

Appeal Decisions

Site visit made on 15 November 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 15 December 2016

Appeals A & B: APP/C1435/C/16/3152005 & APP/C1435/C/16/3152006 Long Meadow Farm, Streele Lane, Framfield, Uckfield, East Sussex TN22 5RY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Nigel Buchmann (3152005, Appeal A) and Ms Rebecca Wyles (3152006, Appeal B) against an enforcement notice issued by Wealden District Council.
- The enforcement notice, numbered BJB/C/2015/0711/FFD, was issued on 13 May 2016.
- The breach of planning control as alleged in the notice is: 'Without planning permission, the erection of a building'.
- The requirements of the notice are:
EITHER
 - (i) Demolish, dismantle and remove the Building from the Land.
 - (ii) Break up and remove any footings of the Building, or any hardstanding upon which the Building is sited.
 - (iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.OR
Carry out the following works to the Building to ensure it is in compliance with the Building approved under planning permission WD/2014/2521/F approved on 2nd April 2015:
 - (a) Remove the electric roller doors from the Building.
 - (b) Remove the boiler, stove, flue, kitchen units and electrical systems and thermostatic controls and equipment associated with the boiler from the Building.
 - (c) Remove all debris, materials, tools and equipment arising from compliance with the above requirements from the Land.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the initial appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered in that case. Appeal B is therefore proceeding on ground (c) only.

Summary of Decisions: Appeal A is allowed, the enforcement notice is corrected and quashed and planning permission is granted in the terms set out below in the formal decision. Appeal B is dismissed.

The notice

1. An alleged breach of planning control in an enforcement notice should always be worded so as to function as a description of development that could form a valid basis for a grant of planning permission pursuant to the deemed application associated with the notice in the event that an appeal on ground (a)
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succeeds. In this case, the simple phrase 'the erection of a building' is inadequate in that regard, no use having been specified to which the building might lawfully be put if retrospectively approved.

2. I note that Council officers observed the building being used for domestic storage prior to the notice being issued and seem to have suspected an intention to use it as residential accommodation. However, on the evidence before me the latter use has never transpired and by the time of my visit the building was in active use as a stable block accommodating two horses and a well-appointed tack room. Moreover, although I do not endorse such usage either in terms of lawfulness or on its planning merits, it is perhaps unsurprising that domestic storage should take place in the short term in an outbuilding of this kind in circumstances where a dwelling has been demolished, its replacement has yet to be substantially completed and the intended occupiers reside temporarily on site in a mobile home.
3. Given that storage and living accommodation have not been formally alleged in the notice, I do not find it unreasonable to assume, albeit with the benefit of hindsight, that the intended use of the building when the notice was issued was, after all, equestrian. This being so, I will correct the notice to allege the erection of a stable block with tack room and ancillary facilities. No injustice to any party arises in doing so.

The appeals on ground (c) – Appeals A & B

4. In appealing against the enforcement notice on ground (c) the onus of proof is firmly on the Appellants to demonstrate on the balance of probabilities that the matter stated in the notice does not amount to a breach of planning control. However, in this regard they have merely made a case to the effect that the boiler, log burner, fitted units, electrical systems, thermostatic controls and equipment associated with the boiler do not in themselves, as internal installations, amount to 'development' requiring planning permission.
5. This is indeed the case, as set out clearly in section 55(2)(a) of the 1990 Act as amended. Nonetheless, these items are merely features of the development targeted by the notice. Accordingly, the question of whether they should be removed or not falls to be considered in the manner of appeals against the notice on ground (f), to the effect that requirement (b) exceeds what is necessary to remedy the breach of planning control. Moreover, this becomes a matter for me only in the event that the appeal on ground (a) fails.
6. The matter that more properly falls to be considered under ground (c) is whether the erection of the subject building as a whole requires planning permission, in which regard the Appellants raises no argument. In that respect, the pertinent issue is whether the structure as built departs to such an extent from the terms of planning permission ref no WD/2014/2521/F¹ that it cannot reasonably be held to be pursuant to that permission.
7. Condition 21 of that permission ties the development thus approved to particular approved drawings, of which ref no 13060-P-07 Rev B depicts the stables. Comparison of this with the development as built reveals that,

¹ Granted by the Council on 2 April 2015 for development described as: 'Demolition of existing dwelling, garaging and stables. Proposed replacement private dwelling with basement, garaging with roof space facilities, private stables, curtilage clarification and rationalisation, removal of temporary container to controlled land adjacent upon completion of new garaging. Retention of mobile home on site during construction works'.

amongst other things, the brick plinth, external flue and roller shutter doors featured on the completed structure were not approved. These departures are far from *de minimis* and, in the absence of cogent evidence to the contrary signal that what has been erected is a different building to that which received planning permission when considered cumulatively. No argument to the effect that the building amounts to permitted development or otherwise benefits from planning permission has been presented.

8. It follows that the structure as a whole is unlawful, including all its fixtures and fittings inside and out. I conclude on the balance of probabilities that the matter stated in the enforcement constitutes a breach of planning control. Accordingly, the appeals on ground (c) fail.

The appeal on ground (a) – Appeal A only

Main issue

9. The Council's reasons for issuing the enforcement notice are less than clear in terms of presenting a case against the development based on its planning merits. The notice itself simply asserts that the building is considered to be 'inappropriate for its intended use, being built to a high specification and not suitable for purpose'.
10. However, this appears to have been fuelled by a suspicion that the building was intended to be used as living accommodation. For the reason previously explained I find such speculation to have been misplaced and, not having been stated explicitly in the notice, something that should carry little weight.
11. The Appellants have now made clear the basis on which planning permission is sought (ie for a stable block rather than any form of residential usage) and I shall deal with the appeal on ground (a) accordingly. The main issue in that context is therefore the effect of the building on the character and appearance of the surrounding area, having particular regard to the lawful fallback position and any impression of domestication.

Planning policy

12. The development plan includes the Wealden Local Plan Core Strategy 2013 (CS) and certain policies of the Wealden Local Plan 1998 (LP) which have been saved following a Direction made by the Secretary of State. Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it. I find no significant conflict between the Framework and the development plan policies cited in this case. Accordingly, they carry full weight so far as they are relevant to the appeal scheme. Reference is also made to the Council's supplementary planning document (SPD) entitled *Wealden Design Guide*, published in 2008.

Reasoning

13. The appeal site is located in open countryside, well outside any 'development boundary' defined by the development plan and within the locally designated Low Weald landscape character area. I found the locality to be characterised by undulating land comprised for the most part of large open fields devoted to arable farming or pasture but bounded by substantial tree belts and high hedgerows. Pockets of woodland, isolated dwellings and agricultural buildings

pepper the wider landscape, although the appeal site forms part of a loose cluster of residential property centred on the T-junction at the northern end of Streele Lane. Development in the area is strictly regulated in the interests of countryside protection.

14. However, in this case I must have regard to the fallback position provided by the 2015 planning permission and the enforcement notice itself. In this regard the latter is somewhat ambiguous in that, at the beginning of the second set of requirements in section 5, it purports to set out steps that would ensure compliance with the planning permission but then neglects to itemise the removal of the unauthorised brick plinth and rooflights or the installation of the approved stable doors in place of the roller shutters. Nor does it specify compliance with the approved plans and conditions of the permission.
15. The consequence of this is that, in terms of the external appearance of the building, compliance with the notice could be secured simply by removing the flue and roller shutters. A fallback position is thus created which is markedly less stringent than full compliance with the permission and which would allow both plinth and rooflights to remain *in situ*. In the event that the appeal on ground (a) is refused it is highly likely that the Appellants would implement the fallback position thus provided. It is therefore an important material consideration for the purposes of my decision which must carry very substantial weight.
16. This being so, I shall confine my ground (a) reasoning so far as it concerns visual impact to the effect of the external flue and roller shutter doors. In any event, I note that the Council has not commented on the plinth and has sought to criticise the rooflights only on the basis that they 'represent a level of specification in excess of what would be necessary for a stable building'².
17. The Council regards the narrow metal flue as 'a materially overt domestication of the building'. However, I disagree. It is positioned at the end of the roof furthest away from the public highway and does not project very far above the ridgeline. Rather than reading as a domestic chimney, it is particularly utilitarian in design with a dark painted finish that helps further reduce its visual impact. Indeed, overall it is more redolent of certain types of agricultural installation than residential use.
18. Turning to the roller shutter doors in the southern elevation, the Council considers that these give this equestrian building the appearance of garaging or an industrial use. However, as the Appellants point out roller shutters are not uncommon in modern stables, given their sound practical advantages over more traditional designs. Moreover, they are typical of agricultural buildings that one would expect to find throughout the countryside.
19. In any event, although they can be glimpsed from the road through the site access they are, for the most part, well screened from public view. Their dark painted finish and recessed position beneath an extensive roof overhang further reduce their visual significance and ensure that they do not draw the eye as obtrusive or incongruous features. In fact, if anything, they help to counter any impression of domesticity inherent in those elements of the

² This argument is one from which I am precluded from attributing weight to, given that removal of the rooflights is not a requirement of the enforcement notice.

scheme that the Council has either endorsed by means of the 2015 permission or by not taken action against them, such as the rooflights, windows and high quality external materials.

20. I conclude that the building as erected does not cause any significant additional detriment to the character and appearance of the area over and above that which would arise from implementation of the lawful fallback position. Accordingly, I find no notable conflict in this regard with CS Policies SPO1 or WCS14, saved LP Policies GD2, EN8, EN27 or DC12, the Council's SPD or the relevant provisions of the Framework.

Other matters

21. I have considered all the other matters raised. The Council levels much criticism at the subject building's internal finishes and trappings, the general thrust of its argument being that the high specification exceeds what, in its perception, would usually be associated with stables and facilitates ready conversion to living accommodation. However, questionable items such as a bath and dishwasher are no longer present. Moreover, it is not unusual for stables on this scale and positioned at distance from the host property, as in this case, to include shower and toilet facilities for the benefit of those tending to the horses, a sink and utilities to aid cleaning and animal care, lighting and ancillary storage (referred to by the Council as 'kitchen units'). Winter heating is also commonplace.
22. None of these features, whether considered individually or cumulatively, gives rise to the possibility that the building may be used as living accommodation provided that any planning permission is structured accordingly. A condition precluding residential usage would give the Council all the planning control it needs in that regard and the development is thus confirmed as merely a well-appointed equestrian facility. In such circumstances the finishes of internal floors and walls, the nature of light fittings, the number of electrical sockets, the manner in which loose boxes have been partitioned and the precise nature of the heating system, all of which are addressed in the Council's submissions, are not matters with which a local planning authority need be concerned.
23. I have noted the objections received from various local residents. However, all express fears regarding intended residential use which, for the reasons set out above, I give little credence to. Therefore, neither these nor any other matters are sufficient to outweigh the considerations that have led to my conclusion on the main issue. Accordingly, the appeal on ground (a) succeeds and I am minded to grant planning permission subject to conditions.

Conditions

24. I have considered the conditions suggested by the Council and also those attached to the 2015 permission that might be applicable to the subject building and thus carried forward, having regard to the relevant advice contained in the DCLG's Planning Practice Guidance. In order to safeguard the effectiveness of local settlement policy and in the interests of sustainability and highway safety the building must be restricted to private equestrian use only by the residential occupiers of Long Meadow Farm.
25. The subject building does not presently fall within a lawful residential curtilage. However, it is possible that it may do so in the future by reason of the

passage of time, at which point it might be held to benefit from permitted development rights for extension and external alteration pursuant to Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. A safeguarding condition preventing the implementation of such rights is therefore required in the interests of visual amenity.

26. Restrictions on external illumination are necessary for the same reason. However, notwithstanding the Council's suggestion to the contrary these need not preclude such installations as long as the Council's prior approval has been secured, thus replicating the effect of condition 13 of the 2015 permission. Retention of the adjacent parking and manoeuvring area for vehicular use in association with the stables is essential in the interests of highway safety.
27. Details of foul and surface water drainage arrangements for the building are required to guard against flooding and to protect the water environment, thus mirroring the effect of condition 14 of the 2015 permission. Given that approval pursuant to Appeal A would be retrospective, a condition to that effect must specify the demolition of the building in the event of non-compliance therewith and include reference to the appeal process, thereby ensuring that the ability to adhere fully to the terms of the condition remains in the hands of those implementing the permission.

Conclusions

28. For the reasons given above I conclude that Appeal A should succeed on ground (a). The enforcement notice will be corrected and quashed and planning permission will be granted on the deemed application. This being so, there is no need to consider whether any of the requirements of the notice are excessive. I further conclude that Appeal B should fail, the deemed application having lapsed in relation thereto.

Formal decisions

Appeal A: APP/C1435/C/16/3152005

29. It is directed that the enforcement notice be corrected by, in section 3, the deletion of the word 'building' and the substitution therefor of the words 'erection of a stable block with tack room and ancillary facilities'.
30. Subject to the above correction 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 as amended for the development already carried out, namely the erection of a stable block with tack room and ancillary facilities on land at Long Meadow Farm, Streele Lane, Framfield, Uckfield, East Sussex TN22 5RY, subject to the following conditions:
- 1) The building hereby permitted shall be used for private equestrian purposes only by the residential occupiers of Long Meadow Farm and for no other purpose, including living accommodation, commercial riding, livery or any other business use.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or external alterations shall be carried out to the building

other than in accordance with a planning permission granted by the local planning authority.

- 3) No floodlighting, security lighting or other external means of illumination shall be provided, installed or operated at the site other than in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 4) The existing parking and turning area adjacent to the stables shall be retained in its present form and made available at all times for the parking and manoeuvring of vehicles in association with the lawful use of the stables.
- 5) The building hereby permitted shall be demolished and all resulting debris removed from the site within two months of the date of failure to meet any one of the requirements set out in (i) to (iv) below.
 - (i) Within two months of the date of this decision, details of foul and surface water drainage arrangements for the building shall be submitted for the written approval of the local planning authority, together with a timetable for their implementation.
 - (ii) Within ten months of the date of this decision the details and timetable submitted pursuant to (i) above shall have been approved by the local planning authority or, if the local planning authority refuses to approve them or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details and timetable shall have been approved by the Secretary of State.
 - (iv) The scheme shall have been fully implemented in accordance with the details and timetable approved pursuant to (i) to (iii) above.

Appeal B: APP/C1435/C/16/3152006

31. The appeal is dismissed.

Alan Woolnough

INSPECTOR