
Appeal Decision

Unaccompanied site visit made on 31 July 2019

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

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref : APP/X2220/C/18/3214371

Court Farm, Padbrook Lane, Preston, Canterbury, Kent, CT3 1HF

- 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 Ronald Bogan against an enforcement notice issued by Dover District Council.
- The notice was issued on 5 September 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a detached building in the approximate position as shown on the plan attached to the notice and identified by photograph labelled A.
- The requirements of the notice are to demolish to ground level the detached building as shown on the plan attached to the notice and identified by photograph A; remove all resultant rubble, rubbish, materials, fixtures and fittings from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Ground (a) appeal and deemed application

Main Issue

1. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area.

Character and appearance

2. The development plan (including the Kent and Medway Structure Plan, Dover Core Strategy and saved policies in the Dover District Local Plan) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for development to respect its surroundings. Policy DM1 of the Core Strategy provides that development in locations outside of urban and village confines will not be permitted unless justified by development plan policies or it functionally requires such a location or it is ancillary to existing development or uses. Since the issue of the notice a revised Framework has come into effect and I have applied the revised version taking into account comments from the parties.
3. Planning permission has been granted (ref DOV/08/00074) (the Permission) for the (part retrospective) change of use of land from agricultural use to an equestrian use (paddocks and grazing) together with the formation of a

- ménage and the erection of boundary fencing. The Permission includes a condition (condition 6) which restricts the use to horses kept for private domestic purposes and not for any form of business or commercial activity.
4. Since the issue of the notice a certificate of lawful use or development has been granted certifying that the continued use of paddocks and ménage for non-private, non-domestic equestrian purposes for up to 5 horses is lawful without complying with conditions 4 and 6 of the Permission.
 5. Court Farm comprises a collection of buildings, including three dwellings, a large former agricultural building, stables, a sand school and horse paddocks, areas of hard-surfacing and the building the subject of the appeal. The site is accessed via a rural country lane characterised by sporadic dwellings. It is located outside any defined settlement confine and in a rural countryside area adjacent to the Elmstone Conservation Area. Opposite the site is an agricultural complex.
 6. The appeal concerns a detached building close to the entrance of the site and north of a large agricultural barn. The building is proposed to be used in connection with equestrian facilities and I consider it to be in relatively close proximity to equestrian activities at the site. The Council's concerns about commercial use predate the issue of the certificate of lawful use or development for non-domestic equestrian purposes. The use of the building for purposes ancillary to the lawful use of the site satisfies Policy DM1 of the Core Strategy and I find no objection in principle to the development in this location.
 7. The surrounding area is characterised by small sporadic dwellings of generally modest scale, surrounding fields and agricultural complexes. The unauthorised building is highly visible from the streetscene. It is a single storey, flat roofed structure. I note that the Appellant ceased work on the building when he became aware that planning permission was needed and that he has made the building weatherproof and watertight. I must consider the deemed application in respect of the matters stated in the notice as constituting a breach of planning control at the time of issue of the notice. I agree with the Council that the building has an overtly domestic appearance at odds with its agricultural rural setting. Its unsympathetic flat roof design and PVCu windows and white fascia cause harm to the character and appearance of the surrounding area.
 8. Policy DM15 of the Core Strategy provides that development which would result in loss of or adversely affect the character or appearance of the countryside will only be permitted if certain specified criteria are met. Policy DD21 of the Local Plan states that horse related development will be granted provided that certain specified criteria are met. I am satisfied on the evidence before me that the proposed use is ancillary to the lawful use of the site but the design of the new building does not relate well visually to other buildings in the complex or the character and appearance of the surrounding area. The development does not therefore accord with relevant policies in the development plan or the Framework.
 9. I have taken into account the economic and social benefits of the proposal but the modest impact on the rural economy and the provision of amenities and welfare for those involved in equestrian activities do not outweigh my concerns about the adverse effect on the character and appearance of the surrounding area. I note the references to potential impact on the living conditions of

- neighbouring properties and transportation and access considerations but I do not consider these to be main issues in the determination of the appeal.
10. The site is located adjacent to a Conservation Area and I consider that it causes less than substantial harm to the Area. I have considered whether public benefits outweigh this harm but I do not find this to be the case.
 11. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. The Appellant proposes a condition requiring approval of joinery and fascia details. I consider that this is reasonable and necessary and would overcome elements of the identified harm. But conditions would not overcome the identified harm by virtue of its unsympathetic design and therefore planning permission should not be granted.
 12. I note the concerns of neighbours about the potential for use of the building as a residential unit but the basis of the appeal is equestrian use and it is not appropriate for me to speculate about future use.
 13. For the reasons given I conclude that the appeal should not succeed on ground (a) and planning permission will not be granted for the development already carried out.

Ground (f) appeal

14. This ground of appeal is that the steps required by the notice are excessive.
15. There are two purposes that an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the steps require demolition of the building and therefore its purpose is to remedy the breach of planning control. No lesser steps would satisfy that purpose.
16. The Appellant's argument seems to be that conditional planning permission would represent lesser steps. I have considered the grant of planning permission on the deemed application in ground (a) and concluded that permission should not be granted. There are no other lesser steps before me.
17. For the reasons given above this ground of appeal does not succeed.

Ground (g) appeal

18. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for a three month compliance period.
19. The Appellant argues that six months would be a reasonable period to enable alternative provision to be found for the equestrian use and to reflect the additional difficulties in hiring/employing assistance during inclement weather.
20. I have balanced competing interests. The private interest of the Appellant in running a business and the public interest in bringing the identified harm to an end without unnecessary delay. I recognise that some time is needed to find alternative provision and on balance I consider that six months would constitute a reasonable period.

21. For the reasons given above I conclude that a reasonable period for compliance would be six months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

22. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by substitution of six months as the period for compliance. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector