
Appeal Decision

Inquiry held on 4 January and 3 February 2017

Site visit made on 4 January 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 02 March 2017

Appeal Ref: APP/M1710/C/16/3148814

Janeland, Willis Lane, Four Marks, Alton, GU34 5AP

- 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 Ms Shelley Ray against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice, numbered 29336/006/EODC, was issued on 16 March 2016.
 - The breach of planning control as alleged in the notice is the erection of a building shown coloured green on the plan attached to the enforcement notice.
 - The requirements of the notice are: 1. To remove all the contents, fixtures and fillings and demolish the building. 2. To dig up, disconnect and permanently remove any electricity, gas and water supply from the building. 3. To remove all resultant materials from the Land. 4. To dig up and remove the concrete slabs and footings.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
 - The evidence to the Inquiry was given under oath.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words '*the erection of a building*' and the substitution therefor with the words '*the carrying out of building works on the area of land*' in the allegations; by the deletion of the requirements in their entirety and the substitution therefor with the words '*remove the pitched roof to the side (north) extension of the building and remove all resultant materials from the Land*'. Subject to these variations, the appeal is allowed and the enforcement notice is quashed. 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 building works comprising the alterations to the roof of the side (north) extension to the building.

Applications for costs

2. At the Inquiry applications for costs were made by Ms Ray against East Hampshire District Council and by the Council against Ms Ray. These applications are the subject of separate Decisions.
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Main Issues

3. I consider that the main issues in this case are:

On ground (b): whether the works that have taken place amount to the construction of a new building or whether they are other building works;

On ground (c): whether the works that have been carried out are development as defined in s.55 (1) of the Town and Country Planning Act 1990 (TCPA) and consequently require a grant of planning permission to authorise them or whether all or part of them fall within the exceptions set out in s.55 (2) of the TCPA and, if planning permission is required,

On ground (d): whether it is too late to take enforcement action and, if not,

On ground (a): the effect of the development on the character and appearance of the surrounding area.

If all these grounds fail, on ground (f): whether the requirements go beyond what is required to remedy the breach of control or the injury to amenity.

Site and surroundings

4. The land on which the works enforced against have taken place is an authorised gypsy site containing a mobile home, a day room and the building against which the notice is directed. This building was, before the residential use commenced, an agricultural barn formerly used in connection with the keeping of livestock. It is now being used for storage in connection with the residential use of the site and, at the time of the site visit, it contained items including vehicles (a vintage lorry and van), mowers, a horse drawn cart and bales of hay or straw.
5. It is in 3 sections: the main body of the building has a dual pitched roof with a gable end; there is a later extension to the rear that is wider than the main section and also has a dual pitched roof; there is also a side extension connecting the main section to the rear addition and this has a lower, dual pitched roof with a gable end and a ridge running parallel to the main section.
6. It is common ground that the building has had works carried out to it, including the replacement of the roof structure to all 3 sections and the construction of new outer walls around the exterior of the whole building. The external walls consist of a skin of blockwork and granite setts and contain new doors and windows. Before these works took place, the roof of the main section of the building was covered with asbestos sheeting. It is now clad with clay pantiles but the roof has the same pitch and height as the original.
7. The rear extension has been completely rebuilt, with new blockwork internally and externally replacing timber framed walls that were clad with profiled metal sheeting. The roof to this section was also previously clad in metal sheet but now has the same pantiles as the main section.
8. The side extension was also, at one time, timber framed with a substantial ventilation gap at eaves height but is now, like remainder of the building, constructed in cavity blockwork. It previously had a monopitch lean-to roof of profiled sheet that sloped down from the eaves of the main section.

Available evidence

9. At the Inquiry, the Council agreed that it did not have any evidence of its own to contradict the appellant's claim that all new outer and inner walls were completed more than 4 years prior to the date of issue of the enforcement notice or that the original walls, all now within the outer skin, were also completed outside this 4 year time scale.
10. The notice was issued on 16 March 2016 and evidence was given on oath that the new walls were complete by early March 2012. It was also not disputed that the walls were constructed before the roofs were removed and rebuilt.
11. The side extension was originally added in the 1990s and evidence was given by the appellant's husband that the inner blockwork skin to the long (north) wall was built in about 2010 and the concrete floor of this section, and that of the rear extension, was also laid at that time. The concrete floor of the main building predates these works.
12. Photographs taken on 17 April 2012 show the start of the roofing works and, by this time, the original roofs had been dismantled and new trusses had been delivered to the site. A photograph dated 1 June 2012 shows the roof of the main building and side extension completed.
13. The appellant has made clear that the appeal on ground (d) relates only to the walls and floors of the building, together with the water and electricity supplies, which have also been installed for more than 4 years. It is accepted that the works to the roofs took place less than 4 years ago.

Reasons

Ground (b)

14. The appellant's appeal on ground (b) is based on the submission that whilst it is not disputed that building works have been carried out to the original barn, there has not been the construction of a building as such. The original walls of the barn remain and the works to the roof are repairs. There is consequently no new building and the enforcement notice should either be varied to amend the allegation or quashed.
15. The Council however, says the works that have been carried out have completely subsumed the original and are so extensive that they amount to the erection of a new building in place of the one that previously existed on the site.
16. It considers that even if this is not the case and it is concluded under ground (b) that the enforcement notice should be amended to change the allegation from '*the erection of a building*' to '*building works*', the operations that have been carried out are still a single act of development that has affected the external appearance of the building and consequently requires planning permission and was not substantially complete more than 4 years prior to the issue of the notice. If this assessment is correct then the appeals on ground (c) and (d) could not succeed.
17. The Council says that it is a matter of common sense that a new building has been created. I agree that the extent of works is significant and that, without knowledge of the chronology of the operations, the structure appears to be a new building that has replaced the original barn.

18. However, it seems to me that the allegation does not reflect the reality of what has, in fact, actually taken place on site. The appellant's husband gave evidence under oath that he decided to improve the look of the building by erecting an external skin to the existing walls. Those of the side and rear extensions were of a somewhat ramshackle and temporary appearance and he used second hand building materials he had acquired to carry out this upgrade to the barn. He apparently carried out the work to the walls himself with help from another of the witnesses who worked for him as a general labourer.
19. The Inquiry was also told that it was originally thought that only minor works would be needed to the existing roofs, limited to the replacement of the asbestos sheeting. However, when a roofing contractor, who also gave evidence, was asked to give an opinion on their condition, he told the appellant's husband that the structure was infested with woodworm and rotten in places. He recommended replacing the roof in totality and was then engaged to carry out the work. The roof repairs were undertaken by the contractor and the labourer who had helped with the walls, between April and June 2012, as noted above.
20. The additional walls were constructed before the contractor visited the site to advise on the extent of works needed to repair the roof and he confirmed that, by the time he visited the site, the external skin of the walls had been completed with the original roofs still intact.
21. The replacement of the internal roof structures to the main section of the barn and the rear extension has not affected the external appearance of this part of the building and the main roof is at the same height and pitch as before. The re-cladding of the exterior could not be carried out in exactly the same material, for reasons of non-availability and health and safety. The tiles that have now been used are, in my opinion, an appropriate alternative and similar enough in colour, profile and appearance to amount to an alteration and improvement as described in s.55(2)(a)(ii) of the Town and Country Planning Act 1990 (as amended) that does not therefore require planning permission to authorise the change.
22. In respect of the roof to the rear extension, photographs confirm that the roof at the rear, which was formerly clad in profiled metal sheet, has been marginally raised so that it is now level with the main roof and the replacement of the metal sheet by clay tiles has also resulted in a slight change of colour. However, I find that these changes do not materially affect the appearance of the building and consequently planning permission is not required for them.
23. The roof structure of the main section is still supported on the original walls and, while a small proportion of the internal skin is new, the external walls could be taken down and much of the original, albeit repaired, building would remain under the repaired roof. I therefore consider that what has taken place does not amount to the erection of a complete new building because of the amount of original material remaining on the site and the extent of what I have found to be maintenance or repair work.
24. I have noted the legal authorities submitted by the Council in respect of what can constitute a new building rather than a repair and alteration but find that the circumstances of this case are sufficiently distinguished from these examples to indicate that the present case should be determined solely on its own merits.

25. *Larkin v Basildon District Council and another* [1980] 2 EGLR 147 concerns the finding that the rebuilding of 2 walls of a house, followed by the rebuilding of the other 2, amounted to a rebuilding of the whole dwelling rather than an improvement. In this case, there is no doubt in my mind that the construction of the external skin was a development that required planning permission as it has altered the external appearance of the building to a material degree. However, the original external walls have not been demolished and, in any event, the new walls, if considered on their own, are now immune from enforcement through the passage of time.
26. *Ernest Henry Hewlett v Secretary of State for the Environment v Brentwood District Council* [1985] concerns the rebuilding of a dilapidated structure and it was found this amounted to the construction of a new building even though the works carried out were said, when taken in stages, to amount to a series of permitted improvements. Again, this case differs from the appeal situation in that, in *Hewlett* there appears to have been rebuilding by stages, whereas, as noted above, here there have been unauthorised new building works that are agreed not to fall within the category of 'improvements or alterations', but are the subject of the appeal on ground (d).
27. *Street v Essex County Council and another* [1965] 193 EG 537 concerned a case where a bungalow was completely demolished down to foundation level apart from two internal walls. The Inspector's conclusion that the replacement was a new building was agreed to be a matter of fact and degree and consequently sound. There is clearly a difference with the appeal case where there has been no comparable substantial demolition.
28. I therefore conclude that the works do not amount to the erection of a new building and will direct that the notice be amended. The appeal on ground (b) succeeds to this extent. I consider that I can amend the notice rather than quash it, as the matters relating to the consequent appeals on grounds (c), (d) and (f), which only come into play if the notice is amended, were fully discussed at the Inquiry and neither party would consequently be disadvantaged.
29. Whether the works are a single building operation that was not substantially complete 4 years before the notice was issued will now be considered in the following paragraphs.

Ground (c)

30. The Council considers that the appeal on ground (c) cannot succeed because the works should be considered as a whole and therefore require planning permission to authorise them. No such permission has been granted. However, I have found, under my consideration of the appeal on ground (b), that the works to the main and rear extension roofs are works of maintenance and improvement.
31. When considering the chronology set out in preceding paragraphs, it seems to me that the works carried out to the barn were not one single project but 2 distinct building operations, with a gap between them, albeit a short one. I consider that the works to the walls were not envisaged as part of the roof works or *vice versa*. The walls have materially affected the external appearance of the building, as distinct from the works to the main and rear extension roofs, which have not.

32. Therefore, those roof works were a discrete building operation that does not require planning permission and the appeal on ground (c) succeeds in respect of them. I will therefore amend the requirements of the enforcement notice to exclude references to the works that I have found do not require planning permission.

Ground (d)

33. The appellant is relying for her appeal on ground (d) on the age of the external walls, which are now claimed to be immune from enforcement action through the passage of time.
34. As noted above, the Council nonetheless believe that all the alterations to the barn are works that amount to a single building operation that was only completed within the 4 years prior to the issue of the notice. If that was the case, the appeal on ground (d) could not succeed as the works were not substantially complete until the roof works were finished and both walls and roof could therefore be required to be demolished.
35. However, my findings above explain that the construction of the new walls was an operation that was carried out separately from the authorised roof alterations. They were completed more than 4 years prior to the issue of the notice and cannot now be enforced against.
36. It is also the case that the floors and service supplies are not development for which planning permission is required, even if they had been undertaken in the 4 years immediately prior to the issue of the notice, which the evidence indicates they were not. They could only now be enforced against if they were facilitating an unauthorised change of use of the building, which has not been alleged. The appeal on ground (d) succeeds in respect of these works. Again, I will vary the requirements of the notice to omit those parts of the works that I have found are immune from enforcement action.
37. However, the work to the side extension roof is able to be enforced against within the time limits, (and has been, through the notice as amended), as the works have made a material change to the appearance of the building. Whether or not planning permission should be granted for the alterations will be considered under the appeal on ground (a).

Ground (a)

38. Following my findings on the grounds of appeal set out above, the area of the building that requires the grant of planning permission to authorise it is the roof to the side extension.
39. The new gabled, dual pitched roof is clearly of a different form to the original catslide which it replaced. It is bulkier and considerably higher. However, it is seen against the backdrop of the greater height of the main roof, to which, in my opinion, it appears subservient and in keeping. Although it has increased the volume of the building as a whole, this does not, to my mind, cause any material harm. The building is some distance from public viewpoints and the change to this roof has had little impact on the character of the surroundings.
40. When seen in context with the authorised and immune alterations, the changes to this roof have given the whole structure a more unified appearance and they consequently meet the requirements of the design policies within the East Hampshire District Local Plan: Joint Core Strategy 2014, specifically policy CP29 d) and e).

41. The other policies cited by the Council relate to sustainable development, the wider spatial strategy and general limitations to development in the countryside and none are, in my view directly relevant to alterations to an existing building.
42. Consequently, I see no benefit in refusing planning permission for the development and requiring the removal of this section of roof. The appeal on ground (a) therefore succeeds in respect of it and planning permission will be granted for it.

Conditions

43. The Council has requested that, if planning permission is granted, I attach a condition limiting the use of the building to that ancillary to the lawful use of the site as a gypsy pitch. However, I do not consider that it is appropriate or necessary to limit the use of the building to that for which it is already authorised. The barn was shown on the plans for the application for the current authorised use and is covered by that permission and the conditions attached to it. Any change in its current ancillary use would require an application for planning permission to authorise it.
44. I understand that the Council is concerned that, because the building has the appearance of a residential bungalow, there is a danger that this is a future use intended by the appellant. There is, however, no other evidence to suggest that this is the intention, or that any such breach of planning control has already occurred. The building has been in the same use for the storage of domestic equipment and vehicles since the works enforced against were completed in 2012 and this use has continued since that time. I therefore find that there is no justification for the imposition of the condition.

Conclusions

45. From the evidence given to the Inquiry I conclude that the allegation in the notice is incorrect, in that the works carried out do not amount to the construction of a building. I am satisfied that no injustice will be caused if the enforcement notice is corrected in order to clarify the terms of the deemed application made under section 177(5) of the 1990 Act as amended. Accordingly the appeal will succeed on ground (b) to this extent.
46. On ground (c), I am satisfied that the works to the main and rear extension roof do not require a grant of planning permission to authorise them.
47. As to the appeal on ground (d) I am satisfied on the evidence that the new external walls are a separate building operation that cannot now be enforced against and that the appeal on this ground should succeed in respect of them. This also applies to the concrete floor and the service installations.
48. For the reasons given above I conclude that the appeal should succeed on ground (a) in respect of the roof to the side (north) extension and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeal on ground (f) does not therefore fall to be considered.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Ltd.
He called	
John Mitchell	Roofing contractor
James Cannon	Previous employee of Mr Searle
Lylie Searle	Husband of appellant
Matthew Green also gave evidence	

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader	Of Counsel
He called	
Simon Wood BA (Hons) BTP MRTPI	Urban Vision Partnership

DOCUMENTS

- 1 Witness statement from Mr Mitchell
- 2 Witness statement from Mr Cannon
- 3 Witness statement from Mr Searle
- 4 Set of site photos
- 5 List of visits made by the Council Officers to the appeal site
- 6 Bundle of Authorities submitted by the Council
- 7 Notes of the Council's costs application
- 8 Notes of the appellant's costs application
- 9 Bundle of Authorities submitted by the appellant
- 10 Notes of Mr Leader's closing submissions
- 11 Notes of Mr Green's closing submissions