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## Appeal Decisions

Site visit made on 4 May 2021

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 May 2021**

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**Appeal A Ref: APP/D3125/C/20/3262127**

**Appeal B Ref: APP/D3125/C/20/3262128**

**Lower Farm, Witney Lane, Leafield, Oxfordshire OX29 9PG**

- 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 appeals are made by Mrs Fenella Nicholas (Appeal A) and Mr Ben Nicholas (Appeal B) against an enforcement notice issued by West Oxfordshire District Council.
- The enforcement notice was issued on 23 September 2020.
- The breach of planning control as alleged in the notice is the unauthorised material change in the use of the land from agricultural use to domestic tennis court.
- The requirements of the notice are: (i) Cease the use of the land as a tennis court. (ii) Remove the area of hardstanding; and (iii) Reinstate the land on which the court was located to natural ground level and to a similar condition as the agricultural land immediately surrounding it by seeding it with grass.
- The period for compliance with the requirements is: (i) One month. (ii) and (iii) Four months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.**

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**Appeal C Ref: APP/D3125/C/20/3262148**

**Appeal D Ref: APP/D3125/C/20/3262149**

**Lower Farm, Witney Lane, Leafield, Oxfordshire OX29 9PG**

- 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 appeals are made by Mrs Fenella Nicholas (Appeal C) and Mr Ben Nicholas (Appeal D) against an enforcement notice issued by West Oxfordshire District Council.
- The enforcement notice was issued on 23 September 2020.
- The breach of planning control as alleged in the notice is the unauthorised construction of a hard surfaced tennis court.
- The requirements of the notice are: (i) Remove the area of hardstanding; and (ii) Reinstate the land on which the court was located to natural ground level and to a similar condition as the agricultural land immediately surrounding it by seeding it with grass.
- The period for compliance with the requirements is four months.
- Appeal C is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal D,

the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.**

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## Appeals A and C-Ground (a) appeals

### Main Issue

1. The main issue in these appeals is the effect of the tennis court on the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB).

### Reasons

#### *Landscape and scenic beauty of the AONB*

2. Lower Farm is part of a small group of traditional rural buildings located in open countryside within the AONB, some distance from the built-up part of the village. The dwelling and its associated grounds are set within an expansive open landscape, offering far-reaching views across substantial arable fields bounded by hedges and low dry stone walls, with relatively few trees. These factors contribute significantly to the attractive and largely unspoilt rural character and appearance of the surrounding countryside, which forms part of the 'Wychwood Uplands' landscape character area (LCA) in the West Oxfordshire Landscape Character Assessment.
3. The above factors are also largely consistent with the identified landscape characteristics of the '*open limestone wolds*' landscape character type (LCT), which makes up part of the LCA. According to the LCA map, Lower Farm and adjoining land on the east side of Witney Lane forms part of this LCT. Although land to the west forms part of the '*semi-enclosed limestone wolds (smaller-scale)*' LCT, in practice I found there to be little significant difference in the surrounding area in terms of the landscape characteristics of the respective LCTs. Therefore, neither the limited incidences in the vicinity of Lower Farm of smaller fields and taller hedges or the presence of structures associated with animal-rearing activity reflect the overall character and appearance of the surrounding AONB landscape.
4. The tennis court is situated in an L-shaped field, several metres away from the rear of the dwelling. The ground has been dug out by up to approximately 0.5 m at the north-east end of the field, to form the court's level surface. The court has a macadam topped surface finished a light green colour, edged with pavements. There is a low net along the centre line, supported by posts on either side. I am aware that a previous appeal at Lower Farm concerning a similarly-sited tennis court was dismissed in May 2016<sup>1</sup>. I have determined these appeals on the basis of the current circumstances.
5. Between the court and the dwelling's established garden is an intervening area of land. The presence of a stable block gives this land a notably rural character and appearance, even though the grass is mown, there is some ornamental planting and horses no longer seem to be kept there. Whilst this land is also accessed from the established garden by a pedestrian gate, a hedge reinforces

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<sup>1</sup> Appeal Ref: APP/D3125/W/16/3141891.

- a definite sense of visual as well as physical separation from the dwelling. The field containing the court is beyond the intervening land and although mown with some ornamental planting and a bench seat, it is bounded by hedges with rural fencing and adjoined on three sides by other fields. There is access between the court field and the adjoining fields through significantly sized gaps in the hedges. There is no firm evidence to show that the court field or land between it and the established garden can lawfully be used for purposes other than agriculture.
6. Due to the substantial distance separating the court from the dwelling, together with the predominantly non-residential character and appearance of the land outside the established garden and the proximity of open fields, I consider that the court is not well-related to the dwelling. The court is detached from the dwelling in a location which could not reasonably be regarded as adjoining the outer edge of the established garden. Its location is closely related, visually and physically, to the adjacent fields. These factors have all resulted in an intrusion of development associated with the dwelling into the open countryside.
  7. The reduction in ground levels to form the court has had a modest but nevertheless significant physical effect on the landform of the field. The alterations to the landform together with the hard surface treatment, the angular lines of the edges and the centre net and posts have all given the court a rather 'engineered' profile. This differs considerably from the gentle contours associated with the smoothly rolling landform of the surrounding countryside. The court has therefore appreciably and harmfully eroded, albeit at a small scale, a characteristic feature of the local landscape. The above factors have also given the court a rather harsh and obviously man-made appearance, more typically found in a suburban setting. This is entirely at odds with the softer profiles and more naturalistic visual qualities of the environs, resulting in the court appearing as an alien feature in the otherwise predominantly rural landscape setting.
  8. Unlike in the previous appeal proposal, the court is not surrounded by high chain link fencing. Also, due to the taller hedge planting on the field boundaries and in the vicinity, the court and its associated activity is largely screened in views from beyond Lower Farm. Even so, there is a difference between the impact on the landscape and visual impact. The former is mainly concerned with matters such as local changes to topography and landform or the effects on individual features such as trees and hedges, whilst the latter largely relates to how people will be affected by changes to views and visual amenity at different places. Therefore, the limited available views of the court should not be taken as meaning that there is an absence of harm to the fabric of the landscape or the visual qualities of the surroundings; rather, it simply means that there are few opportunities for perceiving that harm in the wider area.
  9. In any event, as taller hedges are not a characteristic feature of the surrounding largely open landscape, they merely serve to screen the court. Consequently, the hedges have a limited effect in terms of visually integrating the court into its rural context. Furthermore, as the longer term retention of the hedges cannot reasonably be assured, there is a clear prospect that they could be significantly reduced in height or removed at some stage in the future,

thereby opening up the court and its associated activity to wider views in the surroundings and giving further emphasis to the visual harm caused.

10. The appellants supplied the addresses of several other tennis courts as well as manèges located in the wider area. However, as few details were provided, I am not clear whether the circumstances in which any of the examples originated can be compared with the circumstances in these appeals. For instance, it was not made clear whether any of the examples were granted planning permission in the context of current local and national policy. In any event, the presence of other tennis courts in the wider area does not necessarily mean that they are an accepted feature in the local landscape; for example, no reference to tennis courts in the LCA was drawn to my attention. Also, unlike in the case of a tennis court, a manège is unlikely to be found other than in a rural setting. The Council supplied copies of three appeal decisions concerning tennis courts, two of which were in the AONB, although none were recent. As a result, I afford the examples of other developments referred to by the main parties limited weight. Ultimately, I have considered the tennis court in these appeals on the basis of its individual planning merits.
11. Therefore, I conclude that the court has harmfully eroded the landscape and scenic beauty of the AONB. In doing so, the court does not accord with Policy EH1 of the West Oxfordshire Local Plan 2031 (LP). By neither respecting the intrinsic character of the area, protecting the local landscape or conserving the AONB's landscape and scenic beauty, the court does not accord with LP Policy OS2 and for similar reasons it does not accord with LP Policies OS4, EH2 and EH13. Furthermore, as the AONB's landscape and scenic beauty is afforded the highest status of protection the court is inconsistent with the National Planning Policy Framework.

#### *Other matters*

12. The outdoor recreation opportunities provided by the court are likely to contribute to the physical health and well-being of the appellants, as well as possibly that of their wider family members and friends. The unavailability of communal recreation facilities at times during the COVID-19 pandemic emphasises the likely role that the court has played and could continue to play in future. Also, I am given to understand that the appellants have offered the use of the court to children from the village primary school. I am mindful that improving residents' health and well-being through increased choice and quality of, amongst other things, recreational facilities, is a core objective of the LP. Similarly, the AONB Management Plan seeks to improve residents' health and well-being through enhancing recreational facilities.
13. Nevertheless, any benefits offered by the court in the above respects are likely to be largely private and limited in scale. Moreover, there is little certainty that the ability of the school to access the court would endure. For instance, future owners of Lower Farm might not wish to continue such an arrangement, whilst it is also entirely possible that the school would deem it unsuitable for children to access the court via roads which largely lack separate footways and lighting and where the national speed limit applies in places. Therefore, any benefits offered by the court do not outweigh the harm to the AONB.

*Conclusion on ground (a)*

14. The court fails to conserve the landscape and scenic beauty of the AONB, it does not accord with the Development Plan and is inconsistent with the Framework. Therefore, the ground (a) appeals do not succeed.

**Appeals A, B, C and D-Ground (g) appeals**

15. This ground of appeal concerns whether the time for complying with the requirements of the enforcement notices falls short of what should reasonably be allowed.
16. The four-month period specified in the notices provides ample time in which to undertake the required remedial works, including removing the court and reinstating the affected land to its former profile. Also, due to the date the notices will take effect the compliance period means that the works should in all probability be undertaken during the summer and early autumn. This offers sufficient opportunity for minimising potential damage to surrounding fields and private ways due to any movement of mechanical plant and equipment that might be associated with the works.
17. Accordingly, extending the compliance period to one year would unduly perpetuate the planning harm caused by the breach. The ground (g) appeals fail.

**Conclusion**

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

**Formal Decisions**

19. Appeals A and B-the appeals are dismissed and the enforcement notice is upheld.
20. Appeals C and D-the appeals are dismissed and the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR