
Appeal Decision

Site visit made on 16 May 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 26 July 2017

Appeal Ref: APP/W0530/C/16/3161225

The land known as 36 Apthorpe Street, Fulbourn CB21 5EY

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Keith Carter against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice was issued on 9 September 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission:- (i) the erection of a wooden building and concrete base in the rear paddock of the Land as marked with an 'X' on the attached plan.
 - The requirement of the notice is: (i) remove the wooden building, concrete base, any building contents and all building materials resulting from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in s174(2)(a) and (f) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected, in paragraph 1, by the insertion of "(a)" after "section 171A(1)". Subject to this correction the appeal is dismissed and the enforcement notice is upheld; and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Matter concerning the enforcement notice

2. Paragraph 1 of the notice refers to a breach of planning control under s171A(1) but does not state under which sub paragraph ((a) or (b)) of that provision the breach appears, to the Council, to fall.
 3. Under s173(1)(b) of the Act there is a statutory requirement for the relevant sub paragraph (a) or (b) of s171A(1) to be stated.
 4. It is clear when reading the notice as a whole that what is being alleged is an act of operational development falling within sub paragraph (a) rather than a breach of condition falling within sub paragraph (b). I shall correct the notice by adding "(a)" after "section 171A(1)".
 5. I shall make this correction under s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.
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Other preliminary matters

6. The building is sited within the Green Belt. The appellant argues that the Green Belt boundary, at this part, is inconsistent as it cuts across his garden whereas it generally follows garden boundaries including those of his neighbours.
7. However, it is not for me in this appeal to undertake a review of the Green Belt boundary. I must approach the appeal from the position that the building is, as a matter of fact, within the Green Belt as defined in the current development plan. The rationale for that inclusion is not for me to question.
8. The Council has concerns about the use of the building as a commercial business. However, there is no evidence before me that the building is (or has been) used in connection with any commercial business. The appellant has, in the past, undertaken hive making on a small scale using traditional joinery methods in an existing timber building. There is, however, no suggestion that this small scale activity amounted to a material change in the use of the land.
9. In any event, the deemed application takes its terms from the allegation (at paragraph 3 of the notice) which is only the erection of the building and its concrete base. No change of use is alleged. If the Council is concerned about commercial activity it remains open to it to take further enforcement action. However, my considerations in this appeal must focus upon the effects of the building in its physical form irrespective of how the Council suspects it may be used in the future.

The appeal on ground (a) and the deemed application

Planning policies and statutory requirements

10. The development plan policies to which I have been referred are those set out in the South Cambridgeshire District Council Local Development Framework, Development Control Policies, Development Plan Document [hereafter the "DPD policies"].
11. Policy DP/1 seeks to only permit development that is consistent with the principles of sustainable development and policy DP/7 seeks (amongst other things) to protect the countryside from encroachment. Policies DP/2 and DP/3 seek development of high quality design that, amongst other things, preserves and enhances the character of the local area and which does not have an unacceptable adverse impact upon (amongst other things) the countryside or residential amenity. Policy CH/4 seeks to resist development which would adversely affect the curtilage or wider setting of a listed building; and policy CH/5 states that proposals for developments affecting conservation areas will be determined in accordance with national policy and local design guidance. Policy GB/1 seeks to protect the Green Belt from inappropriate development and to maintain its openness; and Policy GB/2 seeks to ensure that appropriate development in the Green Belt is located and designed so that it does not have an adverse effect on rural character and openness.
12. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise¹.

¹ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

13. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory requirement upon the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting.
14. Reference has been made to the National Planning Policy Framework [hereafter "the Framework"] which sets out the Government's planning policies for England and how it expects these to be applied at local level. The Framework is a material consideration for this appeal.
15. Section 12 of the Framework is concerned with conserving and enhancing the historic environment. It states (amongst other things) that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation². A listed building is a designated heritage asset to which this national policy applies as is a conservation area.
16. Section 9 of the Framework is concerned with protecting Green Belt land. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances; and that the construction of new buildings in the Green Belt is (generally) inappropriate with some exceptions which are set out in section 9.
17. The development plan policies referred to in this appeal pre-date the Framework. Whilst in general conformity, policy GB/1 is not entirely consistent with the Framework not least because it takes its definition of "inappropriate development" from the former guidance of PPG2.³ I shall, therefore, refer to the Framework in my consideration of whether the development is "inappropriate development" in the Green Belt, and afford policy GB/1 limited weight whereas the other policies will carry significant weight.
18. I have also been referred to the District Design Guide, adopted by the Council as a supplementary planning document, which is a further material consideration for the appeal [hereafter "the SPD"]. The SPD states that the character, setting and particular interest of a listed building must always be respected as must the special interest of a conservation area.
19. Additionally, there are evolving policies relevant to this appeal in the South Cambridgeshire Local Plan Proposed Submission 2013 [hereafter "proposed Local Plan"]. Policy S/7 seeks to protect the countryside and policy NH/8 seeks to mitigate the effects of inappropriate development in the Green Belt. Policy NH/14 is supportive of development that sustains and enhances the special character and distinctiveness of the district's historic environment and its heritage assets; and policy HQ/1 seeks high quality design that preserves or enhances the character of the local area (amongst other things). However, the proposed Local Plan has just been through examination and is, therefore, still open to change. I therefore afford these policies only limited weight.

² This is set out in paragraph 132 of the Framework.

³ Planning Practice Guidance: Green Belts (PPG2) set out national planning policy for Green Belts but was replaced by the Framework in 2012.

Main issues

20. Having regard to the Council's reasons for taking enforcement action, planning policies, statutory duties and the further submissions made I consider the main issues in this appeal to be:
- a. Effect of the development upon the character and appearance of the Fulbourn Conservation Area and setting of the listed building at 36 Apthorpe Street;
 - b. Whether the development is inappropriate development within the Green Belt;
 - c. If so, whether there is any harm to the Green Belt and any other harm; and
 - d. Whether, if so, the proposal is justified by very special circumstances.

Effect upon the character and appearance of the conservation area and the setting of the listed building

21. The character and appearance of the conservation area is that of a rural village sitting within a rural landscape. Number 36 is one of several thatched cottages situated towards the edge of the historic village core. The land associated with the property is of elongated form with its most northerly part being partially separated by a hedge from the more landscaped and manicured garden to the immediate rear of the cottage.
22. The conservation area boundary cuts across the land, encompassing the cottage and its immediate garden but does not include the northern part of the land. It is within this northern part, and thus beyond the conservation area boundary, that the appeal building is located.
23. The building sits, at a distance, behind the hedge. It is barely seen from within the conservation area, its most visible part being its mono pitch roof rising slightly above the hedge against a backdrop of trees and greenery. Being constructed in dark coloured shiplap boarding of simple design and modest height, the building recedes into its setting. It has the resemblance of a barn or other utilitarian rural building and does not appear out of place in this rural location at the edge of the village. Nor does it have any adverse effect upon the character and appearance of the conservation area when taking into account its design, materials, distance from the conservation area boundary and degree of visibility.
24. For similar reasons, I do not consider the building has any adverse effect upon the setting of the listed cottage either. Whilst in the same overall parcel of land within which the listed building is experienced, being in the northern stretch the appeal building is some distance from the cottage and separated in part by the hedge. There is barely any inter visibility between the two, the immediate cottage garden being the part of the land most significant to the setting of the listed building. When looking across towards the appeal building from the cottage all that can be discerned is the upper part and mono pitch roof of a building of understated, rural appearance which does not appear out of place at this distance nor discordant with the general wider setting of the cottage. The building has a neutral effect upon, and therefore preserves, the setting of the listed building.
25. On this first main issue, therefore, I do not find harm to the character and appearance of the conservation area or the setting of the listed building. Nor

do I find that the development offends DPD policies CH/4 and CH/5 or the guidance of the SPD.

Whether inappropriate development in the Green Belt

26. The Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt with some exceptions. Amongst the exceptions are buildings for agriculture and forestry and the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
27. The building, in part, appears to be an agricultural building because it is used for the storage of feed for the fowl that are kept on the land. However, it is also used as a domestic workshop in connection with the general maintenance of the property and land and for small scale carpentry undertaken by the appellant. The building does not, therefore, squarely fall within the Green Belt exception for agricultural buildings.
28. There is an older timber building on the land which, it is said, the new building is intended to supersede. That building was in use for storage at the time of my visit. There are a range of other buildings including a summerhouse, storage shed and animal shelters. However, there is no proposal before me for the removal of the existing timber building and/or any of the other buildings. Nor can I deduce that this is what the appellant intends as, by using the word "supersede" he could simply mean that its use is to be transferred to the new building and that the older timber building will remain. I cannot conclude, therefore, that the building is a "replacement" building within the Green Belt exceptions.
29. I find, by applying the guidance of the Framework, that the building is inappropriate development and, by definition, harmful to the Green Belt.

Extent of harm to the Green Belt and any other harm

30. The building adds to the existing footprint and volume of buildings on the land. Whilst of relatively modest size it, thus, affects the openness of the Green Belt to that extent.
31. In other respects, the site is well screened by a mature hedgerow with the building being mainly unseen in views looking towards the land from the countryside beyond. That would still be the case even when the hedgerow is not in full leaf when taking into account its denseness. Being of simple design and constructed in natural materials, it does not unduly detract from the visual amenity of the countryside or the Green Belt. Nor does it appear as a discordant feature in views (such as they are) from neighbouring land parcels. I find the development to accord with DPD policies DP/2 and DP/3 insofar as it preserves the character of the local area and does not have an unacceptable adverse visual impact upon the character of the village and countryside. I have already found that there is no harm to the setting of the listed building or to the character and appearance of the conservation area and compliance with the respective DPD policies. Nor do I find evidence of any conflict with policy DP1 when taking into account the building's insulation and design, association with the land on which it is located, scale and form and its neutral effects upon local landscape character and cultural heritage.

32. The Council suggests that the use of the building results in noise and disturbance which has a detrimental effect upon the living conditions of the occupiers at number 38 when using their garden. The garden of number 38, albeit adjacent to an access track, is some distance from the appeal building although there are other residential properties with gardens abutting the site. However, there is no evidence that the use of the building as an animal feed store and as a domestic workshop in connection with the general upkeep of the property and land has resulted in any unacceptable noise and disturbance. I do not find harm to the living conditions of neighbours arising from the use of the building. Nor do I find any conflict with DPD policy DP/3 insofar as it seeks to protect residential amenity.
33. The harm I identify, therefore, is limited to that which affects the openness of the Green Belt arising from the building's additional footprint and built form.

Whether justified by very special circumstances

34. I have no doubt that the building serves a useful purpose associated with the keeping of animals and in connection with the general upkeep and maintenance of the land. The building, in part, is an agricultural building. The absence of any other harm is also a material factor.
35. The building has only a moderate effect upon the openness of the Green Belt when taking into account its size. However, its effect is negative nevertheless and, in accordance with paragraph 88 of the Framework, that is a matter to which substantial weight must be given. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.
36. When weighing the other considerations against the Green Belt harm I do not find the building to be sufficiently justified. For example, there is no clear evidence of any demonstrable need for this additional building when taking into account the other existing buildings that are to remain on the land. The considerations which have been advanced (even when taken collectively) do not, in themselves, clearly outweigh the harm to openness which has been identified. Thus, I conclude that very special circumstances are not demonstrated.

Conclusion on ground (a) and the deemed application

37. Even when considered against development plan policy GB/1 the building is inappropriate development in the Green Belt and also contrary to policy DP/7 which restricts development in the countryside (that being land beyond the village boundary). It is, thus, contrary to the development plan read as a whole, even though there is no conflict with some of the other cited policies. There are no material considerations that indicate a decision other than in accordance with the development plan.
38. The development is harmful to the Green Belt by definition. It adds to the amount of built development and therefore has a negative effect upon the openness of the Green Belt. There are no other considerations that, either singularly or collectively, amount to very special circumstances sufficient to justify the development. The appeal on ground (a) fails and the deemed application will be refused.

The appeal on ground (f)

39. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach.⁴ The words “as the case may be” indicate that the main purpose of the notice should fall within one or the other category.
40. It is unclear on what basis the appeal on ground (f) is brought. However, the notice is aimed at securing a complete remedy of the breach. It follows that, as the allegation is the erection of the building and concrete base, the steps needed to remedy the breach are the removal of the building and concrete base.
41. It is difficult to see, in the absence of any alternative scheme, how any lesser steps, short of complete removal, would overcome the harm identified under ground (a). No other steps have been put forward by the appellant and there is no other obvious alternative that I can see.
42. The appeal on ground (f) fails.

Conclusion

43. For the reasons given in my consideration of grounds (a) and (f) above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector

⁴ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).