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## Appeal Decisions

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 August 2019**

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**Appeal A: APP/N1730/C/18/3206085**

**Appeal B: APP/N1730/C/18/3206086**

**Former Piggery, Down Farm, Alton Road, Odiham**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Robert Benford and Mrs Stella Benford against an enforcement notice issued by Hart District Council.
- The enforcement notice was issued on 31 May 2018.
- The breach of planning control as alleged in the notice is operational development at the former piggery including building operations to raise the height of all walls to 1.5m, insertion of windows, internal works and addition of a roof to form an independent dwelling. Material change of use and occupation of the resulting structure as a residential dwelling.
- The requirements of the notice are:
  1. Cease the use of the building as a residential dwelling.
  2. Remove the unauthorised operational development in that you:
    - i. Remove any element of the building above 1.5 metres in height including any walls, doors, roof, windows. Remove any internal elements related to the unauthorised use of the building.
- The period for compliance with the requirements is for step 1, 6 months and for step 2, 8 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. With respect to Appeal B, since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.**

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### Preliminary Matter

1. It is my understanding that the Hart Local Plan: Strategy and Sites 2016-2032 (the emerging LP) has been subject to an Examination and the Inspector has provided a letter with some concerns. The Council has responded and clarified at the Hearing that the emerging development plan document is a material consideration but is of very limited weight.
2. In addition, Policy RUR5 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-

2006 Saved Policies (the Replacement LP) is a suspended policy which is no longer active in the decision-making process.

### **The Enforcement Notice**

3. It is argued by the appellants that the enforcement notice plan is inaccurate in its depiction of the footprint of the appeal building and also the inclusion of the staff toilet/washroom area which I understand to have been there for over 20 years. There is no requirement for an enforcement notice to include a plan. Regulation of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 states that an enforcement notice should specify the precise boundaries of the land to which the enforcement notice relates, whether that is by reference to a plan or otherwise.
4. The courts have held that the test for the validity of an enforcement notice is whether it tells fairly what the person on whom it is served has done wrong and what must be done to remedy it. An enforcement notice is a nullity if it is so defective on its face that it is without legal effect.
5. The notice includes a plan which identifies the appeal site in black hatching and also identifies the Piggery as being the subject of the enforcement notice. Although it appears that the staff toilet/washroom are within the hatched area it is not referred to in paragraph 3 which identifies the matters which appears to constitute the breach of planning control, nor in the requirements of the notice which are set out in paragraph 5. The alleged breach of planning control relates to operational development including building operations to form an independent dwelling unit and since the toilet/washroom does not form part of the residential use, it is not the subject of the enforcement notice issued by the Council.
6. The notice tells fairly what has occurred in breach of planning control and what needs to be done to remedy that breach. Consequently, I do not consider the notice to be invalid or a nullity.

### **The appeals on ground (e)**

7. The ground of appeal is that the notice was not properly served on everyone with an interest in the land. The appellants' criticism is that the notice was not served on the business entity which operates from Down Farm
8. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority is materially affected by the notice. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant or the person required to be served has been substantially prejudiced by the failure to serve.
9. The appellant contends that two additional partners (Tom Benford and Kate Benford), both of G K Benford & Co did not receive the enforcement notice and therefore the notice should be rendered defective. Evidence with respect to the actual interest of the additional parties remains rather unclear, but in any case, they were informed of the Enforcement Notice very soon after its receipt by Mr Robert Benford and Mrs Stella Benford. No prejudice has been demonstrated. The appeal on ground (e) fails.

### **Appeal A on ground (a)**

10. The ground of appeal is that planning permission should be granted. In this case the main issues are:

- i. Whether the principle of residential development is acceptable in this rural location;
- ii. The effect on the living conditions of the occupants of an adjacent residential property with particular reference to privacy, overlooking and noise; and
- iii. The effect on the character and appearance of the local area, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, Down Farm House.

#### *Principle*

11. It is quite clear to me that the development does not fall within Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Although I do not dispute the general direction of Government Policy to increase housing supply and seek a buoyant rural economy, I do not consider the principles behind permitted development rights relating to the conversion of rural buildings to residential uses are applicable as a material consideration in this instance. This is because Class Q does not apply to cases where the development would result in the external dimensions of the building in question extending beyond the external dimensions of the existing building. The height of the appeal building has been increased and the undertaking of such an operation has increased the height of the building for the specific purposes of facilitating residential occupation.
12. Furthermore, where development proposed is development under Class Q, development is permitted subject to a condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval is required for with reference to the terms set out in sub-paragraphs I (a) to (e) and the provisions of paragraph W of the Part of the GPDO. This process was not followed by the appellants and cannot be undertaken in retrospect.
13. Policies RUR2 and RUR3 of the Replacement LP seek to control new development in the open countryside outside settlement boundaries Policy RUR2 is a general policy for development in the open countryside and states that development will not be permitted unless the local planning authority is satisfied that it is specifically provided for by other policies in the Local Plan and that it does not have significant detrimental effect on the character and setting of the countryside.
14. When the development the subject of this appeal was carried out it was not subject to any consideration and as such was not justified evidentially or otherwise. Furthermore, it was subject to extensive building operations and as such would appear to conflict with the overall requirements of RUR2. The residential unit is not within a settlement boundary and has not been adequately justified as being necessary to serve the needs of an agricultural holding or meet any other specific circumstances.

15. The Framework states that planning decisions should avoid the development of isolated homes in the countryside unless one or more specific circumstances apply, including the development would re-use a redundant or disused building and enhance the immediate setting. However, as will be discussed in more detail later in this decision it is not considered that the development enhances the immediate setting and moreover it detracts from the setting of the adjacent listed building. There is insufficient evidence before me to satisfactorily demonstrate that the development meets the other circumstances set out in paragraph 79 of the Framework.
16. Policy GEN1 is a general policy for development and GEN2 is specifically for changes of use. GEN2 states that changes in use will be permitted provided that neither the conversion nor its access and servicing arrangements are detrimental to the character or setting of the building or adjoining buildings. With particular reference to whether the principle is acceptable, GEN2 requires the building in question to be of permanent and substantial construction and capable of conversion without major or complete reconstruction. In this case it is clear to me that prior to the conversion the original building was not of substantial construction and moreover the conversion that has been carried out has required there to be very substantial reconstruction, including walls and roof. Consequently, I find that the principle of the development falls short of meeting this key aspect of the development plan policy.
17. The appellant has also identified Policies NBE1 and ED3 of the emerging LP as being relevant to the development. However, as previously indicated these hold very limited weight in determining this appeal. In any case, I appreciate that the Council supports converting previously used permanent buildings for appropriate uses and supports the rural economy, including providing supporting farm diversification schemes. However, the limited weight I attribute to these policies does not outweigh the overall concern I have expressed with regard to the principle of converting the building in question.
18. Consequently, on this issue I find that the principle of the residential accommodation is not acceptable in this rural location. As such it conflicts with Policies RUR2, RUR3, GEN1 and GEN2 of the Replacement LP and the Framework.

#### *Living Conditions*

19. The development the subject of this appeal is situated immediately adjacent to the garden of an adjacent residential property. The main aspect and orientation of the residential property is to the small kitchen garden to the front rather than to the rear. There are three windows which have been identified as being harmful to the living conditions of adjacent residents. However, each of these is relatively small and high above floor level. As such I do not consider that actual casual overlooking of the adjacent garden is likely or even possible.
20. The appellant draws attention to the fact that the windows mainly face towards a vegetable garden; however, that is an integral part of the private amenity space of the adjacent property and should be dealt with as such. I also noted at my site visit that the windows look out towards the wider garden area, including an area around the swimming pool. Nonetheless, the sizes and heights of the windows are such that any perception of overlooking should be minimal.

21. The neighbour has also expressed concern with respect to noise and disturbance from the appeal property. It is my understanding that the building was previously used for agricultural uses, including keeping animals, which will inevitably have caused a level of noise and disturbance. The level of noise and disturbance caused by residential use will be different, but unlikely to cause a degree of disturbance that is harmful to the living conditions of the occupants of the adjacent residential property. I understand that the occupants of the adjacent property may now be able to hear doors and windows opening and closing, talking, laughing and music, but there is insufficient evidence before me to conclude that the nature of that disturbance is anything other than background noise which is audible rather than harmful.
22. I understand that there may be some traffic movements associated with the unauthorised dwelling, but in my opinion these are likely to be less than those that may be associated with the use of the building for agricultural purposes. In addition, given the nature of activities that take place within the wider Down Farm complex, the number of movements that may be generated by the relatively small residential use is likely to be insignificant with respect to disturbance that may arise in terms of noise, disturbance and fumes.
23. Therefore, on this issue I conclude that the development does not have an unacceptable harmful effect on the living conditions of the occupants of an adjacent residential property with particular reference to privacy, overlooking and noise. As such, I find that it is in accordance with the provisions of Policy GEN1 of the Replacement LP.

#### *Character and Appearance*

24. Under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in considering whether to grant planning permission for a development that affects a listed building or its setting special regard should be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Framework states that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
25. These duties are encapsulated by Policies CON17 and CON18 of the Replacement LP. In addition, the Odiham and North Warnborough Neighbourhood Plan 2014-2032 (the Neighbourhood Plan) includes Policy 5 which states that development which affects any heritage asset shall respect the significance of the asset and demonstrate how local distinctiveness is reinforced.
26. Down Farm House is situated immediately adjacent to the appeal site and was designated as a Grade II listed building in June 1987. It was built around 1800 as a square house of two storeys with a symmetrical frontage of three windows with a red tiled hipped roof. It has rendered external walls, stone cills and plinth with sashes in reveals. The south elevation has a large two storeyed angular bay at the west side and the north elevation has a tall staircase window. The single storeyed extension to the east has heavy beams within. The primary interest of Down House is that it is a fine example of a vernacular early eighteenth century farmhouse and is primarily of significance as a consequence of its historic value, illustrating past ways of living and methods of construction. However, it is also of value in terms of its relationship with its

agricultural surroundings and its setting within the rural landscape. That setting has been somewhat compromised by the proximity of the site to RAF Odiham.

27. In addition to Down Farm House there are two other listed buildings in the vicinity of the site, being the Grade II listed granary (first listed in June 1987) and the barn to the south east of the farmhouse which is also Grade II and first listed in June 1987. The granary is early nineteenth century and is comprised of a rectangular timber-framed structure with a red tile half-hipped roof, weather boarded walls with eight staddles. The barn is again early nineteenth century with a large nine bay unit and a four bay smaller unit at right angles. The larger barn has a single aisle, the frame being supported on brick pillars and with a surrounding brick wall. The barn has a red tiled roof and the framework of the upper boards is weather-boarded.
28. The granary is mainly of historical interest as a granary and its historical association with agricultural activities which took place on the farm. Similarly, the barn is primarily of historical interest associated with its role of processing and storing grain.
29. The appeal building is a single storey unit which is situated in the north west corner of the farmstead and is attached to a much larger beef shed with a joinery workshop in the south west corner. To the immediate south is a large steel-framed open fronted storage barn. The building has brick cladding to the south side with three top-hung UPVC windows. To the left side there is a small recessed area. It has a shallow angled pitched roof which is covered with metal sheeting which extends over the adjacent toilet/wash room entrance area. The north elevation of the building backs directly onto the garden of the adjacent listed Down Farm House and is built of concrete blockwork with two top-hung UPVC windows. At my site visit I noted that the north elevation is partly covered with ivy.
30. Before being converted to residential accommodation it is my understanding that the former piggery was built of concrete walls with an asbestos roof and was open fronted on the south side with timber supporting posts.
31. The appeal building is separated from Down Farm House by a gap of approximately one metre but is not considered to be a curtilage listed building. Down Farm comprises a group of rather loosely related farm buildings, including workshops, barns and sheds. Down Farm House itself is separated from the main farm buildings and is set within a substantial landscaped garden plot.
32. The listed buildings identified are important due to their group value as well as their individual merit. The farm reinforces the setting of the farm house and its historical association with the surrounding land. Therefore, the farm buildings are significant in terms of contributing to the historic setting of the farmhouse.
33. It is evident that the farmstead has been altered significantly during the latter part of the twentieth century and early twenty first century, with some original buildings having been lost and the addition of modern structures. Overall, these have created the existing loosely arranged group of buildings and eroded the historic courtyard layout that once existed. The changes have had an adverse effect on the setting of the listed farm house, in particular.

34. The appeal site, which I understand to be on the footprint of an old piggery was last used as a calf pen which was built in the 1960s. It is not of special interest nor does it make a positive contribution to the setting of the adjacent listed farmhouse. However, the building operations that have recently been undertaken to convert the building into a residential property have included filling in the wall under the eaves of the north elevation with concrete blockwork and inserting modern UPVC windows. These are significant modifications to the structure using utilitarian materials. I recognise that the effect of the alterations to the external walls are partly softened by the growth of ivy, but nonetheless, the concrete walls and modern windows have created an unsightly crude structure immediately adjacent to the listed farmhouse.
35. Furthermore, there is a new shallow pitched metal roof which, although not highly prominent from its surroundings, is a poor and insensitive design given its important heritage setting. The materials used are incongruous and at odds with the high quality historic adjacent building. The brick work on the south elevation of the appeal site has a uniform modern appearance and is rather stark in relation to its historic surroundings and at odds with other buildings in the immediate locality. The UPVC windows add to the modern domestic character of the building which conflicts with the adjacent listed building.
36. It appears to me that the appellants are attempting to justify the appearance of the building due to its location in the corner of the farm yard and its position which is relatively well-screened by other buildings. However, in its immediate surroundings, including the adjacent listed building and its associated garden area, the structure is rather unsightly, prominent and at odds with its agricultural and, more importantly, historic surroundings.
37. In relation to the listed granary and barn I do not consider the building to be particularly harmful, but in relation to the setting of Down Farm House I find it to be visually incongruous, of poor design using poor quality unsympathetic materials and having little regard to the setting of the historic building.
38. Given the above, I find that the proposal would fail to preserve the special interest of the listed building with particular reference to its setting. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals. Paragraph 193 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given the harm to the setting of Down Farm House I have identified above I find the harm to be less than substantial but nevertheless of considerable importance and weight. Under such circumstances paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the development.
39. Other than suggesting that the development secures the optimal use for the building the appellants have failed to satisfactorily demonstrate that public benefits would arise.
40. Therefore, I conclude that on balance the development has a harmful effect on the character and appearance of the local area, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, Down Farm House. This would fail to satisfy

the requirements of the Act, paragraph 192 of the Framework and conflict with Policies CON17 and CON18 of the Replacement LP and Policy 5 of the Neighbourhood Plan.

#### *Other Matters*

41. I have noted that a completed unilateral undertaking has been submitted by the appellant with respect to limiting the occupation of the appeal site by an employee or a widow or widower of such persons and to any resident dependents. However, such restriction would not overcome the concerns I have expressed above with regard to the main issues.
42. Therefore, with respect to Ground A, although I find that the development does not harm the living conditions of the occupants of an adjoining property, I have found that the principle of residential accommodation is not acceptable in this rural location and that the development has a harmful effect on the character and appearance of the local area, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, Down Farm House. Those are the prevailing considerations. Therefore, having had regard to all other matters raised, I conclude that the appeal on ground (a) should be dismissed.

#### **The appeals on ground (f)**

43. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control or to remedy injury to amenity. Since the notice requires the removal of the unauthorised elements of the building over 1.5 metres in height and removing internal elements relating to the unauthorised residential use and to cease the use itself, the purpose is clearly to remedy the breach. Leaving any of these elements in place would not achieve that purpose. In this respect the appeals on ground (f) fail.
44. The appellants consider the requirements to be excessive and lose sight of the fact that the accommodation could easily be converted to an agricultural use providing for the welfare needs of farm workers or even a farm office. However, from the evidence before me it is clear that the farm and other activities at Down Farm have operated for many years without there being any such ancillary facilities and I am not convinced by arguments presented that such facilities are reasonably required.
45. It is contended that the notice is contrary to the "Mansi principle" in that it goes too far in requiring operational development to be removed. It is also argued that alternatives should be considered. The enforcement notice requires the removal of internal elements related to the unauthorised residential use and as such the requirements of the notice comply with the terms set out in the Act to restore the site to its condition prior to the breach occurring. Although I have concluded on ground (a) that the development does not cause unacceptable harm to the living conditions of the occupants of the adjoining residential property, there is harm with reference to the unacceptability of the principle of the development and the character and appearance of the area with particular reference to the setting of the adjacent listed building, Down Farm House.

46. The alternative measures suggested by the appellants would not achieve the overall purpose of the enforcement notice. I do not consider the measures required to be excessive and I uphold the notice.

**The appeals on ground (g)**

47. The ground of appeal is that the time given to comply with the requirements is too short. The six months for the cessation of the residential dwelling and eight months for the removal of any element of the building above 1.5 metres and other measures relating to physical works are sufficient. The 12 month compliance period suggested by the appellants would be excessive given the continuing on-going harm caused by the building and use. I understand that the occupants of the residential property are valued employees, but there is insufficient evidence before me that they would not be able to find suitable alternative accommodation within the timescale identified in the enforcement notice.
48. The period of six months would also be sufficient for the appellants to consider alternatives for changing the use of another building or buildings within the farm holding. The period identified in the notice would be sufficient to source a building and suitably qualified plumbing and electrical contractors to carry out any work associated with the operations required by the notice. Therefore, the appeals on ground (g) fail.

**Formal Decisions**

49. The appeals are dismissed, 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 as amended.

*A A Phillips*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|                |                                     |
|----------------|-------------------------------------|
| Robert Benford | Appellant                           |
| Stella Benford | Appellant                           |
| Alex Maddon    | Thrings LLP, Solicitor              |
| David Glasson  | David Glasson Planning Ltd          |
| Elaine Milton  | Elaine Milton Heritage and Planning |

### FOR THE LOCAL PLANNING AUTHORITY:

|                  |                                  |
|------------------|----------------------------------|
| Maxine Lewis     | Planning Enforcement Team Leader |
| Sharon Whittaker | Planning Enforcement             |

### FOR THE THIRD PARTY

Ben Du Feu of Counsel