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## Appeal Decisions

Site visit made on 2 December 2010

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

**Decision date: 5 January 2011**

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### **Appeal Refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527 Land at Tewin Bury Farm, Hertford Road, Tewin, Herts AL6 0JB**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Vaughan Williams and Mr Ivor Williams against enforcement notices issued by East Hertfordshire District Council.
- The Council's references are E/08/0497/B and E/08/0497/B1.
- The notices were issued on 18 January 2010.

#### **Appeal Refs APP/J1915/C/10/2122521, 2122522**

- The breach of planning control as alleged in the notice is the erection of a double marquee building with an associated covered walkway, toilets and air conditioning units and the creation of hardstandings for the parking of vehicles.
- The requirements of the notice are to:
  - 1) Remove the unauthorised marquee(s) and associated structures; viz the covered walkway, the toilet block and the plant and machinery for heating and air conditioning the marquee(s) and toilet block. Such removal must include all bases, sub-bases, foundations and ducting, and all water, electricity, gas and telephone and sewage pipes or cables to include any cess pit or sewage treatment system that is used exclusively for the unauthorised development.
  - 2) Remove the car park hardstandings.
  - 3) Restore the land to its condition before the unauthorised developments took place.
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal by Mr Vaughan Williams (ref. 2122521) 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. The appeal by Mr Ivor Williams (ref. 2122522) is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 does not fall to be considered.

#### **Appeal Refs APP/J1915/C/10/2122526, 2122527**

- The breach of planning control as alleged in the notice is the material change of use of land from agricultural use to car parking uses incidental to the business of Tewin Bury Farm Hotel.
- The requirements of the notice are to cease the use of the land for car parking and restore the land to its condition before the unauthorised developments took place.
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal by Mr Vaughan Williams (ref. 2122526) is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal by Mr Ivor Williams (ref. 2122527) is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 does not fall to be considered.

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**Summary of Decisions: The appeals are dismissed and the enforcement notices as varied are upheld.**

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**Applications for Costs**

1. An application for costs was made by East Hertfordshire District Council against by Mr Vaughan Williams and Mr Ivor Williams and by Messrs. Williams against the Council. These applications are the subject of separate Decisions.

**Appeals on ground (c)**

2. Initially the appeals on ground (c) were made only in respect of the notice against the change of use. However, the subsequent arguments rely on permitted development rights and therefore imply the ground (c) appeals relate to both the operational development and change of use notices. I will proceed on that basis. Being a legal ground of appeal the onus is on the appellants to demonstrate on the balance of probability that there has not been a breach of planning control. At the outset I note that the case presented is lacking in detail and consistency.
3. Permitted development rights for agricultural buildings and operations is set out in Part 6 of Schedule 2 to Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). Although not specifically stated, my understanding is that the appellants are relying on the provisions under Class A – development on units of 5 hectares or more<sup>1</sup>.
4. There are two extensive linked areas of hardstanding, to the north and west of the marquee. The appellants say the hardstanding was originally constructed for agricultural purposes associated with the surrounding farmland, for the storage and parking of agricultural machinery, and for the storage of hay and straw bales. However, this statement does not explain why the work was reasonably necessary for the purposes of agriculture within the unit. A number of questions arise, including why such a large area of hardstanding was required.
5. The appellants at first said the area of land “has been in use for many, many years” and that it was not constructed at the time the marquee was erected. The aerial photographic evidence submitted subsequently by the Council shows that the hardstandings were not present in July 2001, a point the appellants have not attempted to dispute. Instead they say that the hardstanding was provided in accordance with the ‘rolling allowance’ renewed every two years under the permitted development limits. However, there is no information on when the work or stages of the work were done. The probability is that the hardstandings were formed sometime between July 2001 and 2006, when the marquee was erected. This timescale does not easily allow for the hard surfaces to be provided under the rolling allowance given the size of the area involved.
6. My conclusion is that the operational development to create the areas of hard standing was not permitted development under Part 6 of the GPDO.

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<sup>1</sup> In summary, Class A permits any engineering operations which are reasonably necessary for the purposes of agriculture within the unit. Under A.1(d)(i) development is not permitted by Class A if the ground area which would be covered by any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations ..... would exceed 465 square metres. The area comprises the ground area that would be covered by the proposed development together with the ground area of any works within 90 metres that have been provided within the preceding two years.

7. Turning to the material change of use, when I visited the site there was some agricultural equipment and bales on part of the western car park. This would be consistent with some limited, occasional use of a small area of hardstanding by the farm. However, the areas of hardstanding are extensive. In the absence of specific evidence to the contrary, I consider it improbable that they would be used primarily for agricultural purposes, particularly in view of the appellants' evidence about the popularity of the marquee, its importance to the hotel business all year round and the large numbers of people accommodated.
8. Moreover, in order for the parking to be an ancillary use, as the appellants assert, it must have a functional relationship to a primary use. This functional relationship must be one that is normally found, not one based on the specific circumstances of the case. The wording of the breach of planning control has linked the parking to the hotel use, which is probably the appropriate functional relationship, not one based on agricultural use. The appellants have failed to demonstrate that the material change of use described by the notice has not taken place.
9. I conclude the appeals on ground (c) do not succeed.

### **The deemed applications**

10. There are two deemed applications, one for the operational developments and the second for the material change of use of the land. The appellant has confirmed that temporary permission is being sought for the marquee and associated structures whilst an alternative permanent building is secured.

### **Main Issues**

11. The main issues are:
  - Whether the developments are inappropriate for the purposes of Planning Policy Guidance Note 2 and development plan policy.
  - The effect of the developments on (a) the openness of the Metropolitan Green Belt and the purposes of including land within it, (b) the character and appearance of the surrounding rural area, (c) the setting of the listed buildings at Tewin Bury Farm, and (d) the noise environment and the living conditions of nearby residents.
  - The weight to be attached to the other considerations including the contribution of the developments to the hotel business and the farm enterprise, local employment and businesses and the work of charities.
  - If the developments are inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the developments.

### **Reasons**

#### ***Inappropriate development***

12. The double marquee building provides space for holding large functions and exhibitions as part of the hotel complex. The main structure is linked by a walkway to a toilet block that has utilised a structure originally placed on the land for the farm. The air conditioning plant is purpose constructed equipment that services the marquee. The marquee and associated infrastructure are not

essential for outdoor sport, for the purposes of agriculture or forestry or any other of the purposes identified in paragraph 3.4 of PPG2 and by Policy GBC1 of the Local Plan<sup>2</sup>. Therefore inappropriate development has taken place.

13. The car parks have not maintained openness by reason of the replacement of agricultural land by extensive hard surfaced areas and their use for the parking of motor vehicles. There has been encroachment into the countryside. Again inappropriate development has taken place when tested against national and local policy.
14. Inappropriate development is by definition harmful to the Green Belt. I attach substantial weight to this harm in view of the presumption against such development set out in PPG2.

### ***Effect of the development***

#### *Green Belt*

15. The double marquee is a large structure, with associated plant and facilities. As far as I am able to see from the Council's aerial photographs, it has been erected on previously open land within the river valley. Its physical presence has resulted in a harmful loss of openness to the west of the main hotel complex.
16. The car parks cover a large area of land and it seems that a certain amount of remodelling of ground levels has taken place to allow for access and circulation. The appellants say the northern area provides parking for about 70 cars, the western area accommodates about 150 cars. Even when free of cars the appearance of the hard surface treatment is a marked contrast to the adjacent fields and woodland. The car parks would be lit in hours of darkness, which would contribute further to their impact. The loss of openness has been severe, despite the planting to the northern boundaries.
17. One of the purposes of including land within the Green Belt is to assist in safeguarding the countryside from encroachment. Clearly the developments conflict with this purpose because of the very significant change in the use and appearance of the land and the considerable extension of the developed site into the countryside to the west.

#### *Character and appearance*

18. Tewin Bury Farm is located within the attractive landscape of the River Mimram, where the gentle slopes and mature woodlands provide a rural backdrop to the hotel complex. The original farm buildings have been converted to hotel accommodation, including conference, meeting and reception rooms. Car parking was mainly contained in discrete blocks within the courtyards. The developed site had a reasonably compact form and layout.
19. The marquee and car parking areas have extended the complex to the west by some considerable amount. As a result the development now sprawls along the valley. There are glimpses of the marquee from the main road to the south but the visual intrusion of the developments is most clearly seen from the public footpath that follows a route up the hill towards Tewin. Because you look down on the site it would not be possible, even within a longer timescale, to screen the development with new planting.

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<sup>2</sup> East Herts Local Plan Second Review 2007

20. The double marquee is basically a lightweight frame covered with a white plastic material. It does not complement or relate well to the traditional building forms and materials on the site. The car parks, and the western area in particular, have little visual merit or landscape structure, because of the size of the area covered, the surface material and the limited amount of planting. The Council's aerial photographs indicate that their formation has resulted in the loss of trees and hedgerows, features which would have enhanced the local landscape.
21. Planning permission was granted in 1993 to relocate a portal frame barn to the site occupied by the marquee<sup>3</sup>. The appellant has said that the agricultural building is no longer required by the farm and that to reintroduce farming activities into the area used by the hotel would be inappropriate<sup>4</sup>. Consequently this factor carries very little weight, even if the permission remains extant.
22. I conclude that the developments have a harmful effect on the character and appearance of the landscape and surrounding rural area.

#### *Setting of listed buildings*

23. Tewin Bury Farm House, together with several of the farm outbuildings are Grade II listed buildings, dating to the 18<sup>th</sup> and early 19<sup>th</sup> century. They are important in the history of the locality and the farming community as well as having architectural interest. The new developments are a little way from the listed buildings but nevertheless they form part of the Tewin Bury Farm site. The marquee, associated facilities and car parks are essentially functional spaces and make little reference in their design to the historic setting. They have a negative impact on the significance of the heritage assets.

#### *Noise*

24. A noise report accepted that the limited amount of sound insulation material between the two skins of the marquee would have little effect on noise breakout. Noise monitoring led to a number of recommendations to reduce levels of noise and noise emissions. The appellant says the improvements have been largely undertaken, other than those relating to the structure itself.
25. A planning condition could require an agreed scheme, based on these measures, to be carried out in full and maintained. However, the low standard of insulation qualities of the marquee remains my concern. I am therefore unable to rule out noise nuisance to nearby residents and noise intrusion (principally music) into a quiet rural environment in the future.

#### *Conclusion*

26. The developments are not of a high standard of design and layout and they do not reflect the local distinctiveness of the traditional buildings and landscape setting. They fail to comply with Policy ENV1 of the Local Plan.

#### ***Other considerations***

27. The appellants and their family have a long association with Tewin Bury Farm. Over the period since the early 1970's they have increased the land holdings

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<sup>3</sup> 3/93/1118/FP Change of use of redundant barn (The Stables) to meetings and conferencing and relocation of straw barn to provide additional parking.

<sup>4</sup> See design and access statement paragraph 3.5

and diversified into the hotel trade. The marquee allows them to cater for large events and functions such as weddings, conferences, fund raising events and exhibitions. These functions could not be accommodated in the smaller converted buildings. It is also likely that marquee trade has an indirect positive effect on trade at the hotel and restaurant through use of bedroom accommodation, increasing awareness of the place and so on.

28. The extra capacity created by the marquee makes a significant contribution to turnover but the appellant declines to comment on its contribution to profitability of the business. This leads me to conclude that the marquee is an important but not essential aspect of the business.
29. The Local Plan recognises the importance of encouraging appropriate rural diversification and gives examples of bed and breakfast accommodation, farm shops, equestrian uses and holiday cottages. The hotel and conference business at Tewin Bury Farm has grown to a large scale enterprise. It has not been made clear how it now relates to the farm in terms of business structure and income. Whilst the increase in land holdings has been described there is little information about the current farming practices and no farm management plan. It has not been adequately and explicitly explained how the developments would support the continuation of the farm enterprise as a whole. The position has now been reached where the scheme is unable to re-use existing farm buildings. The new building does not satisfy the design requirements set out in Policy GBC7. Therefore the criteria in Policy GBC8 on rural diversification are not satisfied, which much reduces the weight I give to this consideration.
30. The success of the marquee trade has resulted in an extra 20 staff over a four year period, a significant contribution to local employment. Local businesses also benefit because the appellants have a policy of buying supplies and using tradespeople in the area.
31. Therefore I conclude that the developments form part of a successful and expanding business that makes a positive contribution to the local rural economy and employment. I attach significant weight to these considerations, bearing in mind the possibility that the same benefits could be derived from an alternative form of development that is more sympathetic to its surroundings.
32. Many of the functions held at the marquee are fund raising events for charities. The size of the marquee is an advantage because of the ability to accommodate large numbers of guests and to offer space at an affordable rate. Letters from various charities show that the organisation, venue and support of the appellants are much appreciated and indeed there is support from the local community. There may not be a similar venue in the area and it seems to fulfil a need in the market. However, the fall in bookings over the last year, which is attributed to the uncertainties of the enforcement action, suggests that there are alternatives available in the wider area. I attach some weight to this community support.
33. The appellants say that the profitability associated with the marquee would enable the restoration of the river frontage and the Repton landscape surrounding the hotel. I am not satisfied this type of gain, which is expressed only in general terms, meets the tests for either a planning obligation (which has not been submitted) or a planning condition to secure landscape improvement. I attach no weight to this consideration.

34. The appellants have supported nature conservation projects on nearby land but because this support is not directly attributable to the marquee it has little weight.
35. The appellants have outlined the current green policy in place on recycling and use of bus transport and their future plans for producing their own food, re-opening a farm shop, planting coppice woodland, energy efficiency and providing a riverside walk. However they have not given sufficient information to allow relevant existing practices to be linked to the developments by planning condition and in particular the levels of car parking are not consistent with encouraging sustainable forms of transport. Future plans are expressions of intent only. I attach very little weight to these considerations.

### ***Balancing exercise***

#### *Deemed application for operational development*

36. The double marquee, associated infrastructure and car parks cause harm to the Green Belt by reason of inappropriateness. Then there is the additional actual harm to the open character of Green Belt and the encroachment into the countryside. The large structure and extensive car parking areas are intrusive in the rural surroundings and out of place within the setting to the listed buildings. The poor quality of noise insulation of the marquee remains a concern. The weight against the operational developments is very substantial. Even allowing for the fact a temporary permission is sought, the considerable harm to the Green Belt and local environment is not clearly outweighed by the developments' positive contribution to the local rural economy and employment, community support and broader environmental projects.
37. The very special circumstances necessary to justify the development do not exist. The development is unacceptable within the terms of Policy GBC1 of the Local Plan and national policy in PPG2.

#### *Deemed application for change of use*

38. The material change in use of the land causes harm to the Green Belt by reason of inappropriateness, which alone has substantial weight. I also attach considerable weight to the additional visual harm that results from the size of the car parks and the large number of cars that may be parked, which in turn seriously erodes the open character of the Green Belt in this location, intrudes into the rural landscape and detracts from the setting of the heritage assets.
39. The appellant has not clearly explained why permission should be granted for the change of use to incidental car parking for the hotel or placed the development within a wider context of encouraging sustainable travel. It seems to me reliance is placed on the car parking use facilitating the use of the marquee. Therefore the use indirectly contributes to the local rural economy and employment. Even so, this benefit does not clearly outweigh the identified harm. The very special circumstances necessary to justify the development do not exist. The change of use of the land is unacceptable within the terms of Policy GBC1 of the Local Plan and national policy in PPG2.
40. The appeals on ground (a) do not succeed.

## **Appeals on ground (f)**

### *Operational development*

41. The purpose of the notice is to remedy the breaches of planning control. The requirements are not excessive to achieve that purpose.
42. Furthermore, for the reasons set out above in paragraph 21, it is not necessary to allow for retention of the marquee's base and sub-base to enable relocation of an agricultural building. In relation to the removal of the car park hardstandings, I have commented on the lack of evidence of their sustained use for agricultural purposes when dealing with the ground (c) appeals. Moreover, in the absence of any specific information, I would be unable to substitute a lesser requirement, even if the appellants' argument was well founded. Retention of an area for agricultural use is unable to be accommodated within the requirements and is a matter that would have to be pursued separately with the local planning authority. The appeals on ground (f) fail.

### *Change of use*

43. The basis of the appellants' case is that the hardstandings are used jointly by the hotel and the agricultural operation. I have considered and rejected a similar line of argument in the ground (c) appeals and concluded on the evidence that the breach of planning control as described in the notice has taken place. The notice seeks to remedy this breach by requiring the unauthorised use to cease, which is not excessive. In this respect the appeals on ground (f) fail.
44. The second part of the requirement, to restore the land to its previous condition, is dealt with through the notice against the operational development and therefore should be omitted.

## **Appeals on ground (g)**

45. The compliance periods of 6 months would be adequate to carry out the physical works to remove the unauthorised developments and cease the use. However, I consider that the effect on the business and employment should be minimised. Time needs to be allowed to fulfil existing bookings, to enable proposals for a replacement building to be determined and to make arrangements in response to the outcome. Also if it is necessary to provide an alternative location for agricultural storage, time needs to be allowed for a review of the holding, consideration of options and securing permission if necessary. Compliance periods of 12 months are reasonable. To this extent the appeals on ground (g) succeed.

## **Conclusion**

46. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with variations and refuse to grant planning permission on the deemed applications.

## **Decisions**

### **Appeal refs. APP/J1915/C/10/2122521, 2122522**

47. I direct that the enforcement notice be varied by the substitution of 12 months as the period for compliance. Subject to this variation I dismiss the appeals,



uphold the enforcement notice and in respect of appeal ref. 2122521, I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal refs. APP/J1915/C/10/2122526, 2122527**

48. I direct that the enforcement notice be varied by the deletion of the words "and restore the land to its condition before the above unauthorised developments took place" in section 5 and the substitution of 12 months as the period for compliance. Subject to these variations I dismiss the appeals, uphold the enforcement notice and in respect of appeal ref. 2122526, I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Diane Lewis*

Inspector