Appeal Decisions

Site Inspection on 5 September 2016

by Graham Self MA MSc FRTPI

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

Decision date: 19 September 2016

Appeal Reference: APP/D3830/C/16/3146777
Site at: The Stables, Pookbourne Lane, Sayers Common, Hassocks BN6 9HD

- The appeal is made by Mr Jeremy Sussex under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Mid Sussex District Council.
- The council's reference is PAC/PL15-001216.
- The notice is dated 1 March 2016.
- The breach of planning control alleged in the notice is:

  "On 15th February 2013, under application reference 12/04343/FUL ("the Planning Permission") the Council granted planning permission on the Land for the alterations to 1 no new outbuilding, approved under planning application 12/01437/FUL, subject to conditions:

  Condition 2 of the Planning Permission reads, 'The buildings hereby approved shall be used solely for the purposes of the storage of equipment and for office purposes in association with the livery use permitted under application 12/01437/FUL, as set out on the plans hereby approved, and for no other purpose'.

  The reason for imposing condition 2 reads, 'To ensure that the use of the building and site is appropriate to its rural setting and to accord with Policies C1 of the Mid Sussex Local Plan.'

  It appears to the Council that condition 2 of the Planning Permission has not been complied with because the building shown for the purposes of identification edged in blue on the Plan and known as 'The Stables Office' (the 'Building') is not being used solely for the purposes of the storage of equipment and for office purposes in association with the livery use permitted under application 12/01437/FUL and is being used as a separate single dwellinghouse, without the necessary planning permission ('the unauthorised development')."
- The requirements of the notice are:
  1) Cease the use of the Building as a separate single dwellinghouse.
  2) Remove from the Building and the Land the kitchen, living room and bedroom furniture and any other residential paraphernalia associated with the Unauthorised Development.
  3) Remove from the Building and the Land all other materials resulting from step 2) above.
- The period for compliance is six months.
- The appeal was made on grounds (a), (f) and (g) as set out in Section 174(2) of the 1990 Act.

Appeal Reference: APP/D3830/W/16/3152435

- The appeal is made by the same appellant and relates to the same site as recorded above. This appeal is under Section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991; it is against a refusal of planning permission by Mid Sussex District Council.
- The council's reference is AP/16/0053.
- The development subject to this appeal was described in the application as: "Change of use of office building to dwelling house. Change of use of livery stables to cattery. Change of use of lake to fishery. Erection of 2.6m high fence. Occupation of dwelling house to be tied to cattery and fishery. Planning permission for changes of use to be for a 2 year temporary period."
- The council's refusal notice was dated 3 June 2016.

Section 174 Appeal, Ground (a); and Section 78 Appeal

1. The cases relating to the appeal on ground (a) against the enforcement notice and to the Section 78 appeal are linked, so I consider them together.

2. The enforcement notice alleges a breach of condition. Thus the appeal on ground (a) against the enforcement notice is seeking permission for retaining the development permitted by the 2013 permission without complying with Condition 2 - or in effect the discharge of Condition 2 of the 2013 planning permission. The Section 78 appeal seeks planning permission for (among other things) the change of use of the same building to use as a dwelling.

3. Although the Section 78 appeal refers to various separately identified proposals, including "change of use of livery stables to cattery" and "change of use of lake to fishery", this is an incorrect way to define the "use" elements of the proposal. The appeal site is a single unit of occupation - that is to say, for the purposes of planning law it is a single "planning unit". The "uses" were all described together in the application now subject to appeal and what is proposed is a mixed use of the planning unit, including residential or dwellinghouse use, use as a cattery, and use for the operation of a fishery.

4. The " mixed use" component of the Section 78 appeal development is partly retrospective - the dwelling has been occupied as such for some time, a fishery business of some kind may be operating, but there is no cattery use. The retrospective permission sought for retention of the 2.6 metre high fence is a separate item involving "operational development".

5. The main issue raised by the appeals is whether the change of use to the mixed use just described would be acceptable having regard to relevant planning policies on development in this rural part of Mid Sussex. I consider first some matters relating to the dwelling and the links between the dwelling and the other activities at the site. The appellant's case is based on the premise that the use of the building as a dwelling is justified on various grounds including compliance with policies on the re-use of rural buildings and on sustainable development, the lack of harmful impacts, the contribution to the District's shortfall in housing supply, and the requirement for an on-site dwelling to manage the proposed cattery and fishery, particularly the former.

6. The 2013 planning permission was linked to the permission granted in 2012 for the re-siting of two stables/outbuildings and erection of a new outbuilding to be used as livery for up to five horses. The address of the site for this application was Hornsdene Cottage, Pookbourne Lane (this is the dwelling south of the site).

The 2012 permission was also subject to various conditions, one of which (Condition 2) stated that "the buildings hereby approved shall be used solely for.….stabling up to five horses, the storage of associated equipment and for office purposes in association with the livery use hereby permitted….and for no other purpose".

7. There is conflicting evidence about whether the building which is now a dwelling was first built as an office or store and then converted into a dwelling, or was built as a dwelling from the start. Either way, the building was apparently never used for any livery-related purpose, the livery use mentioned in the 2012 and 2013 permissions has evidently never started, and the residential use appears to have begun sometime after the February 2013 permission was granted, probably in early 2015 when Mrs Sussex was evidently made redundant and the lodgings which went with her job as a chef became unavailable.

8. The 2012 and 2013 permissions were apparently obtained when the appeal site was part of the same planning unit as Hornsdene Cottage. Now, the appeal site is owned and occupied separately and the dwelling at Hornsdene Cottage which could formerly have been associated with the then proposed livery operation is not available.

9. Several policies in the Mid Sussex Local Plan and the Hurstpierpoint and Sayers Common Neighbourhood Plan aim to control development in the countryside. This does not of course prevent residential or other types of "urban" development - for example, under Policy C12 of the Mid Sussex Local Plan, development may be permitted where it involves diversification of existing agricultural units.

10. One of the points made for the appellant is that the council wrongly describe the appeal site as being part of a "local gap" as designated for policy purposes in the Neighbourhood Plan. Nevertheless, the site is in an "area of countryside restraint". It is undeniably in a rural area well outside any town or village, with poor access to public transport and not near facilities such as schools and shops. Taking those points into account I judge that this is not a "sustainable" location for planning policy purposes, and that the breach of condition and the development involving the residential use is not "sustainable development". Given this finding, the contribution which would be made to the area's housing supply by permitting one dwelling here would be offset by planning disbenefits.

11. The direct visual impact of the residential use is very limited. However, that is not a compelling factor - there are social and economic reasons why national and local planning policies aim to restrict the spread of housing in this rural area. Without clear justification, permitting the dwelling would conflict with that aim.

12. The Mid Sussex Local Plan contains policies under which suitable agricultural buildings can be converted to other uses. The building now used as a dwelling does not and did not fall into that category, since livery is not agriculture. The general thrust of the local plan is that "proposals for the re-use of rural buildings will be very strictly controlled."[1] Even treating the building as a "rural building" for policy purposes, a building which has never been used for its lawful livery-related purposes cannot be properly regarded as a conversion or re-use complying with the aims of the local plan.

13. Policy DP13 of the emerging District Plan (which has some weight as a material consideration) provides that the re-use and adaptation of rural buildings will be permitted in certain circumstances. The scheme subject to appeal does not

[1] The quotation is from paragraph 6.50 of the local plan.

comply with that policy, as the re-use of the dwelling building has not "secured the future of a heritage asset" or "enhanced the immediate setting and the quality of the rural and landscape character of the area".[2]

14. The cattery scheme would involve converting the building which was originally designed as stables into 12 cat pens, each of which could potentially be occupied by up to two cats if they were from the same household. A business plan was supplied in support of the application. A business plan has also been put forward to support the case for the fishery component of the overall proposal.

15. Given the prospective nature of the cattery business and the fact that Mr and Mrs Sussex started living at the site before the businesses (or at least the cattery business) were proposed, I take a sceptical view of the claim that the dwelling is needed to provide workers on the site with a 24 hour presence. Money has obviously been spent on items such as the fence designed to prevent otters from taking fish, but the past failure to even start any livery business - which was the justification originally claimed for the building now used as a dwelling - makes it difficult to have any confidence that the business ideas now put forward would be pursued.

16. Two successful catteries in the area have apparently recently shut down due to retirement, and the site is not far from an area where new housing is proposed or being developed. These factors could help to provide a customer base. On the other hand, possible competition from other catteries has to be allowed for. But all this assumes that the cattery business becomes successfully established in the first place.

17. Even giving the appellant the benefit of the doubt on those points, there are three significant weaknesses in this part of the appellant's case. First, the appellant has stated: "the cattery is needed as Mia Sussex requires employment". That approach is the wrong way round. The cattery business does not exist, and when assessing the justification or need for a dwelling to support an agricultural or rural enterprise, it is the needs of the enterprise, not of the current occupier, which is relevant. If a planning permission were to be granted for a dwelling, it would not be possible to impose a condition requiring any business on the site to be started (or continued), because such a condition would be unenforceable.

18. Second, a further problem is that a normal condition in this type of case would restrict occupancy of the dwelling to a person employed at the cattery and fishery and his or her dependants. (Indeed, the appellant has suggested that "the house will be tied to the permitted livery use of the stables…or the cattery/fishery use that is proposed…".) Mr Sussex evidently works in the building industry, and such a condition would immediately be breached if, as the evidence suggests is likely, Mr Sussex continues to work elsewhere, and he would not be a dependant of Mrs Sussex. Confirmation that this is intended is the statement in a document submitted in evidence in which Mrs Sussex states: "The plan of action is for *me to run* [my italics] a small 'boutique' cattery". Even assuming the cattery is established and even assuming full occupancy, there is no way a 12-pen cattery would need two full-time workers to live on the site. That would be so even adding fishery-related work.

19. Third, there is no convincing evidence that the tasks involved in looking after the fish (such as feeding, monitoring for predators, checking water quality, and stock checks) would require a worker to live on the site. The same applies to the small extent of animal grazing which apparently occurs. I note the submissions about

[2] I regret the over-wordy text but this comes from policy statements.

the value of the fish and the need for security to prevent crime, but there are other means of doing this. With these factors in mind I discount the fishery business as a reason for needing the dwelling.[3]

20. In considering the issues of sustainable development and harm to the rural character of the area, one of the aspects argued between the parties is traffic generation. The appellants have submitted an assessment by consultants showing that the proposed uses would generate much lower traffic movements than the existing uses. I give only limited weight to this part of the appellant's case for three reasons. The first is that the "existing uses" as a livery stable and office do not in fact exist; there appears to be no intention by the appellant to start them, and the part of the permission covering "the livery use hereby permitted" was not implemented.[4]

21. The second is that the trip generation figures include standard trip rates for office use. That is not appropriate in this instance since the "office" activity permitted (and storage) would only have been in association with or ancillary to the livery use rather than a use in its own right.

22. The third reason is that the trip rate used for the dwelling assumed that both occupiers would work at the cattery, so inbound and outbound work-related trips for workers at the cattery and the occupiers of the dwelling were discounted. As I have explained above, even combining the 12-pen cattery with the fishery, I do not see a business need for both Mr and Mrs Sussex to be employed at the site full-time. What is far more likely is that one or the other would work (or continue to work) elsewhere - probably Mr Sussex because of his work in the building industry.

23. The developments elsewhere to which reference is made in the appellant's statement are not directly comparable. At Michaelmas Barn, Twineham, there was evidently an existing dwelling, a range of redundant farm buildings and a sand school, which were to be replaced by a development scheme including three dwellings. At Leawards Lea, Hickstead, there was an established existing lawful dwelling, to which a cattery was to be added. The scale of the cattery was much larger than that proposed at the appeal site, which has some disadvantages but is more likely to be a viable business prospect; and in the event of its failure, the dwelling would have been lawfully there anyway. These examples provide some similarities with the present proposals, but they do not set a precedent which I should now follow, as the balance of points for and against the developments is not the same.

24. I have considered the possibility of a temporary permission. The application now subject to the Section 78 appeal sought planning permission for a two-year temporary period (although the appeal statement submitted for the Section 174 appeal stated that the application would propose a three year temporary

[3] The fishery operation is difficult to assess, partly because although there are evidently fish in the lake and information has been supplied about their value, as a business operation it is long-term - some 45 carp were evidently put in the lake during the winter of 2014-15 and there is no plan to sell any until the winter of 2016-17. The construction of what was then called a "pond" (only the construction, not the operation of any fishery business) was permitted in 2013 when the land was attached to Hornsdene Cottage. The council have not objected to the fishery operation as such, although they describe it as unlawful and say that the information supplied at application stage indicated that the operation was not agriculture as defined in the Planning Act because the fish were being reared for ornamental purposes.

[4] The quotation is from Condition 2 of the 2012 permission. This permission appears to have been a composite one, for operational development (the building) and for a change of use to use for a livery business.

permission).[5] I find that there are too many doubts and uncertainties. The dwelling structure is not a temporary building, and I think a two-year temporary permission would be quite likely to create problems for all concerned near the end of that period. I have already commented on the difficulty of imposing a "tie" condition limiting occupancy of the dwelling to a person employed at the site and dependants. The circumstances here do not warrant a so-called "personal permission".

25. I have mentioned the need for clear justification. The NPPF sets out a presumption in favour of sustainable development and states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. As explained above, I judge that this is not "sustainable development"; but even if an opposite view were to be taken, the adverse impact of undermining local and national policies would significantly and demonstrably outweigh the benefits of the development. The NPPF also states that planning policies should "promote the development and diversification of agricultural and other land-based rural businesses". The proposed cattery would not be a "land-based business" in that sense.

26. Mr and Mrs Sussex's desire to improve their lifestyle is understandable. But they must have known that they were taking a risk in converting a building into a dwelling without first obtaining planning permission. I sympathise with their predicament; but I find that the council have a basically sound case.

27. I now turn to the fence. It stands along or next to the boundary of the appeal site near the southern entrance, adjacent to Hornsdene Cottage. It is an intrinsically urban feature which takes away a little of the area's rural character. The effect is not substantial; the council have not put forward any significant objections to the fence and have not enforced against it. However, the fence is proposed as part and parcel of the overall scheme described in the application subject to the Section 78 appeal, and on balance I do not think there are grounds for treating the fence differently from the rest of the proposal and permitting it by means of a "split decision".

28. In reaching my decision I have taken account of all the other matters raised in evidence on which I have not specifically commented, including the claimed economic benefits of the development, the lack of harm to the amenities of any nearby dwellings, the educational aspects relating to the fishery, and the possibility of imposing other conditions such as those suggested by the council.[6] I have also noted the representations by local residents supporting and opposing the appeals.

29. In summary, the development subject to the Section 78 appeal and to ground (a) of the Section 174 appeal would conflict with key aims of local and national policies. The arguments about the need to provide a dwelling for a rural worker or to allow the re-use of an existing rural building are unconvincing and flawed. I conclude that planning permission should not be granted either on the deemed application arising from the Section 174 appeal or in response to the Section 78 appeal.

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[5] This statement was dated 18 March 2016. The application was dated 8 April 2016. The apparent change of mind within a few weeks itself suggests uncertainty on the appellant's part about future plans and prospects.

[6] I observe in passing that several of the conditions in the council's Appendix 2 (for example including the phrase "the development hereby permitted shall not commence until…") would not be appropriate in this type of case where retrospective permission is involved.

Section 174 Appeal, Ground (f)

30. Under this ground of appeal, Mr Sussex contends that the requirements of the enforcement notice are excessive and that lesser requirements should be substituted. In particular, it is argued that all that is required is for the building to be used for offices, that the living room furniture such as tables and chairs could be used as part of an office, and that it would be reasonable for an office also to have a kitchen.

31. As I have noted above, the permission for the building which is now used as a dwelling did not allow unrestricted office use - the use of the building was restricted to use for storage of equipment and for office purposes in association with the livery use permitted under the 2012 permission. In the absence of the livery use and of any apparent prospect of such a use, I do not see good reason for not requiring the removal of the items which facilitate the unauthorised residential use. I am certainly not prepared to substitute a requirement that the building be used as offices - that would in effect grant planning permission for unrestricted office use in a location where such development would be wholly inappropriate. It is not for me to say what use rights the site may or may not now have.

32. I conclude that the requirements are not excessive, so the appeal on ground (f) does not succeed.

Section 174 Appeal, Ground (g)

33. Ground (g) concerns the compliance period. A period of 12 months is sought. Two main arguments have been put forward by the appellant, though one was to allow time for the application and Section 78 appeal to be submitted and processed, and this aspect has been overtaken by events. In any case there is no reason why the planning authority when issuing the enforcement notice should have allowed time for the Section 78 appeal to be submitted, processed and decided.

34. The other main argument was that Mr and Mrs Sussex have nowhere else to live and will have to arrange the sale of the site in order to buy another home. That is a difficulty the appellant has brought upon himself by carrying out unauthorised development. No detailed or specific reasons have been put forward why, if a sale and purchase are necessary, it would not be possible to carry out these steps within six months. I conclude that the compliance period specified by the council is reasonable and that there is no justification for extending it in response to the appeal on ground (g).

Formal Decisions

Section 174 Appeal

35. I dismiss the appeal, refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act, and uphold the enforcement notice.

Section 78 Appeal

36. I dismiss the appeal.

G F Self

Inspector