Some of the evidence raised was not strictly relevant to these particular planning appeals, because it referred, for example, to development in residential curtilages elsewhere rather than on agricultural land, or it did not involve a listed building and its setting, or it was outside the Conservation Area, or it involved permitted development rights not available here, or it dealt with matters of fact, history and non-planning law not germane to the strict legal tests in planning law. Matters pertaining to the reinstatement of the tennis court are not before me. I have, in any case, dealt with these appeals on their merits in the light of the evidence which has been put to me, and in accordance with current planning law.
52. For the reasons given above and having regard to all other matters raised, I conclude that these appeals should not succeed. I shall uphold the listed building enforcement notice, and the enforcement notices, and refuse to grant planning permission on the deemed applications for planning permission.

Formal Decisions

Appeal A: APP/J3910/C/06/2028711

53. I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/J3910/C/06/2028718

54. I direct that the enforcement notice be corrected by the deletion of the phrase "gallop and paddocks enclosure" in Schedule 2 and Schedule 4 and its replacement by the phrase "paddocks enclosures" in both Schedules. Subject to this correction I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C: APP/J3910/F/06/2028710

55. I direct that the listed building enforcement notice be corrected by the replacement of the plan attached to the notice with the plan annexed to these decisions. Subject to this correction I dismiss the appeal and uphold the listed building enforcement notice.

Stuart M Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms H Fairfax

John A Nuthall PPASI MRICS

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Appellant.

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FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks BTP Dip Law MRTPI

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DOCUMENTS PUT IN AT THE INQUIRY

- 1 Letter and plan from the Council dated 5 April 2004 put in by appellant.
- 2 Coloured plan identifying a road on the appeal site, put in by the appellant.
- 3 Bundle of photographs put in by the Council.
- 4 Bundle of listed building and planning permission decisions, put in by the Council.
- 5 Letter from AW Francis dated 8 September 2005 confirming that application reference 04/02015/LBC relates only to the Conversion of the Outbuildings to Student Accommodation.
- 6 Plan and letter from Ms Fairfax dated 20 June 2003, put in by the Council.