



Appeal Decision

Site visit made on 22 May 2018

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

an Inspector appointed by the Secretary of State

Decision date: 12 June 2018

Appeal Ref : APP/L2250/C/17/3179930

Land at The Studio, Skeete Road, Lyminge, CT18 8DS.

- 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 RW Cox against an enforcement notice issued by Shepway District Council.
- The notice was issued on 6 June 2017.
- The breach of planning control as alleged in the notice is non compliance with condition 6 of planning permission Y07/0744/SH.
- Condition 6 of planning permission Y07/0744/SH states that the existing chalet dwelling shown on the submitted plan shall be demolished and all resultant spoil removed from the site for disposal within 1 month of the first occupation of the replacement dwelling hereby approved.
- The requirements of the notice are i) demolish the buildings shown outlined in red on the plan attached to the notice; ii) remove all resultant spoil from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

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

Ground (a) appeal and deemed application

Main Issues

1. The main issues in the determination of this appeal are (i) the effect of retention of the Studio on the character and appearance of the surrounding area, having particular regard to its location within an Area of Outstanding Natural Beauty (AONB) and (ii) whether the appeal site is a sustainable location for the retention of the building.

Effect on the AONB

2. The appeal site, known as The Studio, sits within open countryside within the Kent Downs Area of Outstanding Natural Beauty (the AONB) and the North Downs Special Landscape Area (SLA). The area is characterised by undulating open countryside with narrow country lanes, extensive vegetation and low density residential development. The Studio is outside the defined settlement boundary and in a remote rural location. It forms part of a cluster of rural buildings set within the natural landscape. Within this group of buildings are a small number of dwellings with detached garages including Meadow Lodge and Little Valley Cottage. A large field nearby is in use as a

campsite for the stationing of touring caravans. There is no easy access to public transport and a footpath crosses land to the east.

3. Planning permission Y07/0744/SH (the Permission) for erection of a replacement dwelling with first floor in roofspace and demolition of existing dwelling, includes a condition (condition 6) which provides that 'the existing chalet dwelling shown on the submitted plan shall be demolished and all resultant spoil removed from the site for disposal within 1 month of the first occupation of the replacement dwelling hereby approved'. The existing chalet is the appeal site, known as the Studio. The replacement dwelling is known as Meadow Lodge.
4. The Studio is a single storey detached building with room in the roof. A certificate of lawful use or development has been issued confirming the lawful use of the Studio as a dwelling and the use of land as residential curtilage following its conversion from a garage. Meadow Lodge (the replacement dwelling the subject of the Permission) has been occupied by the Appellant and his family since 2014. There is no dispute that the time period for demolition of the Studio pursuant to condition 6 of the Permission has expired.
5. The development plan (including the Kent and Medway Structure Plan, Shepway Core Strategy Local Plan (the Core Strategy) and saved policies in the Shepway District Local Plan Review)) mirrors the National Planning Policy Framework (the Framework) in seeking to protect the countryside from inappropriate development and in recognising that great weight is to be given to conserving the landscape and scenic beauty in an AONB.
6. Saved policy CO1 states that the countryside will be protected for its own sake and development permitted only where certain specified criteria are met. These criteria include maintaining or enhancing features of landscape importance and the particular quality and character of the countryside. Development that conflicts with these criteria will only be permitted where it can be shown that there is an overriding social or economic need.
7. Saved policy CO4 provides that development not consistent with the protection or enhancement of the natural beauty of the SLA will not be permitted unless there is a need to secure social wellbeing which outweighs the need to protect the SLAs countryside landscape significance.
8. Whilst I recognise that The Studio has been present in the landscape since 1987 in considering the application for Meadow Lodge the Council determined that retention of the Studio together with Meadow Lodge would cause harm to the character and appearance of the area. Both buildings are not therefore part of an established cluster. The retention of an additional building fails to maintain or enhance the landscape by introducing a proliferation of buildings which erodes the special landscape character in this rural location. Both buildings were permitted only for a temporary period during the construction of Meadow Lodge and therefore this is not the case of reuse of existing resources.
9. I have considered whether there is an overriding need that outweighs the need to protect the countryside from development that does not protect or enhance the natural beauty of the surrounding area. I note the Appellant's personal need for additional storage but I am not satisfied that alternative

measures could not address this without the identified harm. On the evidence before me I find no overriding social or economic need that warrants an exception to saved policies CO1 and CO4.

10. The Appellant draws attention to the grant of permission for extensions to other properties nearby and argues that the loss of any one individual building will not materially affect the overall visual appearance of the AONB. But each case must be considered on its merits and the prevailing characteristic of the area remains small clusters of rural development within the natural landscape.
11. I find that retention of the Studio by removal of condition 6 would cause unacceptable harm to the character and appearance of the area and fail to conserve the landscape and scenic beauty of the AONB having regard to its qualities and local distinctiveness. It would be contrary to relevant policies in the development plan and the Framework.

Sustainable location

12. The site is located beyond a settlement boundary. There are few community, retail or education facilities close at hand and there is no easy access to public transport.
13. Paragraph 55 of the Framework promotes sustainable development in rural areas. It advises that isolated homes in the countryside should be avoided unless special circumstances apply, such as re-using redundant or disused buildings.
14. Policy SS1 of the Core Strategy provides that development should be focussed on the most sustainable towns and villages (as defined) and that development in the open countryside will only be allowed exceptionally where a rural location is essential.
15. This is an isolated location for a dwelling and would create a high dependency on private car usage. There is no special justification for allowing its retention as a dwelling. It is an unsustainable form of development contrary to relevant policies in the development plan and the Framework.

Conclusion

16. For the reasons given above, I find that retention of the Studio in breach of condition 6 of the Permission would cause undue harm to the character and appearance of the surrounding area and have an adverse affect on the landscape and scenic beauty of the AONB. I also find that removal of the condition would permit the retention of an unsustainable dwelling in the open countryside contrary to the development plan and the Framework.
17. I have considered whether the imposition of conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance.
18. The Appellant says that he does not wish to use the Studio as a dwelling but for storage ancillary to residential use of his home or in connection with the caravan site. But use for storage would not overcome the identified harm to the character and appearance of the surrounding area. I find that conditions would not overcome the identified harm and planning permission should not

be granted. Both parties suggest a unilateral undertaking be entered into but no draft is before me.

Formal Decision

19. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the deemed application made under section 177(5) of the 1990 Act.

S. Prail

Inspector