
Appeal Decision

Site Inspection on 13 June 2019

by Graham Self MA MSc FRTPI

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

Decision date: 25 July 2019

Appeal Reference: APP/X0360/C/18/3218553

Site at: Coppid Hill House, Barkham Road, Barkham, Wokingham RG41 4TG

- The appeal is made by Mr Mark Flaherty¹ under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Wokingham Borough Council.
- The council's reference is RFS/2018/084653.
- The notice is dated 16 November 2018.
- The breach of planning control alleged in the notice is: "Without planning permission the material change of use of equestrian building and curtilage to a dwelling".
- The requirements of the notice are:
 - (i) Cease the use of the equestrian building and Land as a dwelling.
 - (ii) Remove all internal fittings, including kitchen and bathroom fixtures and fittings, remove pump room, remove internal walls and partitions, remove domestic flooring, and remove all windows and doors in the south elevations and remove door in the east elevation.
 - (iii) Remove domestic paraphernalia including motor vehicles and residential items, and remove paving slabs and rear timber fencing from the Land.
 - (iv) Permanently remove all materials associated with the compliance with Steps (i), (ii) and (iii) above from the Land.
- The period for compliance is three months.
- The appeal was made on grounds (a), (d), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended; but ground (d) was later withdrawn. An application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal fails. The enforcement notice is varied and upheld.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 21 June 2019.

Costs

1. Wokingham Borough Council has applied for an award of costs against the appellant. This application is the subject of a separate decision.

¹ In the standard form lodging the appeal and in the introduction to the appellant's initial statement (submitted by an agent), the appellant's surname is stated as Flaharty. On the title page of the statement and in some other documents, the appellant is named as Flaherty. At the site inspection I verified that the latter spelling is correct, so this is what I have used.

Ground (a) and Deemed Application

2. Planning permission is sought for the development described in the allegation. The main issue of dispute relates to the effect of the development on the rural character of the area, having regard to relevant planning policies. It is common ground in this case that the appeal site is outside the development limits of Barkham as defined for local policy purposes in the development plan for this area (which includes the less than succinctly named Wokingham Borough Adopted Core Strategy and the Wokingham Borough Adopted Managing Development Delivery Local Plan). This means that for planning policy purposes the site is in the countryside.
3. Proposals for residential development on land east of Coppid Hill House including the appeal site have been refused planning permission several times and subsequent appeals have been dismissed. In 2009 planning permission was granted for land east of Coppid Hill House to be used for keeping horses, and in 2011 a building located where the appeal building stands was permitted (described as "stables, tack room feed store and machinery plus parking and new driveway"). Part of the appellant's case is that because the stable building was permitted and the development is a conversion with no increase in height or mass of the existing building, it has not caused excessive encroachment of building into the countryside, or harmed openness or rural character. In the appellant's submission, the development complies with relevant local and national policies, including policy CC02 of the Local Plan (said by the appellant to be the key policy) and policy CP1 of the Core Strategy.
4. The development has not resulted in an isolated dwelling, since the site is adjacent to houses which form the edge of the settlement on the south side of Barkham Road. The development also involves the conversion of an existing building rather than construction of a new dwelling. Nevertheless what has happened has resulted in a dwelling and residential curtilage being formed outside the designated settlement boundary. The result is effectively an extension of the urban residential area into the countryside. As is confirmed in the National Planning Policy Framework, planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance the development is not a type where exemption criteria apply under policy CP 11 of the Core Strategy, and the main thrust of local policy is against the development.
5. The development does not comply with policy CC02 of the Local Plan. This policy states (among other things) that "planning permission for proposals at the edge of settlements will only be granted where they can demonstrate that the development is within development limits and...." [other criteria]. This scheme is demonstrably not within "development limits" - as noted above, the site is on the rural side of the settlement boundary for policy purposes and that is also the case in terms of the physical pattern of established, authorised built housing in the area. Various other policies are referred to in the representations, such as policy CP1 of the Core Strategy which sets out "sustainable development" criteria; but other policies do not provide significant support for the appellant's case.
6. The fact that the building itself is not particularly prominent from several viewpoints is not a major point of support for the appeal - if it were to be so regarded, that would suggest that numerous dwellings could be built outside settlements provided that they were well screened from public view, leading to an undesirable spread of housing into the countryside. Moreover, the urbanising effect of the development arises not just from the building itself, but also from the residentially-related use of and activities on the land within the site.

7. The effect of this development by itself might not seem very great; but it is material and significant. If the sequence of planning permission for horse-keeping, then for stabling, then conversion of the stable building into a dwelling were to result in the planning permission now sought, it could be difficult for the planning authority to resist the sequence being repeated.
8. Some of the statements from local residents suggest that the stables were never used for stabling horses. With this type of written appeal when I cannot cross-examine witnesses it is difficult to know the full facts. Certainly there is scant evidence that the building was ever actually used as stables,² and some aspects of this case raise suspicions of possible deliberate concealment; but I am treating the development on its face as a "conversion" involving a change of use. The appellant states (through his agent) that the disputed building was used as a residential annex to Coppid Hill House for more than four years. There is no claim under ground (d) of Section 174(2) that the development is immune from enforcement and if there has been past unauthorised annex use, that does not justify more recent unauthorised use as an independent dwelling.
9. Both main parties have commented on the possible ecological impact of the development, with reference to the Thames Basin Heath Special Protection Area. If all other aspects of the development had been satisfactory, it might have been possible to deal with this issue through the unilateral undertaking submitted on behalf of the appellant or if necessary by a legal agreement. In the event ecological matters have not affected my decision.
10. I observe in passing that the submitted unilateral undertaking³ would tie the ownership of the disputed building to Coppid Hill House, but would not prevent the building being let for separate occupation, at least for up to three years. The appellant's agent evidently believes that this would ensure that "the building and Coppid Hill House remain as one planning unit". That is not so - for the purposes of planning law applicable here, the "planning unit" is the unit of occupation, not the unit of ownership.
11. In summary, I judge that the unauthorised change of use detracts from the rural character of the area, in conflict with the aims of relevant policies of the development plan, and that material considerations do not indicate otherwise. I conclude that planning permission should not be granted, so the appeal on ground (a) does not succeed.

Ground (f)

12. It is argued for the appellant that several requirements of the enforcement notice are excessive and/or not sufficiently precise, and that this applies in particular to the requirements to remove internal walls, flooring, the windows and doors in the south and east elevations, motor vehicles, the paving slabs and the pump room.
13. A general point argued by the appellant's agent is that planning permission is not required for internal works such as installing partition walls or flooring, or for inserting windows and doors. Alternatively or in addition it is contended that the

² The council evidently investigated the possible use of the building as a gym in 2015 and inspected it in 2016, when it was found to be what the council describe as a "stable/unoccupied building with no fixtures and fittings".

³ The appellant is also willing to enter into a Section 106 agreement with the planning authority. I have not delayed this decision to await the prospect of the agreement being finalised because it was not submitted within the timescale for submitting evidence and in any case it would cover similar points to the undertaking.

walls, windows and other features were installed more than four years ago and are immune from enforcement action.

14. These arguments are either a try-on or stem from a lack of knowledge of planning law. An enforcement notice directed at an unauthorised material change of use can validly require operations which facilitate and are integral to the use to be undone, even if the operations did not constitute development or would otherwise be immune from enforcement because of the passage of time. This point has been confirmed in well-known court judgments, one of which is quoted by the council.⁴ Therefore a substantial part of the appellant's case on ground (f) is unfounded. It is also apparent from the council's evidence that the building was not in use as a dwelling, and did not have a kitchen and bathroom installed, when it was inspected in connection with an appeal in about March 2018.
15. As is stated for the appellant, the approved drawings of the stable building show that the building was to be partitioned. However, the layout of the existing building does not match the approved drawings of the stable building - parts of one wall (but not a doorway in it) appear to be positioned in accordance with the drawings, but others are not. The appellant and his adviser have not tried to define exactly which walls or parts of walls match the walls shown on the approved plans for the stables. I am not obliged to re-design the building, and I am not prepared to make the enforcement notice more complicated by trying to specify internal layout dimensions. Indeed I think the appellant can count himself fortunate that the planning authority has not (at least not yet) required the whole building to be demolished, since it does not comply with the 2011 permission externally as well as internally. Bearing these points in mind I do not consider that the requirement to remove internal walls and partitions is excessive.
16. The flooring in the building, mostly with a black and white patterned tile finish, is of what might be termed residential quality. It is not appropriate for use as stables or tack room or plant and machinery room. Requiring the removal of this domestic-type flooring is not excessive.
17. The paving slabs forming part of the surface of the pathway at the side of the dwelling have been laid in a pattern interspersed with chippings. This is not the sort of surface normally suitable for or typical of stables and it adds to the essentially domestic character of the unauthorised development. Again, therefore, the requirement for removal is not excessive. As for the requirement to remove motor vehicles, I perceive some justification for amending this point so as to make clear that what is being required to cease is parking vehicles for purposes associated with residential use.
18. As for the requirement to "remove the pump room", from what I saw during my inspection, it seems that the pump room contains a water tank supplying the unauthorised dwelling; the removal of this feature (with associated pipework and wiring) is certainly not excessive. But the pump room also evidently contains equipment linked with the swimming pool in the garden of Coppid Hill House. No such linkage was shown on the approved drawings for the stable building and I have not been made aware of any permission allowing such a link, which has the

⁴ The two most well-known standard judgments on this are *Murfitt v SSE and East Cambridgeshire DC* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630. The former case concerned unauthorised use as a haulage yard; the court held that an enforcement notice could require the removal of hard surfacing which facilitated the unauthorised use even though the surfacing operation itself would otherwise have been immune from enforcement. The latter case involved an internal staircase which did not require planning permission, but was subject to a removal requirement as it facilitated the unauthorised use of first floor premises.

effect of extending development ancillary to the residential use of Coppid Hill House into the appeal site. The link also appears to breach a condition attached to the permission for the stable building.⁵ Neither the council nor the appellant has commented on this matter.

19. The pump room is located where the approved drawings show a "store/tack room", though with a differently positioned internal wall. The pump room as a whole, including all its fittings (tanks, pipework etc) is also an integral part of the unauthorised building.
20. Taking all those factors into account I judge that the requirement to remove the pump room is not excessive. I refrain from making any comment on whether there might be any scope for preventing the disruption of equipment relating to the swimming pool.
21. The amendments described above can be made without causing injustice to any party, using the powers available to me under Section 176 of the Act. I conclude that ground (f) of the appeal only succeeds to the limited extent of these amendments.

Ground (g)

22. This ground of appeal concerns the compliance period, which the appellant contends should be six months. In the appellant's view the three month period would not allow enough time for the current tenant to find alternative accommodation and for the other requirements to be carried out.
23. No detailed evidence has been put forward about the terms under which a tenant is apparently occupying the unauthorised dwelling. For example, I do not know the end date of the tenancy. In these circumstances the case for extending the compliance period because of the need for the tenant or tenants to find alternative accommodation has not been made out. Although time may be needed to make suitable arrangements for the removal work specified in the notice, the work could be carried out by any reasonably competent contractor in a matter of days, a week or two at most. Having considered those points, I do not find sufficiently strong reasons for extending the period for compliance in response to ground (f) of the appeal.

Minor Variation

24. In Step (ii) of the requirements of the enforcement notice there is an apparent typographical error where "south elevations" is mentioned. I shall make an amendment, as there is only one south elevation, applying to all south-facing parts of the building.

Earlier Enforcement Action

25. The council's statement refers to an enforcement notice issued in 2008 alleging the unauthorised change of use of an area of land from agricultural to residential use. The council say that this area of land is "within the appeal site" and that the 2008 enforcement notice has not been complied with. This aspect of history is strange, since the apparent failure to comply with the 2008 notice (which presumably became a criminal offence once the compliance period expired) does not appear to have resulted in any prosecution. I do not have full details of the 2008 proceedings (the enforcement notice plan was not submitted in evidence);

⁵ Condition 7 of this permission specified (in summary) that the building shall only be used for stabling horses and related equestrian purposes.

but it seems that the enforcement action subject to the present appeal might not have been necessary if residential use of the appeal site was already open to direct prosecution. I regard this historical matter is a small mystery which does not affect the outcome of the appeal before me.

Formal Decision

26. I direct that the enforcement notice be varied in the following ways:
- (a) by deleting "south elevations" from sub-paragraph (ii) of the requirements and substituting "south elevation".
 - (b) by deleting the words "including motor vehicles" from sub-paragraph (iii) of the requirements and inserting a new sub-paragraph (iv) reading:
"Remove all motor vehicles from the land other than vehicles which may be temporarily parked on the land in connection with use for stabling horses."
 - (c) by re-numbering sub-paragraph (iv) of the requirements as sub-paragraph (v), deleting "Steps (i), (ii) and (iii)" from this requirement, and substituting "Steps (i), (ii), (iii) and (iv)".
27. Subject to those variations, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector