
Appeal Decisions

Site visit made on 18 November 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 3 January 2020

Appeal A: APP/Y9507/C/18/3207265

Land at Cowdown Farm, Cowdown Lane, Compton, Chichester, West Sussex PO18 9NW

- 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 C North against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 4 July 2018 .
 - The breach of planning control as alleged in the notice is the construction of a gable end wall in the west elevation of the building supporting a new first floor within the building.
 - The requirements of the notice are (i) remove the gable end wall constructed in the west elevation of the said building; (ii) remove the internal walls, partitions and floor joists forming the first floor structure within the said building (which are supported by the gable end wall in the west elevation; and (iii) remove the resulting debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/Y9507/C/18/3207254

Land at Cowdown Farm, Cowdown Lane, Compton, Chichester, West Sussex PO18 9NW

- 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 C North against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 27 June 2018.
 - The breach of planning control as alleged in the notice is the change of use of the building to use for the stationing of a caravan for the purposes of human habitation.
 - The requirements of the notice are (i) discontinue the use of the building for the stationing of a caravan for the purposes of human habitation; (ii) remove the caravan from the building and (iii) remove the gas bottles and tv aerial from the building.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (e), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by the addition to requirement (i) 'The original low level block wall (about 2m high) of the barn may remain in place', and by the deletion of requirement (ii). Subject to these variations the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice be corrected by deleting the allegation and replacing it with 'without planning permission, the material change of use of the building to use for agriculture and the stationing of a caravan for the purposes of human habitation'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Reasons

Appeal A – Gable Wall

Ground (c)

3. The gable that is enforced against is an integral part of a much larger structure. The internal arrangement of this structure overall, with many small rooms under construction, a first floor structure and the insertion of many relatively small windows of a domestic nature, clearly indicate, on the balance of probability, that the intention of the structure as a whole, which includes the gable wall was to provide a dwellinghouse within the barn.
4. Part 6 of the Town and Country Planning (General Permitted Development) Order identifies permitted development for agricultural uses. Class A permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit. I have concluded that the development that has been undertaken is for the purposes of a dwellinghouse and there is little information to justify this use in relation to the agricultural unit. I note the appellant indicates that the intention was for storage, chemical storage, office use etc. but given the layout of the structure, I do not accept that this is probable.
5. It is for the appellant to prove his case on the balance of probability. In the absence of sufficient evidence I conclude that it has not been shown to be reasonably necessary for the purposes of agriculture within the unit, so whether or not it is in the national park, I conclude that it is not permitted development.
6. The appeal on ground (c) fails.

Ground (d)

7. The appellant in a statutory declaration notes that the original wall of the barn, which was about 2m high, was altered in two different phases. The first alteration in 2009 was the removal of the cladding and then in 2010 a blockwork wall was erected to enclose the west gable.
8. An additional internal wall about 100mm away was constructed in late 2014 to enable the internal structure to be properly constructed. It was seen at the site visit that cavity insulation has been inserted.
9. I have concluded above that the arrangement of the structure that has been built and the insertion of the windows that have been provided clearly indicate that the intention of the structure was to provide habitable accommodation within the barn. This needed cavity walls around its perimeter and the inner leaf is integral with the outer leaf. Therefore, while I accept that the cavity

gable wall was constructed in two phases, it is plain that the intention was for a cavity wall to be provided for completion of the overall structure that has been built. The gable wall was not completed until the internal leaf of the cavity wall was finished in 2014. Therefore, the wall has not been completed for 4 years and is not lawful through the passage of time.

10. The appeal on ground (d) fails.

Ground (a)

11. The development plan includes the South Downs Local Plan [LP]. Policy SD1 relates to sustainable development reflecting the National Planning Policy Framework and the need to conserve and enhance the natural beauty of the National Park. Policy SD5 aims to achieve high standards of design. The location of a dwelling of which the gable is a part within the confines of a large agricultural barn is extremely poor design and does not accord with Policy SD5.
12. Policy SD32 relates to agricultural workers' dwellings. It can be permitted where there is appropriate justification. However, there has been no agricultural justification for the dwelling and hence no need for the associated gable wall and it is not compliant with Policy SD32.
13. Policy SD39 relates to agriculture, noting new buildings and structures will be permitted where there is an agricultural need for the development. I have rejected the appellant's assertion that the gable wall and associated building are for agricultural use, but for a dwelling, and that is what the ground (a) appeal relates to. There is no agricultural justification for the gable wall and therefore it is not compliant with Policy SD39.
14. The appellant suggests that the gable wall can be painted to make it acceptable. However, this does not overcome the harm of the partial construction of a dwelling in this position of which the cavity gable is integral. It is poor design and should not receive planning permission.

15. The appeal on ground (a) fails.

Ground (f)

16. The appellant argues that the internal works of the structure are not identified as part of the alleged breach and cannot be enforced against.
17. The allegation is very specific relating to the gable wall only. In cases where an unauthorised change of use has occurred it is reasonable that any associated operational development that is part and parcel of the change of use can also be required to be removed. However, where the allegation is operational development alone I am not aware of the same presumption. If there is some form of development that is required to be removed it needs to be included in the allegation and could have been in this situation. The Authority chose to identify the gable only, so that is what is under consideration in the notice. As the internal parts were not identified, it is not reasonable to require them to be removed as part of the requirements. I shall therefore amend the requirements to reflect this. Clearly part of the first floor structure may need to be removed, but that is a consequence of the removal of the gable which provides support and there is no reason to include their removal as a specific requirement.

18. I also acknowledge that there was originally a block wall at low level that was in place before the construction of the dwellinghouse began and this can remain. I will amend the requirement to reflect this.
19. The appellant has suggested painting the wall, which I have considered under ground (a).
20. The appeal on ground (f) partially succeeds.

Appeal B – Caravan

Ground (b)

21. The caravan is a small element within a very large agricultural building and it is clear that agricultural use is a major part of the use of the building. It is therefore appropriate that the agricultural use should be reflected in the allegation.
22. The Authority visited the site in August 2016 and July 2017. On these occasions it appeared to the local authority that the caravan was being occupied for human habitation, because of the domestic paraphernalia present, including gas bottles associated with the caravan, tv aerial, generator and power supply. The appellant says that the habitable use of the caravan has ceased some time ago. However, at the Authority's site visit in 2017 the officer was informed that the caravan was occupied. On this evidence the Authority then issued the enforcement notice. I therefore consider that it is reasonable that the allegation relates to the stationing of the caravan for the purposes of human habitation, even though the use has now apparently ceased.
23. The appeal on ground (b) partially succeeds in relation to identifying the agricultural use in the allegation. As this would not have any consequences for natural justice, I shall correct the notice.

Ground (e)

24. A notice has to be served on the owner and any occupier of the land to which the notice relates and on any other person with an interest in the land, that may be materially affected by the notice.
25. A copy of the enforcement notice was served on Mr North, the owner, being placed through the letter box at Cowdown Farm. A copy was also served on the occupier of the caravan by posting it, addressed to the occupier, at the entrance to the barn in which the caravan is located.
26. I consider that this was a reasonable discharge of the duty to ensure the notice is served on the owner and occupiers with an interest in the land.
27. The appeal on ground (e) fails.

Ground (f)

28. The appellant argues that requirements 5(ii) and 5(iii) should be deleted on the basis that the caravan causes no harm as it cannot be seen. This is an argument that would have had to be made under ground (a), but there is no ground (a) appeal to consider.
29. Given the breach of planning control that has occurred it is reasonable that the caravan and associated paraphernalia should be removed.

30. The appeal under ground (f) fails.

Ground (g)

31. The appellant notes that he is not in contact with the owner of the caravan and that he cannot legally remove it. I understand the difficulty the appellant has, but 6 months is plenty of time for the appellant to make the appropriate inquiries about the occupier's whereabouts and to arrange removal of the caravan.

32. The appeal on ground (g) fails.

Graham Dudley

Planning Inspector