
Appeals Decision

Site visit made on 12 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 16 December 2016

Appeal Refs: APP/Y1138/C/16/3150270 & 3150271 Fourwinds, Shillingford, Tiverton EX16 9AU

- 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 Graham Strong and Ms T Coles against an enforcement notice issued by Mid Devon District Council.
 - The enforcement notice was issued on 12 April 2016.
 - The breach of planning control as alleged in the notice is: the erection of two steel framed single-storey buildings in the approximate position shown edged blue on the plan attached to the notice.
 - The requirements of the notice are:
 - 5.1 Remove both steel-framed, single storey buildings and;
 - 5.2 Remove the materials resulting from the demolition from the land.
 - The period for compliance with the requirements is three (3) months.
 - The appeals are proceeding on grounds (f) and (g) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
-

Decision

1. The appeals succeed to a limited degree under ground (f). See formal decision.

Background information

2. The appeals land lies to the west of the property known as Fourwinds. In 2015 planning permission (PP) was granted for two barns at the site (15/00784/FULL and 15/00785). One was positioned close to the boundary with the road and the other was on the northern part of the site. However, when the works commenced the LPA noted that these were not in accordance with the approvals in that they were larger in footprint area as well as being higher than as approved.
3. Informal negotiations with the appellants had seemingly failed and the LPA considered it expedient to issue the notice. Following the issuing of the notice two planning applications were submitted for retention and relocation of the buildings and the LPA requested that the Planning Inspectorate delayed consideration of this appeal until these applications had been determined. The application for the retention of the smaller barn (a livestock building) to the north was granted approval under reference 16/01052/FULL.
4. The application relating to the larger building (for agricultural storage) was for its relocation from the southern boundary to a different location on the holding and where it was not considered to have such an adverse impact on the visual amenity of the locality. This was also granted approval under reference 16/01160/FULL.

5. In effect, therefore, the smaller of the two barns enforced against is now lawful and the LPA is of the view that the building of this barn is in accordance with the approved plans. It follows that the alleged breach in relation to this building has been resolved. However, despite planning permission being granted for the relocation of the larger barn, this had not commenced at the time of writing of the LPA's appeal statement. The LPA has requested, therefore, that the notice be varied to reflect the current circumstances. I deal with this below in the formal decision.

6. Although the LPA refers to the relevant policies of the Mid Devon Core Strategy (CS) and the Mid Devon Local Plan Part 3 (LP) the planning merits are not before me and the deemed application has lapsed. I am only empowered to deal with the appeals on grounds (f) and (g). That is firstly whether or not the steps as set out are excessive and whether lesser steps would overcome the objections and, secondly, whether or not the compliance period is too short.

The appeal on ground (f)

7. Clearly, when considering the facts relating to the applications above, it is evident that the requirement to remove both buildings from the land is excessive. Only the larger of the two buildings, located on the boundary, can now be said to cause harm to the character and appearance of the surrounding area. It follows that the lesser step of only requiring the larger building to be removed will overcome the harm caused. This will both remedy the breach (in relation to that building) and remedy any harm to amenity. The appeals succeed, therefore, to this limited degree and I will vary the notice accordingly.

The appeal on ground (g)

8. When this ground was pleaded it was on the basis that a planning application was then required for the relocation of the larger building. However, that application was duly made, planning permission has been granted and there appears to be nothing to stop it being implemented. An extended compliance period (of 6 months) is no longer required and I consider that the required 3 month period is now reasonable and appropriate in the overall circumstances of this case. The appeals fail, therefore, on ground (g).

Other Matters

9. In reaching my conclusions I have taken into account all other matters raised by the parties. These include the full planning history of the site and all matters covered in the grounds of appeal and the LPA's appeal statement. However, none of these carries sufficient weight to alter my conclusions on the two grounds pleaded and nor is any other factor of such significance so as to change my decision.

Formal Decision

10. I direct that the enforcement notice be varied by deleting requirement 5.1 in its entirety in part 5 (WHAT YOU ARE REQUIRED TO DO) and by replacing it with a new requirement 5.1 to read: *'Remove the large steel framed, single-storey building which abuts the southern boundary of the land, (adjacent to the highway) and shown marked blue on the plan attached to the notice'*.

11. The appeals are dismissed and the enforcement notice is upheld as varied.

Anthony I Wharton

Inspector