

Appeal Decision

Site visit made on 11 June 2018

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2018

Appeal Ref: APP/C/17/3179958

Land between Daisy Lane and the Trent and Mersey Canal, Alrewas, Burton-On-Trent DE13 7EW

- 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 Eleanor De La Haye against an enforcement notice issued by Lichfield District Council.
 - The enforcement notice was issued on 13 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building and laying of an associated hardstanding.
 - The requirements of the notice are to demolish the building and grub up the associated hardstanding.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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 a building and laying of an associated hardstanding on land between Daisy Lane and the Trent and Mersey Canal, Alrewas, Burton-On-Trent DE13 7EW referred to in the notice, subject to the following conditions:
 - 1) The building and laying of an associated hardstanding hereby permitted shall be demolished and removed from the land within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within three months of the date of this decision a scheme for external lighting, soft and hard landscaping, hereafter referred to as the *site development scheme*, shall have been submitted for the written approval of the local planning authority (hereinafter 'the LPA') and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the LPA refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 3) The building shall be used for agricultural purposes only and for no other purpose.

Ground (c)

2. The nature and scale of the building operations fall within the meaning of development set out in section 55(1) of the Act. The appellant maintains that the building has been approved by the LPA. This is because an application was submitted to the LPA on 2 April 2015 for the erection of a hay and feed and straw and equipment building. This application was made pursuant to provisions found in Schedule 2, Part 6, Class A, paragraph A.2 subsection (2) to the Town and Country Planning (General Permitted Development) Order 1995 as amended¹.
3. The application included details of the proposed timber building required for agriculture. The approved plans showed a building that would have been 10 metres wide and 5 m long; 2.8 m in overall height. It would be located on an area of hardstanding. On 29 April 2015, the LPA determined that prior approval was not required. Building works started thereafter however there is disparity between the approved scheme and the development carried out in reality. For example, the building, as built, is 5.25 m by 11.4 m and has been constructed in brick. It has a mono-pitched roof and profile metal roof covering. Access into the building is via a set of double doors. In terms of design and external appearance the building is significantly different. The development does not fully accord with the details submitted with the prior approval application.
4. The appellant has failed to show deemed planning permission exists for the matters alleged. Express planning permission is required and it has not been obtained. I therefore conclude that the alleged matters constitute a breach of planning controls. Ground (c) must fail.

Ground (a)

5. The main issue is the effect of the development upon the character and appearance of the surrounding area and, linked to that, the setting of the adjacent Trent and Mersey Canal Conservation Area (CA) in 1988.

¹ The 1995 Order has been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, which came into force in April 2015. There is no material difference between the former and the latter in terms of Part 6.

6. The appeal site is situated within the countryside. It is about 2.6 ha in size, located adjacent to the CA the special historic interest of which is derived from its industrial archaeological importance and its rural setting. There is a dwelling to the east of the site and agricultural land to the south and west. Planning permission has recently been granted for a 60 berth canal boat marina including roadway, parking, mooring jetties, walkways, workshop, toilet block and a service quay on the site.²
7. The appeal building is designed to function as an agricultural storage shed. At the time of my site visit it was being used for livestock and storage of hay. However, the LPA argue that, compared to the timber building approved as part of the prior approval application, the appeal building sits on a substantial hard-surface and has been constructed in brick. It has a mono-pitched roof and appears like a domestic building. I consider that the building successfully integrates with the site's rural setting because of its external appearance. It does not have an over-dominant or overpowering visual effect because of its size.
8. The building is likely to be noticeable from a public footpath to the north of the canal, but these views are likely to be filtered given that the site's northern boundary is heavily treed. The development does not detract from the open and undeveloped quality of the rural landscape surrounding the site, because of the building's overall height and scale. I am quite context that the development does not have an adverse visual effect upon the surroundings in which the CA is experienced because of the design, layout and siting of the building.
9. Concern about potential light pollution could be addressed by imposing a suitably worded condition. In addition, soft and hard landscaping could further reduce the visual impact of the building. A condition requiring these details reflects the significance that I attach to these matters and the need to enforce in their absence. It is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters. These matters need to be addressed in order to make the development acceptable in planning terms. I therefore drafted the retrospective condition so that it imposes certain timescales to ensure submission of the details within three months and to allow time for approval of those details, or appeal if necessary.
10. The LPA is concerned about the use of the building, especially in the future when the marina is developed. I consider that a suitably worded condition could be imposed to control the use of the building. It is unnecessary to remove permitted development rights set out in Schedule 2 Part 3 to the GPDO.
11. Drawing all of the above points together, on the main issue, I conclude that the development does not have a significant adverse visual effect upon the character and appearance of the surrounding countryside and, linked to that, the setting of the adjacent CA. Accordingly, subject to the imposition of conditions, the development complies with saved Policy C2 of the Lichfield Local Plan 1998, Core Policies 3 and 14, NR1 and BE1 of the Local Plan Strategy 2008-2029.

² LPA ref: 15/00974/FULM.

Conclusion

12. For the reasons given above and having regard to all other matters, I conclude that the appeal should fail on ground (c) but succeed on ground (a) and planning permission is granted.

A U Ghafoor

Inspector