
Appeal Decision

Site visit made on 28 April 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 06 June 2017

Appeal Ref : APP/M2270/C/16/3163191

Free Heath Farm Buildings, Free Heath, Wadhurst, TN5 6RB

- 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 Alex Levett against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 17 October 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of two buildings and the formation of earth embankments on the land in the approximate locations shown on the plan attached to the notice.
- The requirements of the notice are 1. Demolish the building erected on the land and referred to as Building A on the plan attached to the notice; 2. Demolish the building erected on the land and referred to as Building B on the plan attached to the notice; 3. Remove the earth embankments from the land as shown hatched in black on the plan attached to the notice and return the level of the ground to its pre-existing level; and 4. Remove from the land all resultant materials, rubble and rubbish arising from compliance with requirements 1-3 above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction

Ground (c) appeal

1. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act (as amended) and includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
2. The Appellant argues that the building referred to as Building B on the plan attached to the notice and the smaller of the two earth embankments do not comprise development. In determining whether each comprises operational development within the meaning of section 55 of the Act I have assessed their size, degree of permanence and physical attachment.
3. Turning firstly to Building B. It comprises a domestic like shed which rests on bricks. It is of modest size and has a sink area and toilet. There is nothing before me to suggest that it has ever been moved from its current position. Whilst I recognise that it is not physically attached to the ground that factor

alone is not conclusive. The building is connected to water and electricity supplies, has the appearance of permanence and is of not insignificant size. On balance I consider that it can reasonably be regarded as a building for the purposes of the 1990 Act as amended.

4. Turning to the smaller of the earth embankments. It is established law that works such as the formation of earth banks may comprise 'other' operations for the purposes of section 55 of the Act. It is a relatively small pile of topsoil and I have nothing before me that casts doubt on the Appellant's assertion that it is part of ongoing tidying and clearance of the site. I am not persuaded that it is formed in a particular way to create a feature that is intended to stay in one place for some considerable time. As a matter of fact and degree I find that it is of such a small scale as to be reasonably regarded as de-minimis. On balance I find on the evidence before me that the smaller earth embankment identified on the plan attached to the notice cannot reasonably be regarded as an operation for the purposes of the 1990 Act. It therefore does not comprise development requiring planning permission.
5. For the reasons given above I conclude that Building B comprises development within the meaning of section 55 of the Act and constitutes a breach of planning control but that the smaller earth embankment does not. Consequently, the appeal under ground (c) should fail in relation to Building B but succeed in relation to the smaller earth embankment. I shall correct the enforcement notice accordingly.

Ground (a) appeal and deemed application

Main Issue

6. I find that the main issue in determining this appeal is the effect of the development on the character and appearance of the site and the surrounding area, with particular regard to its location in an Area of Outstanding Natural Beauty.
7. The appeal site is located in the High Weald Area of Outstanding Natural Beauty (the AONB). The site is situated on a small plot that has in the past been used as a poultry farm and a tall food hopper remains on site. The surrounding area is relatively isolated and rural and predominantly in agricultural use with some nearby woodland and residential dwellings. There is a hedgerow boundary to the adjacent rural lane.
8. The National Planning Policy Framework (the Framework) provides that great weight is attached to conserving the landscape and scenic beauty in an AONB. This protection is mirrored in the development plan (including saved policies in the Local Plan 2006 and the Tunbridge Wells Borough Core Strategy (the Core Strategy)). Policy CP4 sets an objective to conserve and enhance rural landscapes. Policy CP14 emphasises that the countryside should be protected for its own sake and that natural features of the landscape will be preserved, enhanced and where necessary restored.
9. Turning firstly to Building A (as annotated on the plan attached to the notice). I note that it replaced a former building used for agricultural purposes. At the time of issue of the notice it had a ridge height that exceeded that of the former building. It was of relatively significant size and visible from nearby vantage points including the adjacent rural lane. Taking into account the

photographic evidence before me I agree with the Council that it did not have the appearance of an agricultural structure. Features, including fenestration appeared to resemble that of a dwellinghouse giving it a domestic appearance out of keeping in a rural landscape. The development was out of keeping with the landscape and scenic beauty of the AONB and did not conserve or enhance the open rural landscape. At the time of issue of the notice Building A caused harm to the character and appearance of the area and failed to conserve the landscape and scenic beauty of the AONB contrary to relevant development plan policies and the Framework.

10. Changes have been made to Building A since the notice was issued, including a reduction in ridge height. The Appellant has produced a revised design (drawing FHF/1) which comprises a reduced ridge height and changes to the fenestrations. I consider that this alternative scheme is covered by the allegation in the notice and therefore I have considered the deemed application in relation to the revised design.
11. In the revised design the building remains prominent and out of keeping with its rural surroundings. It remains visible from the adjacent lane. The revisions do not overcome the identified harm. The Appellant argues that the development has no greater impact on the landscape than the building it replaced. But unlike the former building there is no agricultural justification. The Appellant suggests that the revised design be secured by condition but as I have concluded that the design would cause harm to the character and appearance of the area this would not be appropriate.
12. The Appellant argues that Building A is essential for a successful agricultural business to operate on the site and states an intention to use the building for poultry or mushroom farming. But there is no detail before me to support that intention nor to explain how the design of the structure (at the time of the issue of the notice or the revised design) would facilitate that use. I note that the parties do not agree on the lawful use of the site but that is not a matter requiring my determination in this appeal. I find that there is insufficient agricultural justification before me to outweigh the identified harm to the character and appearance of the area.
13. The Appellant suggests that rural buildings similar to those the subject of this appeal are not uncommon in the area. I do not have the details of specific examples before me and I must consider the development according to its particular facts.
14. For the reasons given I conclude that Building A (both as it existed at the time of issue of the notice and the revised design) causes harm to the character and appearance of the area and fails to conserve the landscape and scenic beauty of the AONB. Planning permission should not be granted on the deemed application.
15. Building B is a domestic like shed of modest proportions. It is not widely visible but its domestic like appearance is alien to its open rural setting. It harms the character and appearance of the surrounding rural area and I find no agricultural justification to outweigh the identified harm. Planning permission should not be granted on the deemed application.
16. The earth embankment on the eastern boundary of the site is substantial in size and formed into a curved bund. The Appellant argues that it is necessary

to screen a manure heap and to create a clear parking and turning area in connection with the agricultural use of the site. But this embankment is significant in size and comprises an alien, artificial feature in this rural landscape. It is visible from the adjacent rural lane and out of keeping with the character and appearance of the area. It causes harm to the character and appearance of the area and fails to conserve the landscape and scenic beauty of the AONB contrary to the development plan and the Framework. I am not persuaded that this harm is outweighed by any screening effect or that a turning area could not be created in an alternative way which would not cause harm to the character and appearance of the area. Planning permission should not be granted on the deemed application.

17. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions proposed by both parties in the event that the appeal is allowed. The Appellant suggests that materials, landscaping and lighting could be controlled by condition. But these conditions would not address the identified harm by reason of the domestic and prominent appearance of the buildings and the harm caused by the earth embankment to the open, rural character of the area. I consider that it would not be reasonable or necessary to control the use of the site by condition as the development concerns operational development.
18. For the reasons given above I conclude that Building A, Building B and the larger earth embankment shown on the plan attached to the notice cause harm to the character and appearance of the surrounding area and fail to conserve the landscape and scenic beauty of the AONB contrary to the development plan and the Framework.

Other matters

19. The views of neighbours refer to other matters including the potential for Building A to be used as a dwelling, potential asbestos removal and widening of Free Heath Road. These are not relevant to the appeal before me.

Conclusion

20. For the reasons given I conclude that the ground (a) appeal should not succeed and I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Ground (f) appeal

21. This ground of appeal is that the steps required to be taken exceed what is necessary. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (section 173(4) (a)) is to remedy any breach of planning control which has occurred. The second (section 173(4) (b)) is to remedy any injury to amenity which has been caused by the breach.
22. The Appellant argues that he should be able to retain Building A at its reduced ridge height in accordance with the revised design shown on drawing FHF/1. But as I have explained in the ground (a) appeal the revised design does not address the identified harm. The revised design would not remedy the injury to amenity caused by the breach of planning control.
23. For the reasons given above, the ground (f) appeal fails.

Formal Decision

24. It is directed that the enforcement notice be corrected by deletion of the words 'earth embankments on the Land' in the first sentence of paragraph 3 and 'earth embankments from the Land' in paragraph 5.3 of the notice and substitution of the words 'the earth embankment on the eastern boundary of the site'. Delete the words 'embankments on the Land are' from the final sentence of paragraph 3 and substitute with 'embankment on the Land is'. Delete the words 'in their approximate location hatched in black' in paragraph 5.3 of the notice and substitute with 'along the eastern boundary of the site and hatched in black'. Subject to these corrections the appeal is 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.

S. Prail

Inspector