

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

Appeal by Cotswold Decorative Ironwork Ltd. re Marsh Farm,
Stourton, Shipston-on-Stour, CV36 5HG

Against an Enforcement Notice dated 20th March 2024
LPA reference 20/00226/DESOP

1. References to documents included in Appendix marked **** together with number**

Appeals by :

1. Mr H M Powell Landowner
2. Mrs Denise Powell Landowner
3. Cotswold Decorative Ironstone Works Ltd. ('CDI')
Occupier of the building that is the subject of the Notice

Appeal made pursuant to section 174 (a) of the Town & Country
Planning Act 1990 (as amended):

*'that in respect of any breach of planning control which may
be constituted by the matters stated in the notice, planning
permission ought to be granted'*

APPELLANTS' STATEMENT OF CASE

1. Relevant dates of occupation by Landowners:
 - (i) property purchased 1996
 - (ii) property first occupied for both residential and business purposes 1996
2. Marsh Farm as occupied with uses defined on the plan as at October 2022 from which date there have been no material changes
**** 1. this is a plan agreed with the Local Planning Authority ('the LPA')**
3. The building that is the subject of the Enforcement Notice was substantially completed and occupied by Cotswold Decorative Iron Works Ltd. on 1st August 2020

4. A Refusal Notice was issued by the LPA relating to an application for planning permission for the erection of the building that is the subject of the Enforcement Notice on 5th March 2024
5. The business operations carried on by CDI, and as identified on the agreed plan, relate to the production and sale of estate fencing, gates, bridges, tree guards and bespoke metal work as demonstrated in the Company's brochure attached to the application for planning permission
6. Relevant planning history:
 - (i) 20.12.19 application refused for the erection of a building similar to that which is the subject of this appeal
 - (ii) 03.06.20 appeal (reference App/00308/LDE) withdrawn re application for a Certificate of Lawful Use ('LDC') relating to use of land upon which it was proposed to erect the building proposed at (i) above
 - (iii) 09.10.20 appeal (reference APP/J3270/X/20/3255774) re an application for an LDC withdrawn at a public inquiry consequent upon agreement between the parties it also being agreed that neither side would make an application for an order for payment of costs
 - (iv) 05.03.24 refusal of application to erect a building – this refusal is the subject of an appeal currently being pursued and in which the issues are identical to those in this appeal
 - (v) In addition, reference will be made to a Planning Contravention Notice dated 23rd March 2023 and to which the appellants answered to the effect that the subject building was substantially completed and when it was first brought into use as being the 1st August 2020
 - (vi) a Delegated Report dated 17th January 2024 was completed by the Case Officer Mr. Thompson. The final conclusion in this report includes the following passage: "This application

proposes an unattractive, insensitive new commercial building on an otherwise open residential site in the Cotswolds AONB...”

7. The context within which the appeals against refusal of an LDC were pursued is explained within the Witness Statement of Harry Wolton KC
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8. The 'Reasons for Issuing an Enforcement Notice' follow those that were the grounds for refusal and can be summarised as follows:
 - (i) “The proposed to development does not fall within any of the categories of development deemed acceptable....and so fails to comply with core strategy policy CS.22
 - (ii) The building is unattractive, insensitive and inappropriate and that harms the built character and landscape quality of the Cotswolds AONB
9. The Appellants' case can be divided into two parts:
 - (i) that there are no sound planning reasons for the refusal of the planning permission
 - (ii) that the conduct and inconsistent attitudes adopted by the Officers concerned with the subject site are such as to lead to an inevitable conclusion that the ultimate refusal that is now the subject of appeal is fundamentally flawed and that it follows that the ground of appeal pursued in this appeal should also be allowed
10. The first ground of refusal relies upon policies AS.10 and CS.22 of the Core Strategy. This Strategy was adopted on 11th July 2016. There has been a Review that concluded that the original Core Strategy remains up to date but the LPA is already committed to undertaking a further review working with Warwick District Council on the South Warwickshire Local Plan
Adopted Core Strategy policies AS.10 and C22 ** 3
11. Policy AS.10:
 - (i) Entitled: Countryside and Villages and applies all parts of the District apart from those that lie within built up boundaries

- (ii) "in order to help maintain the vitality of rural communities and a strong rural economy provision will be made for a wide range of activities and development in rural parts of the District"
 - (iii) "minimise adverse impacts"
 - (iv) "Business":
 - (m) "small scale expansion of an existing group of buildings to be for business uses...."
 - (n) "an extension to a business in its established location, particularly if it would be unreasonable to expect the business to relocate in order to expand"
11. The first ground of refusal contends that "the proposed development does not fall within any of the categories of development deemed acceptable by policy AS.10. It is difficult to see how the provision of an additional and small building required for the existing business to expand as necessary does not fall within the subsections (m) and (n) set out above
12. Policy CS.22 is entitled "Economic Development"
- (i) "the expansion of businesses in their existing locations will be supported, subject to the scale and type of activities involved, the location and nature of the site, its accessibility including by public transport and empowered to from the character of the local area"
 - (ii) 5.8.3 "for the purposes of national planning policies, economic development includes that within Class B of the Use Class Order" (as it then was – the proposed development falls squarely into this category as now classified)
13. The wording of the first ground of refusal asserting that the building that has been constructed does not "fall within" such policies as are relied upon appears to be misconceived. In the alternative, it has also to be borne in mind that, just because a particular development does not actually "fit in" with published local policy, the statutory duty of the LPA is defined at section 70 (2) of the principal Act is:
- "in dealing with an application for planning permission the authority shall have regard to the provisions of the development plan, so far as

material to the application, **and to any other material considerations** (emphasis added). The need to preserve and maintain a strong rural economy must be a vital ingredient of the considerations relevant to the appellants business and their employees

14. It is also appropriate to refer to the NPPF (2023):

(i) Section 6 at paragraph 88 (a) "planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas both through conversion of existing buildings and well designed beautiful new buildings"

(ii) Section n6 at paragraph 89 "policies and decisions should recognise that sites to meet local business and community needs and rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings and does not have an unacceptable impact on local roads"

15. The second ground of refusal contending that the building that has been erected is not sufficiently attractive is a matter that must be seen in context. Marsh Farm, as a whole, is a mixed-use comprised of a traditional farmhouse, a substantial former agricultural building that is now a factory, outside storage and other buildings mixed in with the residential use such as to render the site a mixed-use. The cladding to the building has yet to be completed

16. It is submitted that the appeal building is not, in any way, incongruous. The reference to it having a negative impact upon the street scene is difficult to relate to the layout of the mixed uses at Marsh Farm as there is no "street scene" of which it is part.

17. The existing business provides employment for some 25 employees, many of whom live locally. Details of the nature of their employment appear in the Witness Statement of Hughie Powell ** 4

18. The Conduct of the Local Planning Authority:

(i) although it is not conclusive in determining the merits of an application for planning permission, it has to be borne in mind that all

the adverse decisions that have been issued in respect of the previous planning history related to the subject site, were made by Officers with Delegated Authority so to do

(ii) the original case officer (Mr Thompson) had no objection in principle to the erection of a building of the size and in the location proposed by CDI

he was then instructed that it was necessary for the applicant to have a Certificate of lawful use before permission could be considered

(iii) the application for that Certificate was based upon a minimum of 10 year use and continuous occupation of the land by CDI for storage and upon which it was intended to erect the building was refused even in the light of Statutory Declarations made by the occupiers of the site and of the photographs showing storage use clearly in being for a period greater than 10 years before the application was made. This confirmation is contained within the Witness Statement of Roger Burns ** 5

(iv) The original case officer then proceeds to a volte face expressing total opposition to the proposal

(v) the enforcement notice is served on the basis that it is intended "preserve the Council's position" - hardly evidence of it having been considered 'expedient' and necessary to seek demolition of the building

18. In conclusion it is submitted that, In the light of all matters referred to above, the refusal of planning permission on policy grounds is misconceived and the Inspector is invited to grant permission for the retention of the subject building.

