
Appeal Decisions

Site visit made on 23 December 2019

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

an Inspector appointed by the Secretary of State

Decision date: 20th January 2020

Appeal A Ref : APP/J1535/C/18/3216548

Appeal B Ref : APP/J1535/C/18/3216549

White Lodge Cottage, Little Laver Road, Little Laver, Ongar, Essex, CM5 OJF

- 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 John Smith and Appeal B by Sandra Smith against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 22 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised demolition of a dwelling and the erection of a new dwelling on the land.
- The requirements of the notice are i. demolish the unauthorised dwelling on the land and ii. remove all resulting debris from the land following compliance with i. above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeals are allowed and the enforcement notice is quashed

Appeal A and Appeal B

Ground (b) appeals

1. White Lodge Cottage, the subject of the notice, was originally a small dwelling for use by staff at White Lodge and comprised a two bedroom 1.5 storey chalet bungalow. White Lodge is a nearby Grade II Listed Building. The site is within the Metropolitan Green Belt in a relatively rural area. The surrounding area includes a terrace of houses to the west and rolling, open agricultural land with farms and isolated dwellings.
2. This ground of appeal is that the breach has not occurred as a matter of fact. The onus of proof in this appeal rests on the Appellants and the test of evidence is the balance of probabilities.
3. The Appellants' case is that the building has not been demolished but that building works have been carried out to implement a scheme of permitted development. I shall deal with whether or not the building has been demolished as a ground (b) appeal but the issue of whether the building works have the benefit of planning permission is more pertinent to a ground (c) appeal and I shall deal with it accordingly.

4. The photographs before me show that when the works were started in 2018 the original cottage was in a state of disrepair. The Council do not argue that the building did not exist but say that because of its condition it was 'largely demolished'.
5. In the absence of any statutory definition I have applied a common sense interpretation of 'to demolish' and taken into account the definition of 'to completely destroy a building, especially in order to use the land for something else' as set out in the Cambridge Dictionary. I do not consider that because the building had fallen into disrepair and parts of it used to construct a larger dwelling that it was demolished. The photographs before me show that sufficient remained of the original cottage for it not to be considered as demolished.
6. As a matter of fact and degree on the evidence before me I conclude that the 'demolition of a dwelling' has not occurred as a matter of fact. The ground (b) appeals succeed to that extent.

Ground (c) appeals

7. 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. Permitted development rights exist for certain classes of development by virtue of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO).
8. Class A of Schedule 2 Part 1 of the GPDO provides for permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions and limitations. The issue in dispute between the parties is whether at the time of the works the building was a dwellinghouse and therefore capable of attracting permitted development rights. The Council does not dispute that if the building is treated as a dwellinghouse the development meets all other conditions and limitations in Class A and hence would be permitted development and I have no reason to conclude otherwise.
9. As a matter of fact there is no dispute that some parts of the original cottage have been incorporated into the new building. I saw at my site visit that some of its walls, foundations, floors and footprint remain.
10. The Appellants say that they refurbished and extended the cottage. The Appellants evidence does not need to be independently corroborated in order to be relied on but it does need to be precise and unambiguous.
11. The Council's case is that the building cannot benefit from permitted development rights as at the time the works were undertaken it was uninhabitable ie no longer physically capable of functioning as a dwellinghouse providing day to day facilities. They refer to Council tax records which show occupation until 2008 and a set of photographs which appear to show deterioration in the condition of the building over time to a stage where it had no roof and a ground floor missing at least 2 external walls.
12. I do not consider from the evidence before me that the building was in such a state of disrepair or deterioration that it was no longer a dwelling. The Council's

photographs are undated and I cannot be sure of the condition of the building at the time the works commenced. There is no evidence that the building is not capable of supporting an extension. On the balance of probabilities looking at the evidence before me I conclude that there was sufficient structure for permitted development operations to be carried out. The operations incorporated features of the building and built upon them. Although there is no structural survey data before me I have no reason not to believe the Appellants when they say that the roof was removed and replaced as part of the works of refurbishment. The fact that the building was not capable of habitation without some works is not determinative of its status as a dwelling. The works can reasonably be described as an enlargement, improvement or alteration of a dwellinghouse. The Council's evidence does not cast serious doubt upon the Appellants' version of events and the Appellants' version of events is sufficiently precise and unambiguous to discharge the burden of proof in these appeals.

13. On balance as a matter of fact and degree I conclude that the building was a dwellinghouse at the time the works were commenced. It therefore has the benefit of permitted development rights by virtue of Class A.
14. There is no argument before me that the lawful use as a dwelling has been abandoned and no evidence of any intention to permanently cease use as a dwellinghouse.
15. My attention is drawn to an Inspector's decision on appeal concerning another site where as a result of fire damage a shell of a building was considered not to comprise a dwelling. I do not know the particular circumstances of that case and I must consider these appeals on their own particular facts. In any event in this case the building has at all material times been more than a shell and whilst in a state of disrepair can reasonably be considered a dwelling which has been extended in accordance with permitted development rights.
16. For the reasons given above I conclude that the appeals should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeals under ground (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decisions

Appeal A and Appeal B

17. The appeals are allowed and the enforcement notice is quashed.

S. Prail

Inspector