

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: 20 September 2016

Appeal Reference: APP/L3815/C/15/3141588

Site at: Tapners Barn, Marsh Lane, Merston, Oving, Chichester PO20 1DZ

- The appeal is made by Mr Robin Mincik 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 Chichester District Council.
- The council's reference is O/15/00277/CONHH.
- The notice is dated 23 November 2015.
- The breach of planning control alleged in the notice is: "Without planning permission, erection of an extension to the southern elevation of the dwellinghouse".
- The requirements of the notice are:
 - i) Demolish the said extension
 - ii) Remove the resulting debris from the land, and
 - iii) Following compliance with (i) above, make good any damage to the side (south) elevation of the dwellinghouse.
- The period for compliance is three months.
- The appeal was made on grounds (c) and (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal does not succeed.

Appeal Reference: APP/L3815/W/15/3142290

- This appeal is also made by Mr Robin Mincik. The appeal is under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal of planning permission by Chichester District Council.
- The council's refusal notice is dated 17 November 2015.
- The development was described in the application as: "Orangery extension to side of existing Barn".

Summary of Decision: The appeal does not succeed.

Procedural Matters

1. During my site inspection it became apparent that I had not received some documents which Mr Mincik's agent said he had submitted as revised final comments, after the Planning Inspectorate had returned his previous representations on the grounds that they included new material, which was not

permissible at final comments stage. Afterwards I investigated the matter as far as I could and found that this may have occurred because of technical problems with email delivery.¹ Although I do not know exactly what happened, I arranged for the documents to be sent to me and I have taken them into account.

Section 174 Appeal, Ground (c)

2. Under this ground of appeal it is claimed that there has not been a breach of planning control (or, more technically, that the matters alleged in the enforcement notice did not constitute a breach of planning control). The basis of the appellant's case is that the side extension was built in two stages: the side wall and one end wall were constructed first, together with a timber floor; then later, as a separate operation, the roof, the glazed end with a doorway facing the rear garden and a new floor were built.
3. Mr Mincik's suggestion (in his sworn statement) that the removal of old fencing and construction of the walls was "like for like" replacement and therefore "our decision was that this would not involve the council" strikes me as an attempt to claim ignorance or naivety. A fence is a fence. A wall is a wall. Constructing the wall was development as defined by the Planning Act. Given such arguments by the appellant, the council cannot be criticised for describing part of the appellant's case as fanciful.
4. One of the appellant's arguments is that the L-shaped wall structure was "clearly permitted development" under the Town and Country Planning (General Permitted Development) Order ("GPDO"). That matter is by no means as clear as is suggested for the appellant, bearing in mind that part of the L-shaped structure is attached to the house and that permitted development rights normally available under the GPDO to alter the house or erect any other buildings within its curtilage were taken away by a condition imposed with the planning permission for the original conversion in 1987. (A "building" is defined in Section 336 of the Act as "any structure or erection".)
5. It is not clear from the available evidence (including the sworn statements) whether the side wall was built from the start as a cavity wall (bearing in mind that a cavity wall would be necessary to meet building regulations for an extension, and is shown on the architect's drawings of the extension). I suspect it was, since the builder's statement does not mention adding anything to the side wall during the "second phase" of the development. It seems strange to have built a cavity structure for what was claimed to have been merely intended as a screen wall, if at that time there was no intention to turn the initial structure into an extension.
6. Even setting aside the above points, there is no sound basis for the appellant's case on ground (c), for which perhaps "artificial" is a better term than "fanciful". Mr Mincik's argument is rather like saying that since laying one brick is such a minor operation that it does not need planning permission, a whole house could be built without permission provided there is a long enough gap between putting each brick in place. It does not matter whether the side and end wall were built first and then a gap of some two months followed before the rest of the structure was built. The end result, which was reached by the time the enforcement notice was issued, is the extension on the south side of the house as described in the enforcement notice. Its construction constituted development which was not

¹ Specifically, I discovered that the Planning Inspectorate's "Team Mailbox" can become full and then not accept emails, but the "undelivered" return message may then be received in the original sender's junk mail box. (This happened to me during my investigation.) Without frequently checking the junk mail box, the sender may be unaware of the failed delivery.

permitted by the Town and Country Planning (General Permitted Development) Order, and planning permission was not obtained by any other means.

7. In summary, the matters alleged in the enforcement notice constituted a breach of planning control. Therefore the appeal on ground (c) of Section 174(2) fails.

Section 78 Appeal

8. This appeal is against the refusal of retrospective planning permission for the extension. The main issues of dispute concern the effect of the development on the character and appearance of Tapner's Barn or of the surrounding rural area, considered in the light of relevant planning policies.
9. Tapner's Barn is part of a loose-knit hamlet in a predominantly rural area. The dwelling was created by converting what was originally an agricultural building which evidently had post-medieval origins. The building has considerable historic character. Its walls in particular have a distinctive appearance because of the way they were built with coursed flint or stone combined with brick string courses and brick quoins to openings. Changes have obviously occurred in the past, including the construction of a timber-framed rear conservatory for which planning permission was not obtained but is now "immune" and thereby lawful.
10. The council draw attention to local and national planning policies. For planning policy purposes, the council regard Tapner's Barn as a "non-designated heritage asset". This means that its heritage interest is significant enough to be a material consideration in planning decisions, though of lesser status than a listed building (that is to say, a building listed as having special architectural or historic interest and considered to be of national importance).
11. The extension has brown-coloured PVC door and window frames which are obviously modern, but match the material used for openings in the house. The walls of the extension are finished mostly in brick but with a panel of coursed flint stonework in the external side wall. The brick is broadly similar to, but does not match, the existing brick in the main building. The stonework panel also has similarities with the materials of the main house but some aspects of it are a poor imitation of the house: these aspects include finishing details such as the pointing, and its appearance looking more like a decorative "feature panel" than a structural element separated by brick string courses. The overall effect when looking at the outside of the extension is that whilst it is not visually unattractive, nor does it harmoniously or accurately reflect the historic character of the dwelling.
12. Public views of the extension are limited. The structure can be seen from Marsh Lane outside the front of the property, but only by an angled view which would hardly be glimpsed by most passers-by. Vegetation in the rear garden screens most views from other directions outside the site. In these circumstances I find that the extension does little harm to the appearance and character of the wider rural setting.
13. Turning to the effect of the development on the former barn building itself, the extension affects the overall shape of the building and has caused alterations to some distinctive historic features in the side elevation. An arched window opening edged with brick has been replaced with a larger rectangular opening. The lower part of the elevation with its brick string coursework and symmetrically positioned windows is now covered by the extension. The overall impact is again not wide-ranging because the development is not prominent from public viewpoints; nevertheless the effects weigh against granting planning permission.

14. The National Planning Policy Framework ("NPPF") states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The NPPF also states that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Despite the word "proposal", these statements obviously apply to the retrospective consideration of planning permission. In this instance, I judge that the harm caused to the historic character and appearance of Tapner's Barn is less than substantial. On the other hand, the public benefit of re-using and perhaps saving a building of historic interest which applied in 1987 does not apply now.
15. As advised in the NPPF, a balanced judgment is required, taking account of the scale of harm and the significance of the heritage asset. In my judgment the scale of loss is moderate, and the significance of Tapner's Barn as a heritage asset is fairly high. Those factors taken together weigh more against granting permission than in support.
16. Policy 47 of the Chichester Local Plan appears to be the most relevant of locally-adopted policies. Among other things, this policy provides that development which respects and enhances heritage assets will be supported. One of the criteria relating to this policy is that "the proposal conserves and enhances the special interest and settings of...heritage assets". Since the extension has not conserved and enhanced the heritage asset features of Tapners Barn because of the effects I have described in paragraphs 11 and 13 above, the scheme is not "supported" under Policy 47. This does not in itself warrant refusing permission, but it is a pointer towards that direction.
17. Part of the appellant's case is that a roofed enclosure existed for many years at the side of Tapner's Barn before the disputed development was carried out. This enclosure seems to have consisted of a fence with some latticework and a timber roof nailed to a beam attached to the house wall, providing shelter for a timber-decked area. Precise details of the previous structure are unclear, but this is not a compelling point in support of the appeal, since what now have to be considered are the planning merits or demerits of the development subject to the appeal. I appreciate that the fence helped to screen views of the neighbouring property where there is some unsightly activity including parking or storing old vehicles; but the need for a screen here does not justify building the extension.
18. It is tempting to think that now the extension is in place, permitting it would prevent a waste of resources, as well as extricating Mr Mincik from what is an obviously difficult situation for him. I cannot let such considerations affect my assessment. The question I have to ask is: if the extension were not there, should planning permission be granted for its construction? It is reasonable to assume that the standard pre-contract search was carried out when Mr Mincik bought Tapner's Barn, and he either would or should have known since then that normal permitted development rights for extensions were not available. Mr Mincik should also have realised that after the earlier refusal of permission for a similar scheme,² he was taking a risk in building the extension without planning permission. Looking for information on the internet, then building the extension despite the previous refusal, then seeking advice after the extension was built, and then carrying out the advice that "it was better to get this agreed with the

² I note Mr Mincik's statement about errors in the council's decision notice on the 2014 application and I am aware that this scheme had a lean-to roof and side windows, but the footprint was similar to the later extension and the council's concern about heritage asset issues were apparent, or should have been, from the outcome of this application.

council" - which is apparently the sequence Mr Mincik followed - was the wrong way round.

19. The fact that a previous owner got away with building a large conservatory without the planning authority taking action against it does not justify allowing this further development. Indeed if anything it weighs against allowing further change to the building's historic form.
20. In reaching my decision I have had regard to all the other matters raised in evidence on which I have not specifically commented, including the presence of glasshouses on nearby land, the fact that the council did not take enforcement action against the initial construction of the south and east walls, and the possibility of imposing conditions if planning permission were to be granted.
21. In summary, I judge that the construction of the extension has taken away some of the historic character of Tapner's Barn - at the very least, the development has not conserved or enhanced this historic character - in conflict with national and local planning policies. Despite some weaknesses in the council's case, mainly relating to the wider impact of the development, I conclude on balance that there was a sound basis for the council's decision to refuse planning permission and that there are insufficient grounds to overturn their decision. Therefore the Section 78 appeal does not succeed.

Section 174 Appeal, Ground (f)³

22. Under this ground of appeal, the appellant contends that the requirements of the enforcement notice are excessive. The relevant part of the statement submitted with the appeal reads:

"The steps promoted within the Notice at 5(i) go too far and....the roof to the structure together with works which provided the formation of the west wall to the building should be added as the second element to the creation of an extension to the barn".
23. I interpret this statement as claiming that step (i) of the requirements in the notice (the requirement to demolish the extension) should be amended so that the notice only requires the roof and west wall to be removed, leaving in place the south flank wall next to the side boundary and the east wall facing the front.
24. As I have already noted, I can understand why Mr Mincik wants to screen the view southwards from his living room. However, two factors weigh against this part of his case. First, it is apparent from looking at the requirements of the enforcement notice that the notice was issued with the purpose of remedying a breach of planning control. Thus the purpose of the requirements in this notice falls under Section 173(4)(a) of the Act (not Section 173(4)(b), which relates to remedying an injury to amenity). In these circumstances, the requirement to demolish the extension is not excessive - the breach of planning control was the erection of the extension and the requirement to remove it is appropriate to remedy that breach.
25. Second, amending the requirements in the way sought by the appellant would have the effect of granting retrospective planning permission for the erection of the south and east walls, assuming an amended notice were complied with.⁴ Given the reservations I have expressed above about design details and about

³ In one of the letters from the appellant's agent dated 20 April 2016 there is a brief reference to ground (g) (in the penultimate paragraph). I think this is a mistake and was meant to refer to ground (f), as ground (g) was not pleaded.

⁴ This permission would be granted by virtue of Section 173(11).

permitted development rights, I consider that any screen structure here should be the subject of an application for planning permission in the normal way.

26. I conclude that the appeal on ground (f) fails.

Formal Decisions

Section 174 Appeal

27. 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

28. I dismiss the appeal.

G F Self

Inspector