The Planning Inspectorate

Appeal Decisions

Site visit made on 27 March 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/Z2830/C/16/3162528 (Appeal A) and APP/Z2830/C/16/3162529 (Appeal B)
Heyford Mill, Weedon Road, Upper Heyford, Northamptonshire NN7 3NE

- 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 Julian Moriarty (Appeal A) and Mrs Louise Moriarty (Appeal B) against an enforcement notice issued by South Northamptonshire Council.
- The enforcement notice was issued on 4 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use and re-building of the buildings known as The Stables, Mill Cottage and Old Mill for residential accommodation.
- The requirements of the notice are (i) Revert the buildings to the details which were approved under S/2010/0308/FUL and ; (ii) Remove from the ground floor any items facilitating the use of the rooms for habitable residential accommodation including the removal of all internal features including any kitchen paraphernalia, (units, extractor fans), fireplaces etc from the building.
- The period for compliance with the requirements is six months for step (i) and three months for step (ii).
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on grounds (e) and (f) only. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Appeal Ref: APP/Z2830/C/16/3166861 (Appeal C) and APP/Z2830/C/16/3166862 (Appeal D)
Old Mill, Heyford Mill, Weedon Road, Upper Heyford, Northamptonshire NN7 3NE

- 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 Julian Moriarty (Appeal C) and Mrs Louise Moriarty (Appeal D) against an enforcement notice issued by South Northamptonshire Council.
- The enforcement notice was issued on 20 December 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of an open sided pergola structure as shown on photographs attached to the notice.
- The requirements of the notice are to demolish the open sided pergola structure and remove the constituent elements from the site.
- The period for compliance with the requirements is three months.
- Appeal C is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal D, the appeal

on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Appeal Ref: APP/Z2830/C/16/3161883 (Appeal E) and APP/Z2830/C/16/3161884 (Appeal F)

Heyford Mill, Weedon Road, Upper Heyford, Northamptonshire NN7 3NE

- 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 Julian Moriarty (Appeal E) and Mrs Louise Moriarty (Appeal F) against an enforcement notice issued by South Northamptonshire Council.
- The enforcement notice was issued on 27 September 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a gate and wall without planning permission as shown on photographs and plan attached to the notice.
- The requirements of the notice are to demolish the gates and wall and remove the constituent elements from the site.
- The period for compliance with the requirements is six months.
- Appeal E is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended and Appeal F is proceeding on grounds (e) and (f) only. Since the prescribed fees have not been paid within the specified period for Appeal F, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Decisions

Appeals A and B

1. In respect of Appeal A it is directed that the enforcement notice is corrected: by the insertion of the word 'material' after 'without planning permission, the' in paragraph 3 of the notice and the deletion of the figure '10' and the substitution of the figure '4' in paragraph 4(i) of the notice. Subject to these corrections 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 material change of use and re-building of the buildings known as The Stables, Mill Cottage and Old Mill for residential accommodation on land at Old Mill Buildings, Heyford Mill, Weedon Road, Upper Heyford, Northamptonshire NN7 3NE, subject to the following condition:

    1) 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 windows/dormer windows and no buildings incidental to the enjoyment of the dwelling house, other than those expressly authorised by this permission, shall be constructed on either the front or rear elevation of Old Mill buildings in respect of the windows/dormer windows or within the site in respect of incidental buildings.

2. In respect of Appeal B, the appeal is dismissed.

Appeals C and D

3. In respect of Appeal C it is directed that the enforcement notice is corrected by the deletion of the word 'pergola' and the substitution of the word 'gazebo' in paragraph 3 of the notice. Subject to this 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 an open sided gazebo structure on land at Old Mill Buildings, Heyford Mill, Weedon Road, Upper Heyford, Northamptonshire NN7 3NE referred to in the notice.

4. As set out above Appeal D has lapsed.

Appeals E and F

5. It is directed that the enforcement notice is corrected by the deletion of the words 'gate and wall without planning permission as shown on photographs and plan attached to the notice' and the substitution of the words 'wall and gates as shown on a photograph attached to the notice' in paragraph 3 of the notice and varied by the insertion of the words 'OR – (ii) Modify the wall and gates so as to comply with the terms of the grant of planning permission (ref: S/2016/2744/FUL granted on 24 January 2017, including its conditions and limitations' after sub paragraph (i) within paragraph 5 of the notice. Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

6. The Council states the address of the site for Appeals C and D as 'Old Mill, Heyford Mill, Weedon Road' and for the remaining appeals as just 'Heyford Mill, Weedon Road'. In fact all six appeals relate to three adjacent buildings formerly known as 'Old Mill, Mill House and Stables'. These are now one building which the appellants refer to as Old Mill Buildings. This dwelling is set in spacious grounds with a detached holiday cottage on the opposite side of the mill race, known as New Mill, and a detached barn used as an office adjacent to the mill channel which surrounds the site. Whilst this group of buildings is known as Heyford Mill, for ease of reference in these decisions I shall refer to them as Old Mill Buildings but I am satisfied that each of the notices adequately identifies the relevant building.

The Notice in respect of Appeals A and B

7. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. The first reason for issuing the notice is that it appears that the breach of planning control has occurred within the last ten years. In this respect the Council are mistaken. Having regard to the allegation as expressed in paragraph 3 of the notice, a material change of use to a single dwelling house and building works are immune from action after four years (section 171 of the Act). The appellant has not submitted a ground (d) appeal and it appears that the development was carried out prior to the submission of an application at the beginning of 2016 to regularise the works that had been carried out. I therefore consider that there is no injustice caused to the appellant by this mistake.

The Notice in respect of Appeals C and D

8. The notice is not as clear as it could be in this case because the Council describe the structure that has been built in the garden as a 'pergola', which is an open framework usually covered with climbing plants, when 'gazebo' would

be more apt. This is a small roofed structure often screened on all sides used for outside entertaining.

9. The Council's error could be grounds for finding that the notice is invalid. I consider though that the appellants have not been misled by the use of this word as they use it in their Statement of Case interchanged with the word 'gazebo'. They therefore understand the nature of the breach of planning control and what they must do to put it right. This error can therefore be corrected without causing prejudice or injustice to the appellants.

The Notice in respect of Appeals E and F

10. The notice is not as clear as it could be in this case for three reasons. Firstly, there is more than one gate within the wall as there is not only a vehicular gate but two pedestrian gates; secondly there is the unnecessary repetition of the phrase 'without planning permission'; and thirdly, the attached photographs are identical and the attached plan does not reflect what has been built.

11. These errors by the Council could be grounds for finding that the notice is invalid. I consider though that the appellants have not been misled by the incorrect framing of the allegation. This is because from the grounds of appeal it is apparent that they understand the nature of the breach of planning control and what they must do to put it right. These errors can therefore be corrected without causing prejudice or injustice to the appellants.

The ground (e) appeals (Appeals A, B, E AND F)

12. Under a ground (e) appeal the onus of proof is on the appellants to show that the notices have not been served as required by section 172 of the 1990 Act. S172(2) states a copy of the enforcement notice shall be served on the owner and on the occupier of the land to which the notice relates. The appellants are the owners of Heyford Mill and their surname is 'Moriarty'. However, all the notices were served on 'Mr and Mrs Moriaty'. The Council advise that this was a simple typographical error.

13. Section 176(5) of the Act says the Secretary of State may disregard incorrect service where there has not been substantial prejudice. In this case the appellants have been able to lodge appeals against the notices. The Council's unfortunate mistake has therefore resulted in no prejudice or injustice and the appeals on ground (e) fail.

The ground (a) appeal (Appeal A)

Background and Main Issue

14. The Council have alleged that the appellant has implemented a different development which is at variance from the approved scheme granted in 2009[1]. In the main this is because it is materially larger, it includes habitable accommodation at ground level and there are differences in terms of fenestration. The Council are of the view that this has caused harm to the character and appearance of the buildings and the surrounding rural area. The development has also increased the risk to future occupiers from flooding**.** However, since the appeal was submitted the matter of the risk from flooding

[1] Ref: S/2008/1532/p

has now been resolved[2] and this is no longer an area of concern for the Council.

15. The main issue is therefore the effect of the development on the character and appearance of Old Mill Buildings and the surrounding rural area.

Reasons

16. Heyford Mill and its surrounding land sits adjacent to and within the floodplain of the River Nene amidst open fields outside the village of Upper Heyford. The buildings on site were formerly derelict but have now been restored and re-built. The buildings are not listed but the site is recognised by the Council as an Archaeological Asset as there has been a mill on the site, in one form or another, for several hundred years.

17. A long distance public footpath, the Nene Way, passes around part of the boundary of the site and vehicular access to the site is via a lengthy driveway connecting the development to the A45 road. Long distance views of the site from the surrounding area are limited by hedgerows and views from the public footpath are interrupted, in part, by trees alongside the river and the mill channels. The character of the area around the appeal site is essentially rural and its attractive appearance is due, in large part, to the tranquil setting of the river which off-sets the formerly semi-industrial nature of the site.

18. The Council raise no objection in principle to the residential use of the former derelict mill buildings and accept that large parts of them needed to be re-built. The restoration of the Old Mill and Stables, in terms of their height, appears to accord with the previously approved plans from 2009. However, Mill House, in the middle of these two buildings, was apparently higher and included an attic floor in addition to the first floor. Following its restoration the ridge height of this building is materially higher than what was shown on the approved plans from 2009.

19. I find the difference in height between the three buildings to be acceptable. This is because the height of the Mill House eaves, being above the ridge height of the adjacent buildings, as observed by the Council, is not critical to recognising the identity of the built form as mill buildings. In addition, the variations in height still enable the history of the site to be understood and appreciated. From the public footpath to the west of the site I saw that the height of Mill House sits comfortably not only with the immediately adjacent buildings, but also with the height of the Threshing Barn and New Mill. This results in a balanced and interesting composition of rural buildings.

20. With regard to fenestration, the disposition of the windows over Old Mill Buildings is an important component of its character and appearance. The appellant submits that the approved position of window and door openings was based largely on informed conjecture and the historical information held by the Council.

21. I find in general the design of small rural watermills stems from their basic function which is then refined to suit the needs of the occupiers. As such, window and door openings can be haphazard but within larger groups of buildings they can also have a more regular pattern. I consider the front elevation of Old Mill Buildings is different from the approved plans, but not

[2] Letter dated 2 February 2017 from the Environment Agency

markedly. This is because partially glazed upper level door features have been incorporated within the Old Mill and Stables ends of the building which reflect what was originally approved, albeit without the external staircase. Mill House still contains two central windows at ground and first floor level though they are now sited more towards the Stables and a small window replaces a proposed larger window to light a landing, as opposed to lighting an attic bedroom as shown in the approved scheme.

22. The approved scheme retained the cart door openings as garage doors but now that ground floor habitable accommodation is safe from flooding the appellant has used these openings for windows. However, by recessing and infilling the lower part of the openings with stonework and using glazing to fill the full width of the upper part of each former doorway the appearance of the former cart entrances are referenced and retained. Overall I find the arrangement of window and door openings across the principle elevation of the building has not resulted in a cluttered appearance; instead there is a pleasing composition.

23. Turning to the rear elevation, there are three modern openings in the manner of French windows and bi-fold doors inserted at ground level which are spread evenly across the three buildings. The three upper windows of Mill House have also been reduced in size and number to two and are repositioned to the outer sides of the elevation. From the public footpath to the west of the site these openings, as well as the three roof lights, appear modest and restrained. As they are surrounded by a large amount of brick and stone work as well as slate roofing it also means that they are not prominent. As such, this aspect of the design of the development is, to my mind, sympathetic to the existing character of the building.

Conditions

24. The Council have suggested a number of conditions in the event of planning permission being granted and I have considered these against the requirements of the Planning Practice Guidance. In the interests of the appearance of the site it is necessary to impose a condition to remove permitted development rights concerned with roof alterations and outbuildings. However, the requirement for a hard and soft landscaping scheme to make the development acceptable is not necessary. The appellant has re-built a lot of the walls adjacent to the mill channels and is part way through forming a garden. It is clear from his maintenance of the grassed and tree/shrub planted area surrounding the site that he has regard to the setting of his buildings. I therefore see no reason for a strategic landscaping scheme. Suggested conditions No 1, 3 and 7, which are concerned with flood risk management, are also unnecessary.

Conclusion on Appeal A

25. For these reasons I conclude that the character and appearance of Old Mill Buildings and the surrounding rural area has not been harmed by the material change of use and re-building that has taken place. The development therefore accords with Policies G3, H6, EV1, EV2 and EV16 of the Council's Local Plan (LP)[3]. These policies seek design that is compatible with the existing character of the building and the locality and that attention is paid to the relationship with adjoining buildings. I give these policies weight as they are

[3] South Northamptonshire Local Plan adopted October 1997 and subsequently Saved by the Secretary of State

consistent with the National Planning Policy Framework's (the Framework) requirement for good design. The appeal on ground (a) therefore succeeds and planning permission will be granted. The appeals on ground (f) (Appeals A and B) do not therefore need to be considered.

The ground (a) appeal (Appeal C)

Main Issue

26. The main issue is the effect of the gazebo development on the character and appearance of the surrounding rural area.

Reasons

27. The gazebo is a detached outbuilding erected in the newly formed garden to the rear of Old Mill Buildings. It is 5.5m in depth and width and has an eaves height of 2.3m with an overall height of 4m to the ridge. It has a wooden, pyramid shaped roof clad in cedar wood shingles and open sides framed by black painted steels with some side bracing and angle brackets at eaves height. A light and sound system has been installed within the roof area. One side also has an incomplete low brick wall structure that appears to be for a barbeque.

28. The gazebo is sited behind and immediately adjacent to the new garden wall that runs between the Threshing Barn and Old Mill Buildings. The roof is visible above the height of this wall when approaching the site from the east on the public footpath, though this view is interrupted by the trees bordering the mill channel. Views of the structure from the west are largely screened by the Threshing Barn.

29. I find the gazebo, as an open-sided building, is a simple structure that does not detract from the setting of the existing buildings within the mill complex as it is positioned away from them. It is also immediately adjacent to the new boundary wall which largely screens it. In terms of its scale, the Council are concerned about the depth of the building which is similar to, but just less than, the depth of what is now Old Mill Buildings. However, as the gazebo is an open-sided structure sited on a different alignment from Old Mill Buildings, and behind the boundary wall, the similarity in depth is not so obvious. I consider the height of the gazebo is the more prominent dimension, but as this is lower than the eaves height of the nearest part of Old Mill Buildings the scale of the gazebo remains acceptable within this large garden area.

30. The photograph of the gazebo attached to the notice appears to have been taken before the building was finished and it shows the roof before it had had chance to weather. At the site visit I saw that the orange cedar wood shingles have now faded and the roof now appears to be grey. I consider this now harmonises with the appearance of the slate roofs of the group of buildings at Heyford Mill.

31. In terms of the pyramid shape of the roof, it is not unusual to find outlying buildings near a complex of rural buildings with a different shaped roof as this would often reflect their particular function. The Council submit that the design of the gazebo fails to respect local vernacular architecture but I find it is rather akin to a granary building in terms of its roof shape, albeit overall the building is lower in height than a typical granary building. I consider the design of the roof is particularly apt given the presence of the Threshing Barn.

Conditions

32. No conditions have been suggested by the Council in the event of planning permission being granted. Since the development being granted planning permission was substantially complete when the notice was issued, none are necessary.

Conclusion on Appeal C

33. For these reasons I conclude that the erection of the gazebo has not harmed the character and appearance of the surrounding rural area and it therefore accords with Policies G3 and EV1 of the Council's LP. The appeal on ground (a) therefore succeeds.

The ground (a) appeal (Appeal E)

Main Issue

34. The main issue is the effect of the development of a wall and gates on the character and appearance of the surrounding rural area.

Reasons

35. The appellant has erected a long wall over 2m in height, with intervening piers between Old Mill Buildings and the Threshing Barn in the middle of which there is a pair of vehicular gates and at each end there is a pedestrian gate. A chimney has been built into the inside face of the wall which is visible above the wall and a number of lanterns have been fixed to the outside face of the wall arranged at regular intervals. The wall is constructed from sandstone laid in random courses to match the ground floor of the existing mill buildings and the gates are finished in vertical strips of cedar wood. The Council have raised no objection in principle to a wall but are concerned about its design.

36. I find that the wall is a substantial structure due to its length, height, chimney and six wide square piers. Whilst the material chosen for its construction relates to the adjacent buildings, there are aspects of its design that I consider are harmful to the character and appearance of the area occupied by the former mill buildings.

37. In particular, I find its overall height is at odds with the much lower red brick walls found throughout the site. The appellant submits that the height of the new wall is only marginally above 2m and is needed to enclose what has now become the garden for the converted mill and to provide privacy and security. At the site visit though I saw that the garden is fully overlooked from the public footpath once past the Threshing Barn, albeit from a distance. I therefore give limited weight to this submission. I also consider the height, width and number of piers together with the chimney and lanterns contribute towards an over-elaborate appearance for the wall that is unsympathetic to the simple, functional design of the mill buildings.

38. For these reasons I conclude that the development causes harm to the character and appearance of the surrounding rural area. It therefore does not accord with Policies G3 and EV1 of the Council's LP and the appeal on ground (a) therefore fails.

The ground (f) appeals (Appeals E and F)

39. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the wall and gates be demolished. The purpose of the notice must therefore be to remedy the breach of planning control.

40. The appellants submit that the notice is directed at the harm caused by the height of the piers and projecting chimney, not the overall appearance of the wall. Therefore a lesser step would be to require that the piers be reduced in height to match the main element of the wall and to remove the chimney. The Council advise that planning permission was granted[4] to remodel the wall by lowering the height of the piers. The appellants could implement this permission which would resolve their dilemma.

41. I consider the notice needs to do no more than identify the breach of planning control and to state the minimum that needs to be done to resolve the breach. A reduction in the height of the piers and the removal of the chimney, as suggested by the appellants, would not remedy the breach of planning control. This is because the breach of planning control is the action of erecting the wall. Altering its height would not undo that initial action and would not address all of the harm caused by the development set out in the reason for issuing the notice. Furthermore, permitted development rights, if they exist, cannot be claimed retrospectively.

42. However, I have had regard to the grant of planning permission given in January 2017 and it is not time-expired and not subject to any conditions required to be discharged within any given period before development commences. As such the notice could be varied to require that either the development is removed or is modified so as to comply with the terms and conditions of the permission. This would save the appellants the expense of removing the wall and re-building it.

43. Varying the notice on this basis would cause no injustice to the Council. The breach would be remedied whether the wall is removed or altered to accord with the permission. Condition No 1 attached to the permission specifies the approved drawings and any departure from the plans could be enforced against as a breach of condition.

44. I conclude that the requirements of the notice are not excessive to remedy the breach of planning control but the same end could also be achieved by the alternative lesser step of making the development comply with the terms of the permission. I shall vary the notice to allow this in the alternative and the appeals on ground (f) succeed to that extent.

Conclusions

Appeals A and B

45. For the reasons given above I conclude that Appeal A should succeed on ground (a) and I will grant planning permission in accordance with the

[4] Ref: S/2016/2744/FUL, dated 24 January 2017

application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. With regard to Appeal B, for the reasons given above in respect of the ground (e) appeal, the appeal should not succeed.

Appeals C and D

46. For the reasons given above I conclude that Appeal C should succeed on ground (a) and planning permission will be granted.

Appeals E and F

47. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

D Fleming

INSPECTOR