
Appeal Decisions

Site visit made on 9 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 9 February 2017

Appeal A: APP/F1610/C/16/3159729

Land at Hermits Corner, Climperwell Road, Brimpsfield, Gloucestershire GL4 8LB

- 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 appeal is made by Mr Stephen Grendon against an enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 26 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, unauthorised development in the form of a change of use of the land from agricultural to mixed use for agricultural and residential use to include development to facilitate the unauthorised use in the form of the erection of a canopy-roofed part enclosed structure with supporting poles ("the unauthorised canopy") and the alteration of an open fronted agricultural storage building to create an enclosed building with increased height together with the addition of a door and windows ("the unauthorised outbuilding").
- The requirements of the notice are:
 - (i) Remove from the land the unauthorised canopy.
 - (ii) Restore the former agricultural storage building to match its dimensions, design and materials as existed prior to the unauthorised alterations and extension, as per the appended drawings numbered T787/B (APPENDIX A).
 - (iii) Cease the use of the land for residential purposes other than the building shaded blue on the attached plan allowed under the Council's reference 08/02726/FUL and Decision Notice dated 12th December 2008 (APPENDIX B).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations and correction.

Appeal B: APP/F1610/W/16/3157015

Hermits Corner, The Common, Brimpsfield, Gloucestershire GL4 8LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Stephen Grendon against the decision of Cotswold District Council.
- The application Ref 16/02014/FUL, dated 2 May 2016, was refused by notice dated 16 June 2016
- The development proposed is alterations to outbuilding to enclose space under the roof, addition of window and insulation to roof and walls.

Summary Decision: The appeal is dismissed.

The Site and its Planning History

1. The appeal site is located alongside a country lane near to Brimpsfield village centre in the Cotswold Area of Outstanding Natural Beauty (AONB).
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2. The appeal site contains two single storey buildings one of which is a stone building sited adjacent to the lane. Originally this simple stone building was used as a shelter and store in connection with a small allotment. It was then used as a retreat/shelter for naturists.
3. The appellant bought the land in 1994. The appellant has lived on the site since this time occupying initially a lorry which was removed in 2003. Since 2003 the appellant has lived in the stone building.
4. Previous planning history includes an appeal decision¹ which determined that due to its lack of facilities this stone building does not constitute a dwellinghouse for planning purposes.
5. The unauthorised canopy subject to the enforcement notice is adjacent to the stone building.
6. On 12 December 2008 planning permission (Ref: 08/02726/FUL) was granted for the 'conversion from a retreat to low impact residential accommodation (retrospective) including proposed improvements to vehicular access.' (hereafter referred to as the 2008 permission).
7. The second building on the appeal site (the unauthorised building) was formerly an open fronted agricultural building used for the storage of equipment in connection with the maintenance and management of the land.
8. In 2015 the appellant carried out a number of alterations to the unauthorised building including replacing the roof, enclosing the open sides with timber boarding and the insertion of a window and door.

Appeal A on ground (c)

9. The appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The meaning of development is set out in Section 55 (1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
10. The notice attacks both the material change of use of the land from agriculture to a mixed use of agriculture and residential and operational development.

Material change of use

11. The site location plan accompanying the 2008 permission outlines the whole site in red not just a part of it. Also, condition 1 of the 2008 permission states "*The residential accommodation shall only be occupied by Mr Stephen Grendon and the permission shall not enure for the benefit of the land. Upon cessation of the restricted use hereby authorised the site and buildings shall revert back to agricultural use*" (my emphasis). Moreover, the Officer's report indicates that the Council determined the planning application on the basis of "*whether the full time occupation of the building and associated use of the land comply with existing national and local planning policy*". This report also acknowledges that if permission were granted for the low impact dwelling the land could be "turned into a more formal garden". Consequently, I am of the opinion that the 2008 permission granted planning permission for the use of the whole area of land identified as outlined in red on the site location plan.

¹ APP/F1610/X/05/2002903.

12. Thus, what is being carried out on the land is what was permitted by the 2008 permission. There has not been a material change of use as alleged. The appeal on Ground (c) succeeds in this respect and I will strike that part from the allegation.
13. Although the allegation suggests that the unauthorised canopy and outbuilding facilitate the use, these operations are recognised development in their own right. Both parties address these operations in their submissions and therefore there would be no injustice caused were I to do the same.

Operational Development

14. Section 55(1A) states that for the purposes of the Act "building operations" include "(a) the demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to a building; and (d) other operations normally undertaken by a person carrying on business as a builder."

Unauthorised canopy

15. In relation to the unauthorised canopy, the appellant argues that as a temporary structure it does not constitute development, has no material effect on the external appearance of the building and cannot be viewed from public vantage points.
16. The canopy consists of a number of wooden posts and corrugated sheet roofing. It is open to the front and enclosed at the rear by an existing stone wall which runs alongside the access drive. I saw at my site visit that the area underneath the canopy is laid out part as a seating area with settees and a table and part as a storage area. By virtue of its size it is a structure of some significance, it is fixed to the ground and it is not likely to be possible to move it without requiring it to be dismantled, all of which supports the Council's view that it is of some permanence. In these circumstances, and as a matter of fact and degree, there is a material effect on the external appearance of the stone building and it is readily visible outside the building. I conclude that the structure is development for which planning permission is required under section 55(1) of the Act.

Unauthorised Building

17. In relation to the unauthorised building, the appellant's case is that the works carried out to the building do not constitute development; instead the works were essential to allow the building to become functional.
18. Section 55(2) states at subsection (a) "the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, shall not be taken to involve development of the land. Thus a judgement is to be made depending on the facts of the case.
19. The photographic evidence shows that prior to any works being carried out; the outbuilding was a part open sided timber clad building with no doors or windows. The works undertaken include the replacement of the roof, the enclosure of the open sides of the building with timber boarding and the addition of a window and a door. These works have clearly affected the exterior of the building. Case law establishes that in order to assess the effect

on the external appearance the changes must be visible from a number of vantage points.

20. Whilst the existing vegetation affords some degree of screening, I noted at my site visit that when viewed from a number of vantage points including the public rights of way to the south and west of the appeal site the works that have taken place to the building are readily discernable. Thus, I conclude that the works materially affect the external appearance of the building and thus constitute development.
21. Having regard to the previous appeal decision² and subsequent Judgement³ the stone building is not a dwellinghouse and therefore the unauthorised building does not comprise permitted development by way of Class E of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).
22. Whatever justification might be claimed for the works undertaken to the unauthorised building, the works that have taken place constitute operational development within the meaning of section 55 of the Act. They do not fall within any of the exclusions from the definition of development and, as such, require planning permission.
23. For the reasons given above, I conclude that the breach of planning control in respect of the operational development as alleged in the notice has occurred as a matter of fact and accordingly, the appeal on ground (c) fails in this respect.

Appeal B (s78 appeal)

Procedural matters

24. The Council's description of development as contained in their decision notice more accurately reflects the appeal proposal. I have therefore used this description in my decision.
25. For clarification, notwithstanding my findings in relation to Appeal A, ground (c) concerning the material change of use of the land, as set out above, this does not allow for the outbuilding to be used as a separate unit of accommodation. The appellant's submissions indicate that the building is as additional storage and workspace which aligns with what I saw at my site visit.

Main Issues

26. The main issues are i) the effect of the development on the character and appearance of the area and ii) whether the proposal would conserve and enhance the natural beauty of the AONB.

Reasons

27. The outbuilding is located approximately two metres from the western boundary of the site. Despite the trees and vegetation which afford a degree of screening, due to its size and position close to the site boundary and public footpath the outbuilding is visible when viewed from a number of public vantage points.

² APP/F1610/X/05/2002903.

³ Stephen Grendon v SoS & Cotswold District Council [2006] EWHC 1711 (Admin).

28. I am advised that the works that have been undertaken to the outbuilding have resulted in a building which is larger than the stone building in which the appellant lives. Although, there is no evidence to suggest that the building is a separate unit of accommodation, the outbuilding has the appearance more akin to a dwelling house than the simple part open sided building that existed previously. In my view, the consequence of the development has brought about a definable change in the character of the building which is harmful to the character and appearance of the area.
29. I note the appellant's offer to remove/clad the existing white fascia and replace the existing uPVC window with a wooden framed window. However, these suggested alterations do not lessen my concern regarding the adverse impact of a building of this nature in this location.
30. I therefore conclude that the development detracts from its rural setting and materially harms the intrinsic character and appearance of the area. Furthermore, it fails to conserve and enhance the natural beauty of the Cotswold AONB. The development conflicts with Policy 42 of the Cotswold District Local Plan (2006) which states that development should be designed in a manner that respects the character, appearance and local distinctiveness of the Cotswold District with regard to style, setting, harmony, street scene, proportion, simplicity, materials and craftsmanship. It would conflict with the aims of the Framework, which state that great weight should be given to conserving the landscape and scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty.

Other matters

31. The appellant's submissions in relation to the Human Rights Act 1998, Article 8 of the First Protocol, are primarily concerned with the right to live a comfortable and dignified life by being able to store items in a place other than where he sleeps and eats. The appellant's personal circumstances and his right to live a 'low impact lifestyle' weigh in favour of granting planning permission for the outbuilding. However, the development causes harm to the character and appearance of the area and the AONB, and consequently conflicts with the development plan and the Framework. Taking all of these considerations into account, I conclude that the identified harm that would arise from the development outweighs the other considerations and indicates that a permanent permission should not be granted for this outbuilding at this time. I consider that the degree of interference caused to the appellant is proportionate and insufficient to give rise to a violation of rights under Article 8 of the First Protocol.
32. I have also considered whether to grant permission with conditions imposed as suggested by the appellant. However, this would not overcome the identified harm as the outbuilding would still remain upon cessation of the use of Hermits Corner as a residential dwelling.
33. I note the comments from local residents regarding the compliance with conditions imposed on a previous planning permission. However, the enforcement of planning conditions is a matter for the Council and does not influence my decision. Matters relating to the compliance with Building Regulations are outside the scope of planning control.

34. Residents have expressed concerns that the grant of planning permission would set a precedent for other outbuildings to be used as private dwellings and would be harmful to highway safety. There is no evidence that the outbuilding is being used as a separate dwelling or that it has an impact on the existing traffic pattern. Each application and appeal must be determined on its own merits in relation to the development plan, the Framework and other material considerations. Generalised concerns of this nature do not add to my reasons for dismissing the appeal.

Conclusion

35. Having regard to all other matters before me, I find nothing to outweigh the conflict with the development plan that would arise if the appeal were to succeed. I therefore conclude that the appeal should be dismissed.

Appeal A on ground (f)

36. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary. The purposes of an enforcement notice are set out in section 173(4) of the Act and in this case it is to remedy the breach.

37. Section 173(4)(a) of the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control which has occurred by restoring the land to its condition before the breach took place.

38. The appellant's submissions primarily relate to the residential use of the whole site. For the reasons above, I have found that there has been no material change of use of the land and have amended the allegation in the notice accordingly.

39. In order to remedy the breach of planning control in relation to the operational development, it is not excessive but necessary to require the removal of the canopy and the restoration of the outbuilding to its former condition. The appeal on ground (f) therefore fails in this respect.

Formal Decision

40. It is directed that the enforcement notice be varied by:

- i) The deletion of the whole of the text under paragraph 3 ("The Breach of Planning Control Alleged") and the substitution therefor of the words "Without planning permission, the unauthorised development in the form of the erection of a canopy-roofed part enclosed structure with supporting poles ("the unauthorised canopy") and the alteration of an open fronted agricultural storage building to create an enclosed building with increased height together with the addition of a door and windows ("the unauthorised outbuilding").
- ii) The deletion of the whole of the text under paragraph 5 ("What you are required to do") requirement (iii).

41. It is directed that the enforcement notice be corrected by the deletion of the word "ten" from paragraph 4.1 ("Reasons for Issuing the Notice") and the substitution therefor of the word "four".

42. Subject to these variations and correction appeal A is dismissed and the enforcement notice is upheld.

43. Appeal B is dismissed.

Elizabeth Jones

INSPECTOR