
Appeal Decisions

Site visit made on 7 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2020

Appeal A Ref: APP/A2470/C/19/3235346

Appeal B Ref: APP/A2470/C/19/3235347

Dunroamin Farm, Baulk Road, Bisbrooke, Rutland LE15 9ES

- The appeal is 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 Nick Smith and Appeal B is made by Ms Deborah Wallis against an enforcement notice issued by Rutland Council.
 - The enforcement notice was issued on 16 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building within the area shown coloured blue on Plan A.
 - The requirements of the notice are:
 - (i) Demolish the building under construction which is located within the area coloured blue
 - (ii) Remove from the land all the building materials and rubble arising from compliance with requirement (i) above.
 - The period for compliance with the requirements is 3 months.
 - Appeal A 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. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is an identical appeal except there is no ground (a)
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Decisions

1. The appeals are dismissed, and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the Deemed Planning Application

3. Ground (a) is that planning permission should be granted for the matters stated in the notice.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

5. Baulk Road is a country road leading off the A47 which links Peterborough and Leicester. The nearest settlement is Bisbrooke which is a typical village characterised by a large cluster of buildings of varying age and style. By contrast the development around the appeal site is sporadic and the character of the area is dominated by large fields and roadside hedges and trees. Buildings tend to be of single storey form, the exception being a two-storey building on the neighbouring site, The Acorns.
6. The evidence provided by the Council demonstrates that the buildings which previously occupied the position where the new building has been erected were broadly consistent with the size and appearance of development in the area. The key difference was the position of the buildings close to the road and the steeply sloping roof. However, the mature trees which fronted the road provided a level of screening such that the buildings were not conspicuous in the street scene.
7. The building which has been constructed, whilst of a comparable length to the previous buildings is of significantly greater depth and height, resulting in a form of development which has greater scale and massing. Moreover, the incorporation of dormer windows facing the road and the removal of mature trees exaggerates the impact of the building in the street scene. In summary the new building is inconsistent with the character and appearance of the surrounding development and appears as a dominant and incongruous feature in the wider countryside.
8. The appellant refers to the absence of any objections to the development from the local community as an indication that the Council's view that the development is harmful cannot be substantiated. I agree with the Council with regard to the level of harm arising from the development and I am not persuaded that the building is in keeping with the street scene. The absence of objections from interested parties does not outweigh the harm which I have found.
9. Whilst the letter from E M Dorman supports the appellant's description of the use of the previous buildings on the site and suggests that the new building could benefit the appellant's family, the comments made do not overcome the harm that arises from the presence of the building.
10. Both the appellant and E M Dorman consider that the Council have adopted an inconsistent approach with regard to the scale of development which has been carried out at the Acorns. Whilst this is not a matter which is of relevance to my decision, the two-storey structure at The Acorns forms part of the character and appearance of the area. However, unlike the building which is the subject of the notice it is set back from the road and substantially screened by hedging, walling and gates. For these reasons the impact of the two buildings on the street scene are not directly comparable and I do not find that the presence of the building at the Acorns, whether authorised or not, sets a precedent for the new building on the appeal site.
11. The appellant considers that the objections from the Council could be overcome by the imposition of a condition to prevent use as a dwelling and to require the building to be used in a way which is ancillary to the main dwelling house. The Council points out that use as a dwelling would require planning permission and

considers that such a condition is not necessary. Notwithstanding whether such a condition would meet the statutory tests, a restriction on the use of the building to an ancillary function to the house would not overcome the harm that I have identified in terms of the effect which the building has on the street scene.

12. I conclude that the new building has a harmful effect on the character and appearance of the surrounding area. The development is contrary to Policy CS19 of the Rutland Local Development Framework Core Strategy Development Plan Document (2011) (the Core Strategy) and Policy SP15 of the Rutland Local Plan Site Allocations and Policies Development Plan Document (2014) (the Site Allocations and Policies). These policies amongst other things require that all new development meets high standards of design which are sympathetic and make a positive contribution towards the unique character of Rutland's countryside and have a scale, massing and height appropriate to the local context. For similar reasons the development is contrary to the National Planning Policy Framework in relation to achieving well designed places.
13. Although the Council refers to the building having the scale and appearance of a new dwelling house in the notice, there is no allegation that the building is being used for such a purpose. Consequently, I do not consider that Policy CS4 of the Core Strategy which relates to the location of development nor Policy SP6 of the Site Allocations and Policies which relates to housing in the countryside are relevant to the main issue.

Conclusion in respect of ground (a) and the DPA

14. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

15. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
16. The appellants refer to Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 which allows for the construction of outbuildings as permitted development. They acknowledge that the building which has been constructed exceeds the limitations set out in Class E and does not argue that the building constitutes permitted development which would be an appeal under ground (c). They consider that an alteration to the roof of the building would bring it within permitted development limits.
17. The Council consider that the proposed use of the building would not constitute a use which is incidental to the main dwelling house, consequently the building could not benefit from permitted development rights under Class E. Even if I were to accept that the building would be put to a use which is incidental to the main house, the evidence shows that the building is much larger than the previous buildings on the site and that its height significantly exceeds the 2.5 metres limit set in Class E which applies to the building as a whole given its position relative to the boundary.

18. The evidence indicates that the building is in the order of twice the height permitted under Class E and there are no details before me to show how it could be modified to fall within the Class E limitations. It appears to me that such works would be extensive and the feasibility of them being implemented successfully has not been demonstrated.

19. For the reasons set out above the appeals under ground (f) fail.

Ground (g)

20. Under ground (g) the appeal is made on the basis that the time for compliance with the requirements of the notice falls short of what should reasonably be allowed.

21. The appellants argue that the period for compliance with the notice is too short because significant works are required. They consider that 6 months would be a more reasonable time scale. The Council say that the works would only take a few days. One of the appellants has expressed concern regarding the view of the Council in his final comments and considers that it is impractical and unreasonable for him to carry out the works required with one or two days notice. I agree with the appellant on this point but do not think that the Council intended to infer that a shorter time scale than the 3 months set out in the notice would be appropriate.

22. In his final comments one of the appellants has referred to work commitments and the availability of assistance to carry out the works required by the notice, as reasons why a 3-month compliance period is unreasonable. However, there is no further detail regarding these matters or evidence to demonstrate that contractors are in short supply in the area or that the building would take an extended time period to be demolished.

23. Taking all of these matters into consideration I find that the 3-month period afforded by the notice does not fall short of what is reasonable. For the reasons given above, I conclude that the appeals on ground (g) should fail.

Conclusion

24. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application (Appeal A).

Sarah Dyer

Inspector