
Appeal Decisions

Site visit made on 5 December 2019

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

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

Appeal A Ref : APP/W1525/C/19/3220562

Appeal B Ref : APP/W1525/C/19/3220563

Land at Ash Tree Stud Farm, Main Road, Little Waltham, Chelmsford, Essex, CM3 3PA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr G Weal and Appeal B is made by Mrs T Weal against an enforcement notice issued by Chelmsford City Council.
- The notice was issued on 11 December 2018.
- The breach of planning control as alleged in the notice is failure to comply with condition 1 of planning permission 14/01166/MAT.
- Condition 1 states that the premises shall be used as storage only in connection with the maintenance of Ash Tree Stud and used for no other purpose whatsoever.
- The requirements of the notice are i. cease the use of the building shown outlined blue at the approximate location on the plan attached to the notice for any purpose other than in connection with the maintenance of Ash Tree Stud, ii. remove from the building shown outlined in blue at the approximate location on the plan attached to the notice, all domestic items currently being stored within including furniture, gym equipment, building materials and any other items not used in connection with the maintenance of Ash Tree Stud.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeals are dismissed and the enforcement notice is upheld

Appeal C Ref : APP/W1525/C/19/3220557

Appeal D Ref : APP/W1525/C/19/3220558

Land at Ash Tree Stud Farm, Main Road, Little Waltham, Chelmsford, Essex, CM3 3PA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mr G Weal and Appeal D is made by Mrs T Weal against an enforcement notice issued by Chelmsford City Council.
- The notice was issued on 11 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the construction of a building (shown outlined in blue on the plan attached to the notice).
- The requirements of the notice are i. demolish the building shown in the approximate location outlined in blue on the plan attached to the notice, ii. remove from the land any resulting debris and waste material resulting from the actions taken at step i.

- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeals are dismissed and the enforcement notice is upheld

Application for costs.

1. The Appellants have made an application for a full or partial award of costs against the Council. This is the subject of a separate decision.

Appeals A and B

Preliminary matter

2. The Appellants lodge a ground (b) appeal. This ground of appeal is that the matters alleged have not occurred. Their case is that the alleged breach of planning control has not occurred because the development has planning permission. This argument is more pertinent to a ground (c) appeal and I shall address it below accordingly.

Ground (c) appeal

3. The appeal site covers a relatively large area. It includes a dwelling, extensive open grounds close to the River Chelmer and the building the subject of these appeals. The site falls within the Little Waltham Conservation Area in a rural area within the designated Green Wedge. Planning permission has been refused on appeal for the conversion of the building to an annex dwelling.
4. Planning permission reference 14/01166/FUL has been granted for a replacement barn at the appeal site. The approved plans show a building with storage areas and two mezzanine floors separated by a central void. The plans show two windows, one in each end elevation, and no staircase. Condition 4 of the permission states that 'the premises shall be used as storage only in connection with the maintenance of Ash Tree Stud and used for no other purpose whatsoever'. The reason for the condition is stated as 'the site lies within the open countryside within an area protected from development in accordance with policy DC9'. The planning permission was varied to allow the insertion of five roof lights (ref 14/01166/MAT) (the Permission). Condition 4 of permission 14/01166/FUL was repeated as condition 1 of the Permission. The plans show five rooflights, amended windows to either end elevation and a reduction in height to the central doors.
5. This ground of appeal is that the matters alleged do not constitute a breach of planning control. The alleged breach of planning control is failure to comply with condition 1 of the Permission. The onus of proof rests on the Appellants and the test of evidence is the balance of probabilities.
6. The Appellants case is that condition 1 has not been breached. They argue firstly, that the condition is not valid as it is not precise and secondly, that any storage of domestic items is de minimus and does not comprise a material breach.
7. The Appellants argue that 'Ash Tree Stud' is not clearly defined in condition 1 as the condition does not state whether it covers the dwelling or the wider

land. I disagree. The site comprises extensive grounds including a river and wildlife site. It is reasonable to read 'Ash Tree Stud' as covering the wider area not just the dwelling. The Permission clearly defines the site as this wider area as does the red line plan attached to the notice. The entrance to the site is signed 'Ash Tree Stud' and the Appellants use this address in correspondence. I do not find the use of the phrase 'Ash Tree Stud' to be imprecise.

8. I do not find the term maintenance to be so vague as to invalidate the condition. I note that the Appellants' covering letter submitted with the planning application for the replacement barn advised that the building was required for storage of equipment and materials used for works associated with the maintenance, repair and upgrading of the surrounding open land and that in the material amendment application they stated that the building would be used for the storage of seeds and fertiliser. I find the term maintenance to be sufficiently precise and to exclude domestic paraphernalia not required for the upkeep and repair of the land. It does not follow that because the site includes a dwelling the term maintenance should be interpreted to include domestic storage.
9. I have assessed condition 1 of the Permission against the tests set out in the the National Planning Policy Framework (the Framework). I find the condition to be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
10. The Appellants argue that the temporary storage of a few domestic items is de minimus and not significantly different from what was intended by the condition. I note that some of the items of storage such as the boat used for clearing the river fall within the terms of the condition. But the photographs before me show a variety of items being stored in the building including sofas, rugs, a bed and mattress, garden furniture and gym equipment. I do not find these items to be so insignificant as to be de minimus and they are of domestic storage purpose contrary to the condition.
11. For the reasons given above I find that the breach of planning control has occurred and this ground of appeal does not succeed.

Appeals C and D

Ground (b) appeal

12. This ground of appeal is that the matters alleged have not occurred.
13. I saw at my site visit that as a matter of fact the building outlined in blue on the plan attached to the notice exists. The Appellants' arguments concerning whether it benefits from planning permission are more pertinent to a ground (c) appeal and I shall address them below accordingly.
14. As a matter of fact the building the subject of the notice exists and this ground of appeal does not succeed.

Ground (c) appeal

15. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of

development includes the carrying out of building, engineering, mining or other operations in, on, over or under land.

16. As a matter of fact and degree I find that the building has not been constructed in accordance with planning permission ref. 14/01166/FUL and the Permission and comprises development requiring planning permission. The internal layout is materially different to that approved. For example, the mezzanine floor stretches the width of the building and does not include a void in the centre contrary to approved plans. The Permission refers to specific approved plans and the development carried out materially differs from those plans.
17. I have considered the Appellants' arguments that the differences are minor and may not be classed as development. But looking at the building as a whole and the significance of the differences between the development carried out and the approved plans I find on balance that the internal layout of the building as a whole creates a domestic character materially different from the permissions granted for a replacement storage barn. The works have been undertaken as one operation and comprise development requiring planning permission.
18. I find that the development carried out is materially different to the development the subject of permission 14/01166/FUL and the Permission and requires planning permission.
19. For the reasons given I conclude that this ground of appeal does not succeed.

Ground (f) appeal

20. This ground of appeal is that the steps required by the notice are excessive.
21. 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. The notice requires the demolition of the building and its purpose is therefore to remedy the breach.
22. The Appellants argue that the requirement of the notice to demolish the building is excessive as the Permission has been granted. I agree that the purpose of an enforcement notice is not punitive. It is established law that an enforcement notice cannot remove lawful rights (including the lawful right to implement an extant planning permission) and the notice does not purport to do so. The fact that the notice does not expressly state this does not alter the legal position. I do not consider it necessary to amend the notice in this case in order to give effect to lawful rights, including the right to implement the Permission.
23. For the reasons given above I conclude that the requirements of the notice are not excessive and this ground of appeal does not succeed. I shall uphold the enforcement notice.

Formal Decisions

Appeals A and B

24. The appeals are dismissed and the enforcement notice is upheld.

Appeals C and D

25. The appeals are dismissed and the enforcement notice is upheld.

S. Prail

Inspector