The Planning Inspectorate

Appeal Decision

Inquiry opened 16 November 2021

Site visit made on 16 November 2021

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/U2370/C/20/3256803
Lower Wild Boar Cottage, Rawcliffe Road, St. Michaels, PRESTON PR3 0UH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Caroline Hanson against an enforcement notice issued by Wyre Borough Council.
- The notice was issued on 29 June 2020.
- The breach of planning control as alleged in the notice is without planning permission:
  (a) the erection of a building (hereinafter referred to as "the Building") in the approximate location shown edged and hatched blue on the attached plan;
  (b) A material change in the use of the Land consisting in the use of the Building as a dwellinghouse and the use of other parts of the Land for ancillary or incidental purposes;
  (c) The laying out and constructions of a means of access on to the highway and a driveway (hereinafter referred to as "the Access and Driveway") in the approximate location shown edged purple on the attached plan;
  (d) The erection of a wooden store to house a gas storage tank ("hereinafter referred to as "the Store and Tank") in the approximate position marked A on the attached plan;
  (e) The erection of a wall over 1.0 metre in height adjoining a highway (hereinafter referred to as "the Wall") in the approximate location marked B on the attached plan; and
  (f) The erection of gateposts over 1.0 metre in height adjoining a highway (hereinafter referred to as the "the Gateposts") in the approximate locations marked C and D on the attached plan.
- The requirements of the notice are:
  (a) Cease the use of the Building as a dwellinghouse;
  (b) Cease the use of the Land for any purpose ancillary or incidental to the use described in sub-paragraph (a);
  (c) Remove the Building, the Driveway, the Wall, the Gateposts and the Store and Tank from the Land together with all materials, debris or waste arising from their removal; and
  (d) Re-cover the areas of the Land on which the Building, the Driveway, the Wall, the Gateposts and the Store and Tank respectively stood with topsoil in such volume and quantity as to ensure that those areas of the Land are restored to the same level as they were prior to the carrying out of the unauthorised development ("Topsoil") and then sow the Topsoil with grass seed.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) 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.

Summary of Decision: The appeal is allowed in part on grounds (c) and (d) and the enforcement notice is quashed after planning permission is granted in the terms set out below in the Formal Decision.

Matters concerning the notice

1. In addition to the matters alleged, which fall within s171A(1)(a) of the 1990 Act[1], the Council claims that the erection of the building contravenes condition 6 of planning permission reference: 91/326/FUL[2]. Condition 6, in effect, removes permitted development rights for alterations and extensions to the dwelling known as Lower Wild Boar Barn and for outbuildings, other structures and enclosures to be erected within its curtilage. While condition 7 of that planning permission refers to a plan showing the extent of Lower Wild Boar Barn's curtilage, no such plan was attached to the planning permission. Regardless of the extent of Lower Wild Boar Barn's curtilage, the dwelling identified in the notice is not an alteration or extension of that dwelling nor is it a curtilage building to it. For this reason, the erection of the building does not represent a breach of condition 6, and therefore the alleged breach of planning control does not include matters that fall within s171A(b).

2. Amongst other things, the notice alleges the *'erection of a building'* and *'a material change in the use of the Land consisting in the use of the Building as a dwellinghouse and use of the land for ancillary or incidental purposes'*. There is no dispute between the appeal parties that the building was erected as a dwelling from the start and subsequently occupied and used as a single dwellinghouse. In line with the leading case *Welwyn*[3], a material change of use of the building has not therefore occurred as a matter of fact. The main parties understood that allegation (b) is directed at the material change in the use of the land to a use for residential purposes, which arises from the erected building being used as a dwelling. No injustice would arise from my correction of the notice to *'(b) A material change in the use of Land to use for residential purposes'*.

3. The requirements should reflect the matters alleged. The allegations include the laying out and construction of a means of access on to the highway and a driveway. The corresponding requirement (c) does not include the removal of the means of access onto the highway. The Council confirmed that there was an existing field access in the approximate position of the current means of access and therefore requiring its removal would go beyond what is necessary to remedy the breach.

4. The Council further confirmed that a track led from the existing access into the former field. While requiring the operational development to be removed is necessary, what happens to the land thereafter can only go so far as is necessary to remedy the breach. The removal of all the driveway and the land's reinstatement with topsoil and grass goes beyond what is required to return the land to its former condition. It was agreed that requirements (c) and (d) should be varied and a new requirement (e) added so that the land is returned to its condition before the development occurred. Amending the requirements in this way would not cause injustice and would not go beyond what is necessary to remedy the breach.

[1] Town and Country Planning Act 1990 as amended
[2] 91/326/FUL was for the conversion of a barn to residential dwelling and garage and the resultant dwelling is now known as Lower Wild Boar Barn
[3] *Welwyn Hatfield Council v SSCLG* [2011] UKSC 15 2 AC 304

Preliminary matters and background

5. The Inquiry opened on 16 November 2021 and adjourned due to the absence of representing Counsel for the Council. The site visit took place on 16 November 2021 and I was accompanied by representatives of the main parties. The Inquiry resumed on 8 March 2022 and sat for 3 days. The evidence was affirmed at the Inquiry.

6. On 3 April 2020 the Council issued an enforcement notice in respect of this site, alleging similar breaches of planning control to those considered at the inquiry, but it was subsequently withdrawn ('the withdrawn notice'). A second notice was issued and that is the subject of this inquiry ('the notice'). The material date for achieving immunity from enforcement action is therefore calculated from the issue date of the withdrawn notice rather than the notice[4].

7. Planning permission was granted for the conversion of a garage and store into a holiday let unit, and various other planning permissions were granted for extensions to that holiday let unit. It is a matter of common ground that the garage and store referred to in these planning permissions was not converted and was instead demolished before a new dwelling was erected. The appellant conceded that there is no fallback position, as not only are those planning permissions no longer extant, but the garage and store to which they relate no longer exists.

Appeal on ground (c)

8. An appeal on this ground is that the matters, if they occurred, do not constitute a breach of planning control. The appellant claims that the access and driveway, wall, gateposts, store and tank are permitted development and benefit from express planning permission granted by Classes E and F, Part 1 and Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('the GPDO').

Wall and gateposts

9. Part 2 of the GPDO deals with minor operations and Class A relates specifically to any gate, fence, wall or means of enclosure. The wall and gateposts fall to be considered against Class A, which is not affected by the lawfulness or otherwise of the building. There is no dispute that the wall and gateposts exceed 1 metre but are less than 2 metres in height. Having regard to A.1(a)(i), the wall and gateposts would not benefit from express planning permission granted by Article 3(1) of the GPDO if they were to be found to be adjacent to a highway used by vehicular traffic.

10. There is no definition as to what is meant by 'adjacent' to a highway, it is a matter of judgement for the decision maker. Adjacent does not have to mean abutting or adjoining, it can mean being near to. Rawcliffe Road runs parallel to the site frontage, which is denoted by the hedgerow located beyond the grass highway verge. The wall and gateposts have been set back within the land beyond the widened access and behind the alignment of the hedgerow. Furthermore, the wall and gateposts are set at an oblique angle to the highway. Taking these factors together, I find that the wall and gateposts are not adjacent to the highway. The wall and gateposts therefore meet the limitations of Class A, Part 2.

[4] The relevant date by virtue of the second bite provisions

11. The wall and gateposts are development requiring planning permission. As they do not exceed the limitations in A.1(a)(i), Part 2 they are permitted development. The wall and gateposts benefit from planning permission granted by Article 3(1) of the GPDO. The wall and gateposts do not therefore constitute a breach of planning control.

Driveway, gas storage tank and wooden store

12. Classes E and F, Part 1 of the GPDO set out permitted development rights conferred in relation to the erection of incidental buildings, containers for domestic heating purposes and incidental hard surfaces in the curtilage of a dwellinghouse. Article 3(5) of the GPDO confirms that permitted development rights do not apply to an existing building where *'the building operations involved in the construction of that building are unlawful'.*

13. The driveway, wooden store and gas storage tank may fall within the limitations of Classes E.1, E.2 and F.1 of the GPDO. However, the evidence shows that the installation of the gas storage tank was carried out as part of the construction of the dwelling in order that heating could be provided. The aerial images also show that the erection of the wooden store and the construction of the driveway had been carried out by 17 July 2017. It is, therefore, more than likely that they were provided before the dwelling could have become lawful. These operational developments could not therefore benefit from permitted development rights conveyed under Classes E and F, Part 1 of the GPDO due to Article 3(5).

14. The access, driveway, gas storage tank and wooden store are development requiring planning permission and that permission has not been granted. These works constitute a breach of planning permission.

Conclusion on ground (c)

15. For the reasons given above, the ground (c) appeal succeeds in respect of the walls and gateposts only.

Appeal on ground (d)

16. An appeal on this ground is that, at the date the notice was issued, it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant time periods for achieving immunity from enforcement action are 4 years for the building, access, driveway, wooden store and gas storage tank, and 10 years for the residential use of the land. While the building may achieve immunity, its use as a dwellinghouse is not ancillary to its construction. Therefore, having regard to *Welwyn*, it is feasible that the building may have achieved immunity when its use as a dwellinghouse has not. The material dates are therefore 3 April 2016 for the building and 3 April 2010 for the residential use of the land. The onus of proof is on the appellant and the relevant test is the balance of probability.

17. As the use of the building as a dwellinghouse did not commence until approximately August 2018, it is not immune from enforcement action. The appeal on this ground only relates to the erection of the building and the construction of the access and driveway. The appellant therefore needs to show that the building, access and driveway were substantially completed on or before 3 April 2016.

18. The phrase *'substantially completed'* is taken as having the meaning established by Lord Hobhouse in *Sage v SSETR & Maidstone BC* [2003] UKHL 22. In the case of building operations, what is required is *'a fully detailed building of a certain character'*. It is clear from *Sage* that this is a matter of fact and degree, but a holistic approach should be taken regarding the *'totality of the operations which the person originally contemplated and intended to carry out'*.

19. In this case, the building did not have the benefit of planning permission and there are no approved plans against which the totality of operations contemplated and intended by the appellant can be assessed. While 'as built' plans have been provided, these were not available during the time of construction. Therefore, it is necessary to consider the building's external and internal design and its intended purpose as contemplated by the appellant. As previously identified, the building was intended to be erected as a dwelling.

20. The Council accepts the chronology of events relating to the construction of the dwelling[5] and does not claim that any document provided was unreliable or did not relate to this building. In his oral evidence, Mr Cowley identified specific areas within the evidence that the Council contends undermines the appellant's assertion that the building was substantially completed by 3 April 2016. I take these in turn below.

Mr Percy's Email of 5 October 2018[6]

21. This states *'The newly created holiday let dwelling was not finally ready for habitation until August 2018, mainly external works are being completed now'*. The Council claims that if the dwelling was not ready for habitation until August 2018, the building could not have been substantially completed before that date. Regard should however be had to the purpose of Mr Percy's email and the context within which it was submitted.

22. Mr Percy's email provides information in support of a planning application for the removal of condition 2 on planning permission 10/00949/FUL, which restricted the occupancy of the converted garage and store to holiday accommodation only. Once it came to light that planning permission 10/00949/FUL had not been implemented, the application was withdrawn.

23. The purpose of Mr Percy's email was to support a substantially different type of application, one not concerned with demonstrating when the building was substantially completed. There can be no doubt that Mr Percy stated that the *'holiday let dwelling'* was not finally ready for habitation until August 2018. However, Mr Percy's email also states, '*Works to implement the change of use was commenced in 2012 and the approved extension and garage were also subsequently built'*. We know that these statements are incorrect as a matter of fact. Therefore, doubt is cast on the accuracy of the content of the whole of Mr Percy's email. I give limited weight to Mr Percy's email as it contains significant inaccuracies.

Mrs Garton's evidence

24. Mrs Garton, in her oral evidence and proof, referred to telephone conversations with Mr Hanson, within which he advised that the development was *'a hospital*

[5] Chronology attached to the Mr Carter's Opening Statement
[6] Appendix 25 of the Council's Statement of Case

job'. It was agreed that the phrase *'hospital job'* has no common understanding. Mrs Garton considered it to mean that the development was going to be progressed intermittently and could be on going for some considerable time. However, it seems to me, having heard Mrs Hanson and Mr Haines describing the water ingress that occurred during a particularly severe storm towards the end of 2015, that *'hospital job'* would more likely have been Mr Hanson's way of describing the repairs to or replacement of windows that were necessary to rectify storm damage and prevent further water ingress.

25. Mrs Garton's note dated May 20th refers to *'Tele. No windows in the property'* and the last entry says, *'Visit Oct 2016'*. Mrs Garton confirmed that she had never entered the site or inspected the dwelling. In fact, the only views she had of the dwelling were what she had seen from Rawcliffe Road. Photographs and Google Street View images show that views from Rawcliffe Road are long distance views, over adjacent properties and high boundary hedgerows. When driving passed the site, even in a slightly higher vehicle than an average car, it is unlikely that the ground floor of the building would be sufficiently visible to discern the ground floor windows. The photographs and Google Street View images confirm that there is only one first floor window visible from Rawcliffe Road. Furthermore, Mr Haines confirmed in his oral evidence that the windows were installed during July 2015 and invoices show that windows were fitted sometime before 15 December 2015[7]. Mr Haines' evidence given under oath and the invoices contradict the information Mr Hanson gave to Mrs Garton during their conversations.

26. I accept that Mrs Garton had nothing to gain from delaying confirmation of the building's completion. However, the appellant would benefit from such delay as Council Tax payments would not have to be made. Furthermore, Mrs Garton has no first-hand experience of the progress of the building operations. In the absence of any specific evidence showing the windows were installed after 3 April 2016, I give Mrs Garton's evidence limited weight.

Council Tax Registration

27. Mrs Hanson's registration of the building for Council Tax purposes occurred on 14 September 2016. It seems less than likely that the appellant would register an incomplete building for Council Tax purposes as they would become liable for payments from the date of registration. This registration date is well in advance of the appellant's occupation of the building. Council Tax registration occurred after the material date but this of itself does not demonstrate when the building operations were substantially completed. For these reasons, I give the Council Tax registration limited weight.

The Ball and Berry Site Inspection Record

28. This provides notes of the various site inspections carried out by their surveyors acting as approved inspectors for the development. Mr Cowley, in his oral evidence, expressed doubt that the surveyor had been on site to witness that the windows had been installed by 22 July 2015. However, he also conceded that this document had not been fabricated and had nothing upon which to base his doubt. The Council's evidence also highlights the entry of 13 November 2017, which refers to *'external works still not complete'* and the entry for 25 September 2018 confirming that '*external works now complete. No*

[7] Appendix 15 of Mrs Claire Wilkinson - Invoice for fitting windows and doors

outstanding issues. OK to issue final certificate'. The Council contends that the building could not be substantially completed until a Building Regulations Completion Certificate could be issued. However, this not correct as a Building Regulations Completion Certificate does not demonstrate when the building operations were substantially completed.

29. In addition to confirming the windows were installed, the entry for 22 July 2015 also confirms that the building is *'plastered out internally'*. Normally, a building would not be plastered out internally if it was not watertight. While this entry also states that it *'might be a while before external works are completed'*, Mrs Hanson and Mr Haines both confirmed in their oral evidence that the external works amounted to the provision of permanent external steps.

30. The Council has no evidence of its own to contradict the Ball and Berry Site Inspection Record entries as no Council officers visited the premises during the building's construction. The Ball and Berry Site Inspection Record details staged inspections of the building operations, by an independent surveyor, which I have no reason to doubt, provide an accurate record to which I apply substantial weight.

Guarding Issues

31. Ball and Berry's later email refers to *'guarding issues'* delaying the issue of the Completion Certificate, but no definition of 'guarding issues' is given. The Council claim that the guarding issue was the lack of balustrades to the inverted dormer balconies. These are identified as 'glazed parapet' on the as built plans[8] and, for consistency, that is what I will call them. Given the plethora of invoices provided for other materials and works, the Council argue that the lack of evidence relating to the purchase and installation of these glazed parapets shows that they had not been installed. The Council further claim that without these glazed parapets the building would not have been fit for purpose and therefore the dwelling could not have been substantially completed.

32. The provision of the glazed parapets is integral to the intended finished design of the dwelling, but they are not integral to it being capable of functioning as a dwellinghouse. They are also a relatively minor matter when compared to the extent of the other works that have been shown to have been completed. Any safety concerns could readily be addressed by locking the doors leading from the building on to the balconies. While the provision of these glazed parapets would no doubt have been a requirement in securing a Building Regulations Completion Certificate, that document is not an essential requirement of determining whether the building was substantially completed.

33. Furthermore, anyone looking at the building prior to the installation of the glazed parapets would still identify the building as being a dwelling and not some different type of building. I am satisfied that nothing integral to the building being able to function as a dwellinghouse remained outstanding by the material date and there is nothing from the Council to prove otherwise. For the reasons given above, I find that even if the glazed parapets had not been provided before the material date, their absence would not prevent the building from being substantially completed.

[8] Appendix 5 of the appellant's Statement of case

The Snagging List

34. Mr Hanson's email of 15 December 2015 provided a 'snagging list', which identified that ground floor exterior doors had no *'locking handles'* and that the kitchen window had not been sealed below the frame. It is the Council's contention that without door locks and with gaps around a window the building was not fit for purpose and could not therefore be substantially complete.

35. Mrs Hanson clarified that the reference to *'no locking handles'* in Mr Hanson's email of 15 December 2015 did not mean that the doors had no locks, only that the handles were missing. Mr Cowley accepted Mrs Hanson's explanation in his oral evidence. Given that windows had been paid for and installed before any defects were identified, it would be normal for the manufacturers to remedy those defects as a matter of urgency. A position confirmed by Passive Windows' email of 4 January 2016.

36. Mr Haines recalled that the windows were installed in July 2015 and that, following the storm damage and in response to the 'snagging list', the installation of the replacements was completed by May 2016. He also recalled that he boarded over the windows in the rear elevation to protect them while an old septic tank was taken out. The boards were affixed to the outside masonry and not fitted in empty window openings.

37. While the appellant has not shown when the replacement windows were installed, I find it more than likely that this would have occurred within a matter of weeks rather than months. As such, it is more than likely that the replacements were installed before 3 April 2016. Even if they had not been installed by 3 April 2016, whether doors and windows were subsequently replaced does not alter the fact that they were first installed by 22 July 2015.

Other evidence

38. The Wild Boar Cottage Chronology[9] sets out the sequence of events, and all the referenced documents are provided. The documentation confirms when materials were purchased and works were paid for. This documentation, in conjunction with the sworn evidence of Mrs Hanson and Mr Haines, shows when the building had walls, roofs, doors, windows, rainwater goods, means of foul and surface water disposal, heating, electrics and plumbing. Furthermore, rooms had been plastered, and bathrooms and the kitchen had all been installed before the material date of 3 April 2016. I give this evidence substantial weight.

39. The matters claimed by the Council to cast doubt on the appellant's evidence, taken individually or collectively, do not outweigh the substantial supporting evidence. The appellant has therefore shown, on the balance of probability, that the building was substantially completed by the material date, 3 April 2016. The building is therefore immune from enforcement action due to the passage of time.

The access and driveway

40. Operational development has clearly been undertaken to construct the driveway that currently exists, and the aerial images show that this operational development took place sometime between 22 April 2015 and 17 July 2017.

[9] Attached to Mr Carter's Opening Statement

This period straddles the material date. In the absence of any evidence to show when the works were carried out, the appellant has failed to show, on the balance of probability, that the access and driveway are immune from enforcement action.

Gas storage tank

41. The appellant's appeal on this ground is not specifically aimed at demonstrating the provision of the gas storage tank. However, the evidence provided to demonstrate when the building was substantially completed includes details of when the heating system was installed. For the heating system to be operational before the material date, the gas storage tank would also have had to have been provided by the material date. There is however nothing to show when the wooden store was erected.

Conclusion on ground (d)

42. For the reasons given above, the appellant has demonstrated that, on the balance of probability, the erection of the building, including the provision of the gas storage tank, was substantially completed on or before 3 April 2016. The building and gas storage tank have therefore become immune from enforcement action due to the passage of time. The appellant has however failed to demonstrate, on the balance of probability, that the access and driveway were substantially completed on or before the material date.

43. The appeal on ground (d) succeeds in part.

Appeal on ground (a) and the deemed application for planning permission

44. Due to the partial success on grounds (c) and (d), the appeal on this ground and the deemed planning application relate to the use of the building as a dwellinghouse, the use of the land for residential purposes, the laying out and construction of a means of access and driveway, and the erection of a wooden store to house the gas storage tank.

45. The **main issues** are:

- whether the development constitutes an acceptable form of development with regard to the provisions of local and national policy in respect of the development's location, flood risk and the character and appearance of the countryside; and
- if the development is not acceptable, whether any harm would be outweighed by other considerations.

Location of development

46. Mrs Wilkinson conceded in her oral evidence that the erection of this dwelling was contrary to the development plan. My attention was drawn to a considerable number of local planning policies, it was agreed that Wyre Local Plan 2011-2031 ('the WLP') policies SP1 Development Strategy and SP4 Countryside Areas are most relevant to the provision of a new dwelling in the countryside.

47. Although the dwelling is adjacent to other dwellings, it is in the countryside away from any settlement with services and facilities. It is therefore isolated,

and occupants would be reliant on use of private vehicles to access services and facilities. Consequently, it would not usually amount to a suitable location for residential development and would not accord with local and national policies which seek to direct new development towards settlements and restrict development in the countryside to protect its rural character.

48. The erection of a new dwelling in this location would therefore be contrary to the provisions of the development plan. However, through the partial success on ground (d), the building, which was erected for the sole purpose of residential use, cannot be required to be demolished. Its physical presence is therefore established, albeit with a nil use. The retention of the building with a nil use could result in the dereliction of the building and a reduction in visual quality of the land and the surrounding countryside. Whereas its continued use for its intended purpose would ensure the continued upkeep and maintenance of this permanent building and the land.

49. The conversion of permanent buildings in the countryside to residential use is supported by local and national planning policy, where an enhancement to its immediate setting would result. I accept that the appellant has not demonstrated that the building could not be used for some other beneficial use, that appears higher up in the hierarchy set out in policy SP4. However, the development undertaken was not a conversion and that part of policy SP4 is not directly applicable. Furthermore, the building could not be put to any other use without first securing planning permission for that use. I am not aware that any alternative use of the building has been granted planning permission.

50. While Miss Lowcock's oral evidence alluded to the residential use of the building and land putting undue strain on local medical and education services, no evidence has been provided to show that these local services are at or beyond capacity. The demand on such services arising from a single 3 bedroomed dwelling is unlikely have any significant detrimental effect on the delivery of medical and educational facilities in the locality.

51. Policies SP1 and SP4 of the WLP seek to protect the intrinsic character and beauty of the countryside from development, amongst other things. This policy conflict is outweighed by the permanency of the building, the potential degradation/dilapidation arising from a nil use, maintaining a beneficial use, and the lack of planning permission for any other alternative use.

Flood Risk

52. The land lies in Flood Zones 2 and 3 defined for the River Wyre. The appellant has provided a site-specific Flood Risk Assessment (FRA) and additional flood defence data, Historic Flooding and Flood Modelling Data and a levels survey. These confirm that the site benefits from flood defences and that the site has not previously flooded.

53. Policy CDMP2 of the WLP requires that, where development is in a flood risk area, it must be demonstrated that the Sequential Test has been applied and passed, and mitigation measures must be in place to reduce the effects of flood water. The Sequential Test has not been applied before the building was erected. If it had, it is likely that other, reasonably available sites with a lower risk flooding would have been found. However, bearing in mind that the

building will remain, any proposal to re-use the building would not need to be subjected to a Sequential Test[10].

54. In response to the additional flood data provided, the Environment Agency has confirmed that, insofar as it relates to their remit, they are satisfied that the development would be safe without increasing flood risk elsewhere. Therefore, the development incorporates adequate mitigation measures, although a residual risk remains, particularly if the flood defences fail.

55. While the development conflicts with policy CDMP2 of the WLP insofar as the Sequential Test has not been passed, this is outweighed by the permanency of the building and its incorporation of acceptable flood mitigation measures.

Character and appearance of the countryside

56. The appeal site lies in relatively flat landscape of fields divided by hedgerows and interspersed with sporadic groups of buildings. The premises forms part of one such sporadic group of buildings. I have found the physical presence of the wall, gateposts and building to be lawful and as such their effect on the character and appearance of the countryside is established.

57. The building was clearly designed and built as a dwelling. Furthermore, the land was previously occupied by a domestic garage and store. While the notice does not include details of the previous land use, Mrs Hanson confirmed in her oral evidence that it had been left fallow by the previous owner, and after purchasing it, she had used it for ancillary residential purposes in connection with Lower Wild Boar Barn before its use became ancillary to Lower Wild Boar Cottage. Mrs Hanson's recollection of events is borne out by the aerial imagery provided. The land has therefore had a managed and maintained appearance for some considerable time, with the only significant difference being the formalisation of the access and driveway.

58. Views of the building and driveway from Rawcliffe Road are screened by adjacent properties and the woodland planting carried out by the appellant. Long distance views of the site are available from the A568, but the building is seen as an integral component of this sporadic outcrop of buildings. Ms Lowcock conceded in her oral evidence that there are no public rights of way from which the site is visible. While the building may not be of a local vernacular design, I find its' and the ancillary land's residential use has no significant adverse impact on the character and appearance of the countryside.

59. The development does not adversely affect the character and appearance of the countryside and is therefore compliant with policy CDMP3 of the WLP, which seeks to deliver a high standard of design that respects or enhances the character of the area, amongst other things.

Conditions

60. The Council has suggested 2 conditions; the first relates to the submission of various details to make the development acceptable in planning terms and the second seeks to remove permitted development rights.

61. Given the dwelling occupiers likely reliance on private vehicles, securing the provision of electric vehicle re-charging facilities is reasonable and necessary to

[10] Footnote 56 of the National Planning Policy Framework

mitigate the isolated location. Any change in the surface materials of the driveway could affect surface water run-off, as such the submission of details pertaining to finished surface materials is reasonable and necessary. The dwelling has been provided with the means of foul and surface water disposal. The adequacy of that implemented means of disposal is however unknown and it is therefore reasonable and necessary for details of that scheme to be submitted for approval and for any short comings to be addressed. As the dwelling is in an area at risk from flooding there is need for an emergency plan to be approved.

62. As the development has already taken place, it is necessary to impose a sanction or mechanism for enforcement in the event of non-compliance. A period of 3 months is considered an appropriate period within which the details shall be submitted for approval. The condition shall also include a period of 12 months for the cessation of the residential use of the building and land, and the removal of the wooden store and driveway, in the event that the details are not submitted, or suitable schemes are not approved and implemented within their agreed time frame.

63. The walls and gateposts are constructed of suitable materials. As I have found them to be permitted development, there is no need for further details to be approved.

64. The building is in the countryside where replacement buildings would not normally be allowed to be significantly greater in size than the one they replace. This building is larger than that which would have arisen because of the conversion and extension of the former garage and store. The main appeal parties provided plans showing what they considered to be the extent of the building's curtilage. The Council's plan[11] depicts a rectangle of land surrounding the building, whereas the appellant's plan[12] includes the access, driveway, the land accommodating the store and gas tank, land that was previously garden to Lower Wild Boar Barn and land containing parts of the 2 ponds and parts of the lawn. While I agree that the curtilage should not extend to the appellant's land ownership, neither main party has provided convincing arguments as to why their plan accurately defines the curtilage or why it necessary to show the extent of the building's curtilage on a plan.

65. I find the removal of classes A, B, C and E of Part 1 of Schedule 2 of the GPDO permitted development rights to be reasonable and necessary, to ensure that any subsequent extensions and alterations do not adversely affect the character and appearance of the countryside. The provision of a plan showing the extent of the curtilage is not however necessary, as it will be a matter for the decision maker to determine at the time of any subsequent application for planning permission.

66. The premises has defined boundary treatments already. Where the land adjoins other residential properties or the highway, there would be no reason to control the materials or height of any new boundary treatment, over and above what controls exist in the GPDO. Had the development not occurred, this land would have remained in residential use associated with Lower Wild Boar Barn. The ancillary residential use of the land has not changed and the removal of permitted development rights for enclosures is therefore unreasonable.

[11] ID16
[12] ID17

Conclusion on ground (a)

67. For the reasons given above the appeal on ground (a) succeeds and planning permission is granted subject to conditions.

Overall Conclusions

68. From the evidence before me, and on the balance of probabilities, the appeal on grounds (c) and (d) shall succeed, following correction of the notice, in respect of the building, the wall, gateposts and gas storage tank.

69. In respect of the material change of use of the land for residential purposes, the erection of the wooden store and the laying out and construction of a means of access on to the highway and a driveway, for the reasons given above, the appeal shall succeed on ground (a) and I shall grant planning permission for the residential use of the land, the erection of the wooden store and the laying out and construction of a means of access on to the highway and a driveway. The appeal on ground (g) does not therefore fall to be considered, because the notice will be quashed.

Formal Decision

70. It is directed that the enforcement notice be corrected by:

In section 3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACHES OF PLANNING CONTROL:

- *the deletion of allegations (a), (e) and (f).*
- *The deletion of all the words in (b) and the substitution of the words 'A material change in the use of land to use for residential purposes;'.*
- *the re-identification of allegations (b), (c) and (d) as (a), (b) and (c).*

And varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO: the deletion of all the words in steps (c) and (d) and the substitution of the words '(c) Remove the Store from the land together with all materials, debris or waste arising from its removal; (d) Re-cover the areas of the land on which the Store stood with topsoil in such volume and quantity as to ensure that those areas of the land are restored to the same level as they were prior to the carrying out of the unauthorised development and then sow those areas of top soil with grass; and (e) Return the Driveway to its state prior to the carrying out of the unauthorised development.

Subject to the corrections and variations, the appeal on ground (a) is allowed, the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the residential use of the land, the erection of the wooden store and the laying out and construction of a means of access on to the highway and a driveway at Lower Wild Boar Barn Cottage, as shown on the plan attached to the notice, subject to the following conditions:

(1) The use of the building as a dwellinghouse shall cease, the wooden store shall be demolished and the driveway shall be removed from the site

within twelve (12) months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within three (3) months of the date of this decision details of an emergency plan on flooding, including safe access and escape routes; electric vehicle recharging (EVCP) scheme; details of the surfacing materials of the driveway; a drainage scheme, which shall detail measures for the attenuation and the disposal of foul and surface waters, together with details of existing and proposed ground and finished floor levels to achieve the drainage scheme and any flood risk mitigation deemed necessary, shall be submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall be in accordance with the hierarchy of drainage options outlined in Policy CDMP2 of the Wyre Local Plan 2011-2031 or any equivalent policy in an adopted Local Plan that replicates the existing Local Plan, with evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates to be submitted. For the avoidance of doubt, surface water must drain separate from foul water. The schemes shall include a timetable for their implementation.

(ii) If within ten (10) months of the date of this decision the local planning authority refuse to approve all the details or fail to give a decision within the prescribed period in respect of the details set out in (i) above, a valid appeal shall have been made to the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be so retained for the lifetime of the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

(2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), the dwelling shall not be altered or extended, nor shall any building or structure be erected within its curtilage without first applying for planning permission.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:		Mr Martin Carter of Counsel
	He called:	Mrs Caroline Hanson; Mr Martin Haines; and Mrs Claire Wilkinson
FOR THE LOCAL PLANNING AUTHORITY:		Mr John Hunter
	He called:	Mr Andrew Cowley; Mrs Jaqueline Garton; and Ms Lucy Lowcock

DOCUMENTS

ID1 Appeal Decision 1165042 relating to Oakhill Farm, Dorking
ID2 Appeal Decision 3241295 relating to Cockerham Road, Lancaster
ID3 Appeal Decision 3270487 relating to Low Shepherds Yeat Crook, Kendal
ID4 Response from the Environment Agency dated 5 November 2021
ID5 Letter from Council to appellant dated 11 February 2022
ID6 Letter from appellant to Council dated 16 February 2022
ID7 Google Streetview x 2 images dated March 2009
ID8 Google Streetview x 2 images dated September 2021
ID9 Photograph dated March 2020
ID10 Flood Defence data
ID11 Historic Flood Modelling data
ID12 Drawing Number: 170 Revision A dated 25-02-2022 (Levels Survey)
ID13 Response from Environment Agency dated 7 March 2022
ID14 Extract from second LDC's Officer report
ID 15 Revised & agreed EN requirements
ID16 Council's suggested conditions
ID17 Appellant's suggested conditions