

Appeal Decision

Site visit made on 30 August 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 14 September 2016

Appeal Ref: APP/D0515/C/16/3150889

Land to the west side of the Coach House, Needham Bank, Friday Bridge, Wisbech PE14 0LP

- 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 appeal is made by Miss Emily Howard against an enforcement notice issued by Fenland District Council.
 - The Council's reference is ENF/104/15/UW.
 - The notice was issued on 28 April 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission (i) the unauthorised demolition of the existing barn shown on the attached plan and (ii) the erection of an unauthorised building shown on the attached plan.
 - The requirements of the notice are: (i) Permanently demolish and remove from the Land the unauthorised building approximate position and marked 'A' on the attached plan; (ii) Permanently demolish and remove from the Land any hard-standing or foundations incidental to the unauthorised building; (iii) Permanently remove all building materials, tools and other items from the Land; and (iv) Permanently remove from the Land all resulting debris from compliance of requirements (i) to (iii) above and take it to a lawful disposal point.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The enforcement notice is corrected by the addition of the words 'in the' immediately before the word 'approximate' and the deletion of the word 'and' immediately following the word 'position'. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Within the appeal form the appellant indicated that she wished to appeal on grounds (a), (c) and (f). However, the prescribed fees in relation to the ground (a) appeal were not paid within the prescribed period and, accordingly, the appeal on ground (a) has lapsed and I shall not determine the planning merits of the alleged development within my decision. The Inspectorate wrote to the appellant on 13 July 2016 to confirm that the appeal will proceed on grounds (c) and (f) alone.
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3. There appears to be a minor typographical error in the requirements of the notice at section 5(i) which states 'permanently demolish and remove from the Land the unauthorised building approximate position and marked 'A' on the attached plan'. Whilst the wording leaves no doubt as to which building is referred to the phrase would be clearer through the addition of the words 'in the' immediately before the word 'approximate' and the deletion of the word 'and' following the word 'position'. The requirement would then read 'Permanently demolish and remove from the Land the unauthorised building in the approximate position marked 'A' on the attached plan'. I have corrected the notice accordingly in order to provide greater clarity.

The Appeal on Ground (C)

4. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. The former barn has undoubtedly been demolished, as acknowledged by the appellant who states that the barn fell down after her builder removed key structural components on the recommendation of a structural engineers report. That report has not been submitted as part of the appeal. In any event, the demolition of a building constitutes development, as defined by section 55(1A) of the Town and Country Planning Act 1990 (the Act).
5. Although the Direction within Department of the Environment Circular 10/95 excluded certain forms of demolition from the definition of development, certain elements of that Direction were quashed following a judgement in the Court of Appeal¹. As a result, the demolition of buildings with a cubic content of more than 50m³ now constitutes development and would require planning permission. No information on the size of the former barn is presented but, for it to be large enough to convert into a dwelling it is likely to have been substantially greater than the 50m³ limit.
6. When making an appeal on ground (c) the onus, on the balance of probability, falls on the appellant to demonstrate that there has not been a breach of planning control. For the reasons given, the demolition of the barn was development for which planning permission would have been required. No planning permission had been granted and the development was therefore a breach of planning control.
7. Building work commenced on the site of the former barn but that work would appear to have ceased. At the time of my visit, the building had been constructed up to slab level with a concrete base surrounded by perimeter walls built from block work. The slab level of the building is raised above surrounding ground level. All of the structure appeared to be newly constructed. Although planning permission had been granted for the conversion of the former barn to a dwelling there is nothing left of the former structure which has been demolished in its entirety.
8. The appellant suggests that the works were undertaken on the advice of her builder on the understanding that this would be acceptable. However, the evidence before me is that the planning permission was for the conversion and change of use of the existing barn to a dwelling. The works that have been undertaken on site do not appear to relate to any form of conversion but amount to operational development and the erection of a new building. No

¹ *SAVE Britain's Heritage v SSCLG & Lancaster City Council* [2011] JPL 1429

evidence has been presented to suggest that planning permission has been granted for the development that has taken place or to suggest that complete demolition and re-building was within the scope of the planning permission which was granted in 2013². Therefore, on the information presented, the building work that has taken place amounts to unauthorised operational development.

9. For the reasons given above, I conclude that there has been a breach of planning control, as stated in the notice, and the appeal on ground (c) must fail.

The Appeal on Ground (f)

10. An appeal on ground (f) is made on the basis that the steps required to comply with the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity that may be caused by such a breach. In seeking the complete removal of the building it appears to me that the Council is seeking to remedy the breach of planning control. Leaving the unauthorised building in-situ would not remedy the breach of planning control – it is operational development for which planning permission is required. In the absence of an appeal on ground (a) it is not open to me to consider whether planning permission should be granted for the development. Whilst the appellant may intend to submit an application for planning permission for a new building at some future point there is no guarantee that such an application would be successful and that would be a matter for the Council to consider at that time.
11. Therefore, no lesser steps have been suggested that would remedy the breach of planning control and the appeal on ground (f) must therefore fail.

Conclusion

12. For the reasons given above I consider that the appeal should not succeed.

Chris Preston

INSPECTOR

² F/YR130625/Extime