

Appeal Decision

Hearing held and site visit made on 23 August 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 22 September 2016

Appeal Ref: APP/M1710/C/15/3141181

Headley Grange Farm, Liphook Road, Headley, Bordon, GU35 8NG

- 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 1990 Act").
- The appeal is made by Ms Orlanda Broom ("the Appellant") against an Enforcement Notice issued by East Hampshire District Council ("the Council") on 18 November 2015.
- The Council's reference is 55393/001.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission and within the last four years, the erection of a building for use as a dwelling house on the Land.
- The requirements of the Enforcement Notice are: 1. Cease all works on the Building. 2. Demolish the Building and dig up and remove the footings. 3. Dig up, disconnect and remove all electricity, water supply / pipework from the Land. 4. Dig up and remove all the hard surfacing and all the resultant debris, rubble and materials from the Land
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) of the 1990 Act.

Summary of Decision: The appeal is allowed, the Enforcement Notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

1. At the Hearing I canvassed the issue of whether the allegation set out in the Enforcement Notice should be amended. Having considered this matter further I do not consider that the allegation needs to be amended.
2. The Building and its proposed curtilage fall outside any settlement boundary defined in the Development Plan.
3. At the Hearing an application for costs was made by the Appellant against the Council. This application will be the subject of a separate Decision.

Background Matters

4. In September 2013 a visual survey of the building ("the 2013 Building") that was the subject of the planning permission (Council Reference 55393¹) was carried out. The Report on that survey was dated 7 October 2013² ("the Survey"). The Survey explained that the walls of the 2013 Building were seen to be in either in a reasonable condition or a generally fair condition. The Survey concluded that the 2013 Building could almost certainly be adapted with the minimal amount of rebuilding since it would appear to be structurally sound and capable of being converted without substantial rebuilding or extension.

¹ Document 8

² Document 7

5. On 2 April 2014 the Council granted conditional planning permission for the change of use of the 2013 Building to form an artist studio; a two bedroom bungalow; the demolition of a pole barn and calf pen and the erection of a garage³ ("the 2014 Planning Permission"). The Survey was submitted with the planning application and was specifically referred to in the 2014 Planning Permission.
6. It was clear from the 2014 Planning Permission that the roof of the 2013 Building would be removed and the new roof would be higher than the original. Further, it was clear that some of the walls of the 2013 Building would be removed so as to facilitate new doors and windows. Further, new walls would be necessary where parts of the 2013 Building were demolished. This is, in part, illustrated by the sketch⁴ submitted by the Appellant entitled "Original Brickwork".
7. In late August 2014 conversion works on the 2013 Building commenced. Significant parts of the 2013 Building were demolished in accordance with the 2014 Planning Permission.
8. When the roof of the 2013 Building was removed it was clear that the northern gable end wall was unstable. This was temporarily propped up. In early September 2014 there was a partial collapse of some of the walls of the 2013 Building. Work was suspended whilst one of the conditions attached to the 2014 Planning Permission was discharged.
9. In November 2014 works on the conversion of the 2013 Building resumed. The Appellant's intention was to complete the conversion works to the 2013 Building as per the 2014 Planning Permission. However, it was clear that the walls of the 2013 Building were not of the quality previously assumed. The Appellant was advised by a structural engineer to remove the walls because they were in such a poor condition and to rebuild those walls using modern blockwork.
10. The Appellant explained that she did not consider that removing the walls would be contrary to the 2014 Planning Permission because there were no conditions requiring the original walls of the 2013 Building or any parts thereof to be retained and the approved plans did not make reference to such a requirement.
11. The Council's view is that the works carried out to the 2013 Building were now so extensive that the project was no longer a conversion of the 2013 Building but a rebuild and that the 2014 Planning Permission could no longer be completed. After meetings with Council Officers and taking their own professional advice the Appellant reluctantly agreed with this position. It was explained to me that if the walls had not collapsed or been removed they would have been hidden:
 - a) From external view by new blockwork covered by wooden cladding.
 - b) On the inside of the building because they would have been plastered over.

³ Document 8

⁴ Document 9

12. I will refer to the building to which the Enforcement Notice relates as “the Building”).
13. The material from the original walls has been recycled and is used as part of the base for the floor of the Building. The original floor sloped considerably and had gullies running along its length that needed to be filled with material.
14. An application to retain and complete the Building was refused by the Council in June 2014⁵ and the Council declined to determine further applications in January 2016.

Policy

15. The Development Plan for the area includes the saved policies of the East Hampshire District Local Plan: Second Review (“the Local Plan”) and the East Hampshire District Local Plan: Joint Core Strategy (“the Core Strategy”).
16. I was also referred to parts of the National Planning Policy Framework (“the NPPF”).
17. I handed out a document entitled “Policy Referred to During the Appeal”⁶ at the Hearing which listed all of the policies that I had been referred to and the relevant parts of the NPPF. The Appellant also referred to Appendix 2⁷ of the Core Strategy.
18. The Council do not argue that the Building harms the setting of Headley Grange (a listed building). I agree with that assessment. Accordingly, Local Plan Policy HE12 is not relevant to the determination of this appeal.
19. I do not consider that:
 - a) Policy C14 of the Local Plan is relevant because that Policy relates to proposals for the conversion of buildings in the countryside – in this case the Building is a new dwelling in the countryside not a conversion.
 - b) Policy HE2 of the Local Plan is relevant because it relates to alterations and extensions of buildings – the Building is a new dwelling in the countryside not an alteration or extension of an existing building.

Main Issues

20. The main issues relating to the Ground (a) appeal and the deemed planning application are set out in the sub-headings within the “Reasons” section below.

Reasons

Would the retention of the Building conflict with the Development Plan’s Policies for housing in the countryside?

21. Policy H14 of the Local Plan explains that outside settlement boundaries residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live on the site rather than in a nearby settlement.

⁵ Document 10

⁶ Document 5

⁷ Document 6

22. Policy CP6 of the Core Strategy explains that development will be permitted for the conversion of rural buildings to appropriate uses including residential subject to other matters being adequately addressed.
23. The Appellant agreed the retention of the Building conflicts with these Policies.
24. Core Strategy Policy CP10 explains that housing outside settlement boundaries will only be permitted in specified circumstances none of which apply in this case.
25. I find no policy support for the retention of the Building in its countryside location in either the Development Plan or the NPPF.

Is the Building in a location where the occupiers would have to rely on the private motor car to access facilities and services?

26. The Development Plan's transport policies seek to reduce the use of the private car and encourage other initiatives to minimise the impact of air pollution.
27. The Building and its curtilage are outside but close to the settlement boundary for Headley. The access track to the Building runs adjacent to the settlement boundary. Further, a large part of the Building would be used as an artist's studio and ancillary storage space thus reducing the Appellant's need to travel to London. I also understand that the Appellant's husband would also work from the study within the Building thus reducing his need to travel.
28. I also consider that the facilities and services within Headley would be accessible for the occupiers of the Building by means other than private car e.g. by bicycle although I have no doubt that it would be inconvenient to live at the Building without access to a private car. For instance I was informed that Headley does not benefit from a large supermarket and therefore it seems likely that the occupiers of most of the dwellings within the settlement boundary of Headley rely on the private car to do their large shopping trips. Further, still the Appellant's parents live a short distance from the Building and I have no doubt that some trips by private car could be avoided or shared in these circumstances.
29. I therefore conclude that whilst the Appellant and her husband (the intended occupiers of the Building) would, to a certain extent, be reliant on the use of the private car this is not a matter which weighs so heavily that planning permission should be refused on that basis alone.

Other Material Considerations

The circumstances under which the walls of the 2013 Building were removed.

30. I have explained above the circumstances under which the walls of the 2013 Building were removed. I have also explained that some of the new walls that have been built would have been necessary in any event because the approved conversion scheme required some new walls to be built.
31. The Appellant explained that it was never her intention to remove the walls of the 2013 Building at the outset of the project – they were removed because:
 - a) Parts of them collapsed.
 - b) They were advised to remove them because:

- i) There were serious and legitimate concerns that they would not be strong enough to transfer the weight of the new roof⁸ to the ground.
 - ii) There were serious health and safety concerns if the walls collapsed whilst workmen were at work on or within the Building.
 - iii) This was the sensible course of action.
- c) Nothing was explicitly stated in the 2014 Planning Permission or the approved plans confirming that the walls or any parts of them had to be retained.

Does any planning benefit result from the proposed removal of existing buildings?

32. There has been a significant removal of agricultural building following the commencement of the 2014 Planning Permission. I have no doubt that the removal of those parts of the former agricultural building, which the Appellant described as "horrid old buildings" benefits the countryside and improves its appearance. In addition that Appellant has offered to remove two further buildings from the adjoining land. Whilst these are not significantly harmful to the character or appearance of the countryside their removal would benefit the intrinsic character and beauty of the adjoining countryside. This benefit can be secured by the imposition of a condition.

Would planning permission for the retention of the Building result in other applications to demolish countryside buildings with planning permission for conversion to residential and then seeking planning permission to rebuild in the same form as the approved conversion scheme?

33. I do not share the Council's concern regarding this matter. I am aware that such an approach may superficially appear to have some benefits in as much as it may be cheaper to do this than to convert the building.
34. However, there is no evidence before me that the Appellant sought any benefit by removing the walls – in fact it has resulted in significant delays in completing the Building as well as considerable stress and anxiety for the Appellant and her family.
35. In any event, if my decision is to grant planning permission for the retention of the Building, it does not create any binding precedent for the Council. I also have some sympathy for the Appellant's view that in conversion schemes where substantial works are necessary it would make it much simpler for all concerned if the permission specified what parts of the original building had to be retained. I do not criticise the Council in this case because it was clear from the Survey that there was no suggestion that the walls could not be retained. It came as a surprise to the Appellant and the Council when the walls failed to serve their intended purpose.

Does any material harm to the surrounding area arise from the design of the Building?

⁸ I was advised that the weight of the new roof was four times heavier than the original roof.

36. The Council agreed at the Hearing that the design of the finished dwelling-house (which would be exactly the same as previously approved by the Council when they granted the 2014 Planning Permission) would not result in any harm to the character or appearance of the surrounding area.

Support from the local community

37. All but one of the letters which I received as a result of the publicity of this appeal supported the completion of the Building rather than its removal.
38. One letter sought clarification as to the footprint of the Building. I am able to confirm that the Building's footprint is significantly smaller than that of the former agricultural building.

Would the completion of the Building result in any advantage for the Appellant?

39. No planning gain is sought by the Ground (a) appeal – all the Appellant seeks is to be able to complete the works to the Building so that it reflects that permitted by the 2014 Planning Permission. The result of allowing the completion of the Building would be that there would be a new dwelling-house in the countryside which looks exactly the same as that permitted by the 2014 Planning Permission.
40. The fact that the completion of the Building results in no advantage for the Appellant reassures me that the loss of the original walls was truly a misfortune rather than a planned abuse of the planning system.

Would Compliance with the Enforcement Notice result in a waste of building materials?

41. Undoubtedly this is the case but it would not, by itself, be a justification for the retention of the Building – this argument could be used when appealing most Enforcement Notices where operational development is required to be removed.

Human Rights Act 1998 ("the HRA")

42. I have had regard to Article 1 of the First Protocol of the HRA. I do not agree with the Appellant that there is no public interest in securing the removal of the Building.

Conditions

43. All of the Conditions were discussed at the Hearing and/or were subject to post-Hearing correspondence. Condition 1 is imposed so as to provide certainty as to what the curtilage of the dwelling-house is. Condition 2 secures the removal of two buildings which were referred to above. I consider the removal of these buildings would improve the natural beauty of the countryside within which they are situated. Conditions 3 and 5 to 11 were agreed between the parties. These conditions have been imposed for the reasons agreed as set out in Document 2 to this Appeal Decision.
44. For the purpose of clarity I have amended the wording of some of the proposed conditions. Further, I have:
- a) Not imposed suggested Condition 2 because the car parking spaces are within or immediately adjacent to the garage building and the

construction of that building and the control over the car parking spaces is governed by planning permission 55393.

- b) Not included the plan for the garage building in Condition 11 because the garage building is permitted by planning permission 55393.

45. I consider that all of the conditions imposed are reasonable and necessary in this case.

Overall Conclusions

46. I have explained that the proposal is contrary to the Development Plan. However, I have also explained the other material planning considerations that apply in this case. I consider that these material considerations indicate that permission should be granted.

47. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.

Formal Decision

48. The appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the erection of a building for use as a dwelling-house on the land at Headley Grange Farm, Liphook Road, Headley, Bordon, GU35 8NG referred to in the Enforcement Notice, subject to the following conditions:

1. The curtilage of the dwelling-house hereby approved shall be limited to the land shown edged red on Drawing No.13/148/skLPa.
2. The two buildings shown coloured pink and annotated "Buildings to be demolished" on Drawing No. EH/493/IE/002 shall be demolished and the materials resulting from the demolition shall be removed from the Headley Grange Farm, Liphook Road, Headley, Bordon, GU35 8NG within three months of the first occupation of the dwelling-house hereby approved.
3. The development works shall be carried out in accordance with the material samples previously agreed with the Local Planning Authority under planning application reference 55393 unless otherwise agreed in writing with the Local Planning Authority.
4. Cycle and bin storage provision shall be made in accordance with the details approved by the Local Planning Authority under planning application reference 55393 prior to the first occupation of the dwelling-house hereby approved and shall be retained thereafter.
5. Lines of sight of 2.4 metres by 59 metres (to the south of the junction of the access track to the dwelling-house and Liphook Road) shall be provided prior to the first occupation of the dwelling-house hereby approved and shall be kept free of obstruction exceeding 1 metre in height above the adjacent carriageway of Liphook Road and shall be maintained as such thereafter.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order

revoking, re-enacting or modifying that Order) ("the Order") no extensions or alterations otherwise permitted under Schedule 2, Part 1, Classes A, B or C of the Order shall be carried out to the dwelling-house hereby approved.

7. The development hereby approved shall be carried out in accordance with drainage details previously agreed with the Local Planning Authority under planning application reference 55393. The development shall be carried out in accordance with the approved details before the dwelling-house hereby approved is first occupied and shall be retained thereafter.
8. Development shall not recommence on the site until protective fencing has been erected around all trees, shrubs and other natural features not scheduled for removal ("the fenced areas"). The protective fencing shall be retained for the duration of the works and shall be in accordance with the recommendations of BS 5837:2012 unless otherwise agreed in writing by the Local Planning Authority.
 - a) No unauthorised access or placement of goods, fuels, chemicals, soil or other materials shall take place inside the fenced areas.
 - b) No burning of materials shall take place where it would cause damage to any tree or group of trees on the site or on adjoining land.
9. Before any part of the development is first occupied or brought into use (unless otherwise first agreed in writing by the Local Planning Authority) a verification report demonstrating the effectiveness of the remediation works carried out and a completion certificate confirming that the approved remediation scheme has been implemented in full shall both have been submitted to and approved in writing by the Local Planning Authority. The verification report and completion certificate shall be submitted in accordance with the scheme approved pursuant to planning permission 55393 and undertaken by a competent person in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination (CLR 11)".
10. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 13/148/skLPa – Location Plan
 - 13/148/sk02d – Proposed Floor Plan
 - 13/148/sk03 Revision B – Proposed Front & Rear Elevations
 - 13/148/sk04d – Block Plan
 - 13/148/sk06 Revision A Proposed North and South Elevations

APPEARANCES

FOR THE APPELLANT

Ian Ellis BA(Hons), MRTPI	Director of Southern Planning Practice Limited
Orlanda Broom	The Appellant
John Broom	The Appellant's father
Mark Sandell	The Appellant's husband

FOR EAST HAMPSHIRE DISTRICT COUNCIL

Jon Holmes BA(Hons), MRTPI	Principal Planning Officer
Sean Baldock Planning Enforcement Diploma	Senior Development Inspector

INTERESTED PERSONS

Councillor Anthony Williams	District & Parish Councillor
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DOCUMENTS

1. Appeal Decision dated 17 September 2008 – Guiles, Broad Way, Froxfield Green.
2. Revised List of Conditions agreed by the Council and the Appellant.
3. Letter dated 20 February 2014 from the Council to Mr Grant (Grant Consultancy).
4. Letter dated 28 March 2014 from the Council to Mr Broom.
5. "Policy Referred to During the Appeal".
6. Appendix 2 to the Core Strategy.
7. The Survey.
8. The 2014 Planning Permission.
9. "Original Brickwork".
10. Notice of Refusal dated 2 June 2015 – Reference 55393/002.

PLANS

1. 13/148/skLPa – Location Plan
2. 13/148/sk02d – Proposed Floor Plan
3. 13/148/sk03 Revision B – Proposed Front & Rear Elevations
4. 13/148/sk04d – Block Plan
5. 13/148/sk05 – Garage Building
6. 13/148/sk06 Revision A Proposed North and South Elevations
7. EH/493/IE/002 – Demolition Block Plan