



## Appeal Decisions

---

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 29/11/2023

Appeal references: CAS-02278-X7K9S1 & CAS-02495-H0J6W9

Site address: Land at Silver Circle Distillery, Pleasant View Barn, Ninewells Road, Catbrook, Trellech, Monmouthshire NP16 6UL

A site visit was made on 9 May 2023.

---

- **Appeal A** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Harold Johns against the decision of Monmouthshire County Council.
  - The application Ref DM/2022/00048, dated 10 January 2022, was refused by notice dated 30 July 2022.
  - The development proposed is described as the “Retention of mixed use within existing building to accommodate a distillery, a bar and a tourist use (visitor experience), retention of change of use of land from agriculture to land to be used in association with the proposed use, retention of use of agricultural storage building for use as a bottling plant, and retention of hard surface areas for use as car parking’.
- 
- **Appeal B** is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991. The appeal is made by Nina Howden against an enforcement notice issued by Monmouthshire County Council.
  - The enforcement notice (“the Notice”), numbered E21/174 was issued on 21 December 2022.
  - The breach of planning control as alleged in the Notice is the unauthorised change of use of barn from agricultural use to industrial use (B2), unauthorised change of use of agricultural land to car park in association with unauthorised industrial use (B2).
  - The requirements of the Notice are:
    1. The industrial (B2) use of the larger barn (as highlighted in green in Appendix 1) shall cease.
    2. Cease the industrial (B2) use of all land outside of the buildings within the area edged in brown.
    3. The unauthorised hardstanding (as highlighted in blue in Appendix 1) shall be removed in its entirety, with all debris removed from the site, and the land restored to its former condition prior to the unauthorised works.
  - The period for compliance with the requirements is three months from the date the Notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
- 

## Decisions

### **Appeal A:** CAS-02278-X7K9S1

1. The appeal is dismissed.

### **Appeal B:** CAS-02495-H0J6W9

2. The appeal is allowed in respect of ground (g) only, but otherwise dismissed. I direct that the Notice be varied by the deletion of the words 'three months' and their substitution with the words 'six months' from the date the Notice takes effect. Subject to this variation, the Notice is upheld.

## Costs Applications

3. Applications for costs have been made by the appellants against Monmouthshire County Council. These applications are the subject of separate decisions.

## Procedural and Preliminary Matters

4. The description of development shown on the planning application form is '*Retention of mixed use.....*' Given that the development the subject of **Appeal A** has commenced, I have dealt with that appeal as one that seeks planning permission under s73A(2)(a) of the Act.
5. There are two barns within the appeal site. I will refer to the larger barn on the western part of the site as 'Barn 1' and the smaller barn to the east as 'Barn 2'. At the time of my site visit, Barn 1 was in use as a bottling plant and storage / labelling / packaging area in association with the distillery business, albeit the layout is not exactly that shown on the submitted drawings. The submitted drawings show Barn 2 as a 'Multi-purpose space including production, shop, bar, office and storage' together with the proposed layout of the external space. This would consist of a large area of hardstanding on the northern part of the site and the vehicular access leading to a visitor parking area to the west of Barn 1 and a staff parking area to the north of Barn 2, together with a seating area in the space between the barns and on the southernmost part of the site.
6. The Notice (**Appeal B**) attacks only Barn 1 and the area of hardstanding around this barn, whereas the development the subject of the planning application (**Appeal A**) relates to the use of both barns and the land, and the hardstanding for car parking. It is in this context that I have considered the appeals.
7. By letter dated 11 October 2023, Welsh Government announced changes to Planning Policy Wales (PPW) with immediate effect. The main policy change which is of relevance here relates to the net benefit for biodiversity. However, since the implications of the changes to PPW do not affect the outcome of the appeals, I have not sought to canvas the views of the parties.

## Background

8. Planning permission was granted in 2019 for the change of use of the existing agricultural building (Barn 2) to a micro distillery for the production of gin and other spirits. As I understand it, the only external change involved the construction of a lean-to extension to the southern side of the building to provide toilet facilities and storeroom. Informal parking was to be provided within the site for approximately 4 cars with an estimation that around

5 vehicles per day would visit the premises during peak times. Deliveries were expected to be around 1-2 times per week in a transit sized van.

9. A subsequent application for the discharge of Condition 7 in relation to foul drainage was approved under Ref. DM/2019/00558, which agreed the installation of a 2800 litre capacity septic tank. An application to vary the condition controlling the opening hours of the distillery was approved under Ref. DM/2019/01696, amending the opening hours to 08:00-21:00 daily.

### **The s78 Appeal (Appeal A)**

10. Against the background that I have described, the main issues are:
  - The effect of the development on the character and appearance of the area, with particular regard to the Wye Valley Area of Outstanding Natural Beauty (AONB);
  - Whether the site represents a sustainable location;
  - The effect of the development on the living conditions of neighbours;
  - Whether the development can be served by adequate off-street parking provision and the effect on highway safety;
  - Whether the site can be adequately drained; and
  - The effect on ecology.

#### *Character and appearance*

11. The appeal site lies on the outskirts of the village of Catbrook and within the Wye Valley Area of Outstanding Natural Beauty (AONB). The site is bounded by a hedgerow to its front boundary, a tree lined boundary with the residential property to the west, post and wire fencing to the east and an open aspect to the fields beyond the southern boundary. The immediate surroundings are characterised by low density detached dwellings in spacious plots on the periphery of the village and in a predominantly rural landscape.
12. The existing buildings have a functional, agricultural form and appearance; they are clad with metal profile sheet coloured green, have minimal openings and large roller shutter doors on their main elevations. Vehicular access is gained from the single track, country road via metal, five bar field gates.
13. The Council's concerns relate to the installation of an acoustic fence, the siting of portable toilets during events and the potential effects of a lack of sufficient car parking spaces to meet the demands of the development resulting in either off-site parking on the highway verges or overspill parking in the adjacent field.
14. I acknowledge that the approved change of use of Barn 2 to a gin distillery already alters the character of the area somewhat. The Council does not suggest that this permission has not been implemented, and I must therefore take into account that the site legitimately operates as a small-scale business from Barn 2. In this context, I do not consider that the intensification of the use by way of its extension into the second, larger barn would have any materially greater impact on the character of the area.
15. Be that as it may, the effect of the intensification of the use and the introduction of events is that there is a realistic proposition of the need for an overspill parking area and/or the siting of portable toilets on what could be a regular basis. To safeguard the living conditions of nearby residents the appellant's Noise Impact Assessment recommends the erection of a 2m high acoustic fence along the northern (front) and western (side) boundaries. Such a means of enclosure would dominate the site frontage, appearing alien in its surroundings. The need for overspill parking in an adjacent field and / or the introduction of portable toilets would add to the visual harm and would fail to conserve this part of the AONB which is otherwise a quiet hamlet set in a pleasant rural

landscape. The development therefore adversely affects the character and appearance of its surroundings, in conflict with Policies S10, S17, EP1, DES1 and LC4 of the adopted Monmouthshire Local Development Plan (LDP) 2014.

16. The Council suggests a landscaping scheme may overcome the visual harm of the development. I do not know whether it would be possible to plant forward of the acoustic fencing since such details do not form part of the submissions before me. Further, a planting scheme capable of screening the site could have a significant impact on the landscape. I cannot therefore be satisfied that the adverse effects of the development in this regard could be satisfactorily mitigated by the imposition of a condition.

#### *Sustainability of location*

17. Policy S11 supports proposals that provide and /or enhance sustainable forms of tourism, subject to detailed planning considerations. Such considerations include the need for all new development to promote and secure sustainable, safe forms of transport which reduce the need to travel, increase provision for walking and cycling and improve public transport provision, as outlined in Policies S16 and MV2.
18. Much of Catbrook has no segregated provision for pedestrians and cyclists and visitors would have no alternative but to walk or cycle along narrow rural lanes and classified roads subject to the national speed limit. Neither is Catbrook accessible by public transport, the nearest bus stops being around a 50 minute walk from the site. The appellant's evidence shows customers arriving by private car, taxi or minibus. Whilst the principle of the use of the site as a micro distillery has already been established, its limited capacity under the extant permission means that it is unlikely to attract similar staff and visitor numbers as the scheme the subject of the appeal.
19. The development would inevitably be reliant on staff and visitors getting to and from the site by private car, for the most part. The site is not in a sustainable location, accessible by public transport or other alternative means. As the site's location does not have adequate sustainable travel links, it does not meet the requirements of LDP policies S11, S16 and MV2.
20. I accept that PPW recognises that certain diversification proposals will only be accessible by car, albeit every effort should be made to locate diversification proposals so they are well-served by public transport. The contribution that the development makes to rural diversification and tourism does not outweigh the unsustainable location of the site and the lack of alternative modes of transport available to serve the much more intensive use of the site in this particular case.

#### *Living conditions*

21. There is much disagreement between the parties regarding visitor numbers and the means of getting to and from the site together with the nature and frequency of delivery vehicles.
22. The appellant's figures for December 2021 – March 2022 show relatively low visitor numbers, but the survey was conducted over a limited period and at a time when Covid restrictions were in place. The appellant asserts that visitor numbers for the summer months of July and August 2021 were provided, but have been largely ignored. From my reading of the evidence, it would seem that these figures were derived from estimations based on the number of tours and gin school bookings together with sales in the distillery shop. I am not persuaded that rudimentary calculations, such as an assumption that 1no. bottle of gin sold equated to 2no. visitors in one car or that 4no. cocktails suggested 4no. visitors, can be relied upon as accurate, particularly when the appellant's own evidence shows that the highest number of visitors in a single day is

35no. (outside an organised event). That is quite a difference from the suggested average of between 3.1 and 7.7 visitors per day.

23. I have also had regard to the visitor numbers in respect of the street food events, which are recorded as 178no. visitors at the event of 14 August 2021 and 231no. visitors at the event of 10 July 2021, with the appellant stating that both events were spread out over the day with no more than 50 people attending at any one time.
24. I acknowledge that visitors will come and go at different times and this may limit the noise generated at any one time. However, there is nothing before me to suggest an enforceable mechanism whereby the number of visitors on site at any time could be limited.
25. A noise monitoring survey was undertaken between 9 and 14 December 2021. The assessment concludes that the development's plant operations do not exceed background sound levels in the area. However, it identifies a minor/moderate relative change in ambient sound levels at the identified receptor locations due to typical activities at the site, including visitors and car parking. The assessment of noise from the outdoor seating area identifies a negligible change to the ambient sound levels during small outdoor seating events. During larger events, the assessment identifies moderate change to the ambient sound levels at one noise sensitive receptor and a minor change at the others. The predicted levels remain below the BS8233 criteria of 50 dB(A) for external amenity areas.
26. The assessment concludes that noise from typical operations at the distillery can be heard at the closest receptors but would not substantially change the ambient noise levels in the area subject to the installation of acoustic fencing along the northern and western boundaries of the site. It further advises that best practice should be used to minimise patron noise from the outdoor seating area (with that area limited to the south of the barns for 'normal' events with a reduced number of people) and making visitors aware of the noise-sensitivity of the area by encouraging quiet behaviour on site.
27. I cannot say with certainty whether the noise survey period typically represents the noise generating activities across the site. Whilst I acknowledge an acoustic fence may minimise the noise impact, I have already concluded such a feature would have an adverse impact on the AONB.
28. Without an acoustic fence, I consider that impulse noise associated with the use, such as raised voices, music, the slamming of car doors or the start up of car engines with visitors arriving or leaving the site would result in a level of disturbance over and above that which the neighbouring residents should reasonably expect to enjoy.
29. Additionally, to my mind a development which must rely, in part, on the operator having to request that visitors leave the premises quietly, is tantamount to a recognition that the use would have an unacceptable impact on the living conditions of existing residents, particularly at times when they should have a reasonable expectation of a quiet environment.
30. Hence, I find that the development is likely to result in a significant increase in visitor numbers, resulting in noise disturbance and a harmful impact on the living conditions of the residents in the immediate vicinity of the site. It therefore conflicts with LDP Policies S10, S17, RE2, RE6, EP1 and DES1 in this regard.

#### *Highway safety*

31. The highway network in the vicinity of the site is made up of country roads and rural lanes, with a single lane carriageway forming this part of Ninewells Road. There is an existing field gate providing vehicular access to the site.

32. The Council disputes the findings of the appellant's Transport Statement that passing opportunities are available along the carriageway, pointing out that the carriageway is a narrow single track bounded by hedges with soft verges unsuitable for vehicles. Further there are no hard surface passing places other than field and property entrances. In addition, the assertion that traffic speed and volume along Ninewells Road are low are unreliable, given that they rely on observations rather than records of actual traffic speed or volume data. Ninewells Road is subject to the national speed limit.
33. The photographs provided by interested parties show vehicles at a particular point in time and cannot be relied upon to show vehicle movements or typical manoeuvres and/or parking arrangements. I have seen a third party website stating that coach parking is available at the site but have no reason to doubt the appellant's assertion that the largest vehicle that has been used to bring customers to and from the site is a mini-bus. I have insufficient information to identify the exact number and nature of the vehicle movements. However, as stated above, visitor numbers have been recorded between 178 to 231 people with around 50 to 60 people attending events at any one time. That volume of visitors coming and going would inevitably lead to difficulties and conflict along narrow lanes with no official passing places.
34. I am also concerned that customers accessing the development on foot or by bicycle would be forced to walk or cycle in the carriageway, along a single-track road where there is a realistic prospect of the traffic travelling at national speed limit and drivers having to perform reversing manoeuvres (this includes delivery vehicles and HGVs). Thus, I am not convinced that it is a safe environment for pedestrians or cyclists.
35. There is also disagreement between the parties regarding the size and frequency of delivery vehicles. Nevertheless, the Transport Statement provides a Swept Path Analysis of a 10.0m rigid vehicle, which concludes that adequate space is available for a vehicle of this size to safely enter and exit the site in a forward gear. Although I note the concerns of interested parties that the SPA suggests a tarmacked surface for the width of the carriageway when, in fact, there are verges to either side, the Council has not taken issue with this element of the scheme.
36. It would appear that the area of land adjacent to Barn 2, over which delivery vehicles would travel in order to leave the site in a forward gear, also functions as the operational parking area. Thus, I am not satisfied that there would be adequate space for delivery vehicles to turn within the site in the event that the operational parking is in use.
37. Turning to parking, the submitted evidence suggests that there would be a maximum of 60 guests on site at any one time. To accommodate this, overspill parking would be provided in the adjacent fields. For events, it has been assumed that vehicular occupation would be a minimum of two people per vehicle; for 60 guests on site approximately 30 cars would therefore need to be accommodated on site and within the designated overspill areas.
38. I am not certain on what basis assumptions have been made regarding the number of visitors at each event or the number of persons per vehicle. Neither is there any mechanism before me for limiting the number of visitors, securing the 'overspill' parking area or ensuring that all 10 spaces within the site are available for visitor parking rather than being used for operational parking or servicing. Consequently, I cannot be certain that the single width carriageway to the front of the site would not be used as indiscriminate parking by visitors which, in turn, would compromise highway and pedestrian safety. For these reasons, I do not consider a condition requiring an Event Management Plan could overcome these issues.

39. Moreover, a Delivery Management Plan could be secured by condition but I share the Council's concern that this would not address the limitations of the local highway network or the site's constraints.
40. In light of the above, I find that the development has an unacceptable impact on highway and pedestrian safety, in conflict with LDP Policies S10, S16 and MV1.

### *Drainage*

#### *Foul*

41. Welsh Government Circular 008/2018 '*Planning requirements in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants*' ("the Circular") states that the first presumption must always be to provide a system of foul drainage discharging into a public sewer (my emphasis). If it can be shown that connection to a public sewer is not feasible, a private sewage treatment system consisting of package treatment plant can be considered. Only if it can be demonstrated that connection to the sewer, or the use of a private package treatment plant is not feasible, should a septic tank system be considered.
42. The installation of a septic tank was approved for the change of use of Barn 2 to a micro distillery. A septic tank was accepted on the basis that the distillery was a small business with only two people working there on a day-to-day basis, and a few occasional visitors. I understand that the installed septic tank has a capacity of 4-5 people per day, and is intended for a 5 person household.
43. Taking the above factors into account, I acknowledge it is possible that the existing septic tank would be sufficient for day-to-day staff use. However, with visitor numbers in dispute and without a mechanism for limiting such numbers in any event, I cannot be certain what the actual flows and loads are. Neither do I know whether the appellant has considered the hierarchy referred to in the Circular, so as to establish whether a connection to the mains or, if not, a private sewage treatment would be feasible in this instance.
44. Notwithstanding the above, it is accepted that event days significantly exceed the capacity of the septic tank. Although it is proposed that portable toilets could be used, I have not been provided with a full assessment, including the details of the number of portable toilets required, to meet demand beyond the capacity of the septic tank. In other words, I am not satisfied by the submitted evidence that reliance on such means would not lead to environmental, amenity or public health problems.
45. I afford very little weight to the appellant's statement that '*Visitors to the distillery usually spend less than an hour on site and in our experience are not likely to use the toilet*'. That can neither be guaranteed or enforced, and I cannot envisage a situation where a tourist business which offers refreshments, forbids customers from washing their hands and/or using a WC.
46. The septic tank was intended to serve a much more modest development than that the subject of Appeal A. It therefore follows that it has not been demonstrated that the development is served by satisfactory on-site services for sewage disposal. In this regard, it would conflict with the Circular and LDP Policy EP1.

#### *Surface water and flooding*

47. The Council acknowledges that as the total construction area appears to be above 100m.sq, SAB approval is required. Surface water drainage is a separate consent regime and, therefore, and I see no reason to duplicate controls under that legislation.

### *Ecology*

48. Policy 9 of Future Wales requires a net enhancement for biodiversity for all new development.
49. The ecological assessments which accompanied the previous application cannot be relied on in respect of the need to secure biodiversity enhancement for the scheme that is before me. The need for properly considered ecological enhancement, which is proportionate to the development the subject of Appeal A, would be necessary to comply with FW Policy 9 and the duties imposed by section 6 of the Environment (Wales) Act 2016 and the national planning policy requirements of PPW, noting the update to Chapter 6 of PPW which further reinforces this position.
50. In the absence of such proposals, I must conclude that the development conflicts with Future Wales and the requirements of the Act and PPW in this regard.

### *Other Matters*

51. The appellant contends that the development constitutes a sustainable development of a rare brownfield site in a location that is in accordance with the statutory development plan and will make an important contribution towards the rural economy. Even if I were to consider this site to be brownfield, the development fails to meet the sustainability objectives outlined in local and national planning policy for the reasons I have already given. This matter does not therefore outweigh the harms I have identified in the balance of acceptability.

### **Appeal B: The ground (f) appeal**

52. An appeal on ground (f) is that the steps required to comply with the requirements of the Notice are excessive and lesser steps would overcome the objections.
53. The argument advanced in support of the ground (f) appeal is that a s78 appeal has been made against the refusal of planning permission and, as such, the steps required to comply with the requirements of the notice are considered excessive and would have irreversible financial and operational implications. However, the scope of ground (f) is limited given that there is no ground (a) appeal before me seeking retrospective permission for the use or development.
54. I have concluded that the S78 appeal be dismissed and there are no other suggestions before me of realistic or suitable lesser steps that would address the fundamental concerns in respect of the development that has been carried out and which is the subject of the Notice. In my view, the requirements are entirely appropriate to achieve the objectives of protecting the character and appearance of the area, the living conditions of neighbours, highway safety, drainage and ecology.
55. Thus, the requirements of the Notice are not excessive and there are no lesser steps put forward by the appellant that would remedy the breach of planning control that has been caused. The appeal on ground (f) must therefore fail.

### **Appeal B: The ground (g) appeal**

56. The appeal on ground (g) is made on the basis that the 3 month period for compliance with the Notice is too short in view of the resultant severe financial burden on the business. Accordingly, a period of 12 months to continue trading and a further 3 months to comply with the Notice is sought.
57. I have had regard to the appellant's contention that the works required to revert to the approved use would require the transfer of the enterprise to new venues, arrangement of



finances and scheduling, and recalibrating the business model whilst fulfilling existing commitments and remaining operational in the current uncertain economic times.

58. The Council states that the time given to comply with the Notice is not insufficient, arguing that it is in line with the normal period allowed for compliance with an enforcement notice and is more than sufficient to remedy the breach.
59. To extend the period of compliance would prolong the harm I have identified. However, I have also had regard to the difficulties associated with finding alternative premises, re-establishing the business and meeting its existing commitments together with the removal from the site of the material forming the hardstanding. An extended compliance period would increase the likelihood of another suitable site being found, thereby assisting in keeping the business operational. That being said, and whilst I find the 15 month period sought by the appellant to be too long a compliance period during which the unauthorised use would subsist, I consider that 6 months strikes the right balance between remedying the breach of planning control as soon as is reasonably possible and acknowledging the difficulties that the appellant is likely to encounter. I shall vary the Notice accordingly.

### **Conclusion**

60. In conclusion, Appeal A is dismissed. The appeal on ground (g) succeeds as I find the compliance period too short, and I am therefore varying the Notice accordingly prior to upholding it.
61. In reaching my decisions, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that these decisions are in accordance with the Act's sustainable development principle through the contribution towards the Welsh Ministers' well-being objective to make our cities, towns and villages even better places in which to live and work.

*Melissa Hall*

INSPECTOR

---