
Appeal Decisions

Site visit made on 6 January 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Oldbury Farm, Southend Road, Great Wakering, Essex SS3 0PS

Appeal A: APP/B1550/C/19/3234186

Appeal B: APP/B1550/C/19/3234187

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Philip Burns (C Raynor Ltd)(Appeal A) and Mr Anthony Arnold (Appeal B) against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 28 June 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The erection of a building with kitchen and toilet facilities not compliant with plans approved under planning application 16/00983/FUL (building is shown in the approximate position marked A and hatched on plan 2 attached to the notice).
 2. The installation of a septic tank in the approximate position marked B on the plan attached to the notice to facilitate the disposal of waste generated in the toilet and kitchen facilities installed in the new building.
- The requirements of the notice are:-
 1. Demolish the building including all internal facilities shown marked A and hatched on plan 2 and remove its foundations.
 2. Remove the septic tank shown in the approximate position marked B on plan 2 and any connecting pipework.
 3. Following compliance with steps 1 and 2; level the land.
 4. Remove all resultant materials and debris from the site.
- 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)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- Appeal B is proceeding on the grounds set out in section 174(2)(f)&(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision

Preliminary Matters

1. Originally appeals were also brought on ground (c), but the appeals on that ground were withdrawn in the appellants final comments.
2. It is important that the allegation is correct as the deemed planning application arising under the ground (a) appeal is derived from its wording. Where it is alleged that a building is constructed with material differences from approved plans, and a condition was not imposed requiring that the development is

carried out in accordance with the plans, the enforcement notice should allege "the construction of a building with kitchen and toilet facilities without planning permission". This is consistent with the notice having been issued under section 171A(1)(a) of the Act. Aside from the standard time condition for commencement, when planning permission was granted for a new workshop at the appeal site the only other condition concerned external materials. There was no other plans condition imposed. Having consulted the main parties, no objection was raised to a change in the wording of the first allegation.

3. In the second allegation it should be made clear that the position of the septic tank is shown on the plan numbered '2', as more than one plan is attached.
4. From the arguments put forward the appellants clearly knew what was being attacked by the notice. By correcting the notice in the manner described, I am satisfied that no injustice would arise to either party.

Appeal A only - ground (a) and the deemed planning application

Main Issue

5. The enforcement notice is directed at a building erected at Oldbury Farm which is located in the Metropolitan Green Belt. The main issue is whether the building is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy.

Reasons

6. The deemed application is for the development as built on the date the enforcement notice was issued i.e. the erection of a building with kitchen and toilet facilities and the installation of a septic tank at Oldbury Farm.
7. Planning permission was granted on 25 January 2017 pursuant to Council reference 16/00983/FUL for the demolition of an existing workshop and the erection of a new workshop. At that time Oldbury Farm was described as an established farming company with five full-time staff and farming approximately 600 hectares with the farm rotation being predominantly arable cropping. Approximately one-third of the workshop has been demolished. The building enforced against replaces the demolished part of the workshop although the footprint is smaller.
8. It is submitted that this is the first phase towards the larger steel portal framed building for which planning permission was granted in 2017 measuring approximately 20m x 36m. Measurements taken by the Council indicate the building enforced against is 18.42m deep and 11.75m wide. Instead of 720sqm of floor space as approved, the building is considerably smaller with approximately 216sqm.
9. Inside, one corner has been blocked off for a 'small welfare area' and toilet with washbasin serviced by a septic tank. Much of the old workshop still remains.
10. The appellant says that subject to the outcome of this appeal they intend to construct the remaining two-thirds of the building as approved. Given what has been built already, it might be that any future development would necessarily conflict with the 2017 permission and could not be therefore be carried out except with a further grant of planning permission. However, for the purposes of

ground (a), I am concerned only with whether planning permission should be granted for the building as built.

11. The appellant admits that the building was first used by a carpet company temporarily in breach of planning control. The notice does not attack any material change of use of the land, but what the building has been built for is relevant for Green Belt purposes.
12. Under Policy GB1 of the Council's Core Strategy, 2011 ('CS') it states that development will be directed away from the Green Belt as far as practicable. However, the continuation of existing rural businesses will be encouraged, as appropriate, so long as such activities do not significantly undermine the objectives or character of the Green Belt. Policy DM10 of the Local Development Framework Development Management Plan 2014 ('LDF') provides that the Council will favour proposals for the redevelopment of previously developed land in the Green Belt which accord with CS Policy GB2. This states that the Council will maintain a restrictive approach to development within the Green Belt, but with some relaxation for rural diversification. Except for farm shops, retail is not considered an acceptable form of rural diversification in the Green Belt. However, the appellant is categorical in stating that the building was constructed for agricultural purposes and that the retail use was temporary.
13. Paragraph 133 of the National Planning Policy Framework ('the Framework') makes clear that the Government attaches great importance to Green Belts. By virtue of Paragraph 145 the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to certain exceptions.
14. One exception identified in Paragraph 145a) are buildings for agriculture and forestry. A building for commercial purposes would not fall within any exception. No equivalent provision has been brought to my attention within the Council's development plan. A further exception within Paragraph 145d) is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. According to the appellant the partially demolished workshop that the building replaces was at least 85 years old and was used for agricultural purposes. The previous use of the former workshop which occupied the land is undisputed.
15. Much of the Council's case focuses on the use of the building for commercial purposes as it was initially used, and statements made by the appellant during the early investigation. Officers were apparently told that the building was erected to rent out to a business and two more similar units would follow within the same footprint as that approved. The appellant insists in these appeal proceedings that the building was built in connection with an agricultural requirement as a farm workshop providing an undercover space for the repair and maintenance of farm machinery.
16. By the time of the Council's site visit on 10 June 2019 the carpet business had vacated the building and agricultural equipment and machinery was found inside. This was shortly before the enforcement notice was issued. Nevertheless, the Council's position remains that the building was not reasonably required for agriculture and notes that the internal space was under-utilised.
17. Notably, Paragraph 145a) does not set out any requirements of agricultural need. The building simply needs to be "for agriculture". There is a requirement in The Town and Country Planning (General Permitted Development) (England)

Order 2015 (Part 6, Classes A and B - 'Agricultural and Forestry') that buildings and other works must be "reasonably necessary for the purposes of agriculture within that unit". However, it relates solely to the consideration of whether it is permitted development. It does not apply when considering the merits of a planning application or deemed planning application.

18. The Council quotes *Pêche d'Or Investments v SSE & Another*¹, *Emin v SSE & Mid Sussex DC*² and *Holding v FSS & Thurrock BC*³ but all these cases discussed whether a building was 'reasonably required' for a particular purpose in the context of permitted development rights and interpretation of the general development order. They are not on point or helpful in this instance.
19. The crux of the matter is whether it is a building "for agriculture". Clearly, the building was not used for an agricultural purpose when it was occupied by the carpet business. That is not to say it was built for that commercial purpose or that it cannot be used for agriculture.
20. The appellant states that the requirement was and is for an up-to-date workshop and storage accommodation for the farming business. The first phase was the farm workshop. For that reason, there is a special coating on its concrete floor to prevent contamination by oil and grease. The appellant says that the floor and coating was laid in January 2019. It was also in January 2019 that the appellant says he was approached by the carpet firm which was allowed on a temporary basis.
21. Evidently the erection of a workshop on the farm in this position was considered acceptable following demolition of the previous workshop when planning permission was granted in 2017. The principle of such a building, if that is what it is, has therefore been established. Consequently, if the building is for agriculture as argued, it would not be inappropriate development.
22. The building is located within the complex of buildings forming Oldbury Farm with expansive yard in front. The Council points out that the farm has been diversifying by letting out former agricultural buildings to various businesses for commercial purposes. This has added to the Council's concerns that the building was never intended for agricultural use. The appellant advises that the diversification by letting small work areas within redundant farm buildings for commercial use began in the early 2000's. It is explained that the decision more recently to let the former potato store as a commercial storage unit was taken because the gases used continue to emit chemicals for many years making it unsuited for other crops.
23. Whilst noting that non-agricultural uses are taking place within other units within the farm complex, consideration is required as to whether this particular building constructed in the yard of an active working farm is for agriculture.
24. I observed that the building is of utilitarian appearance constructed of blockwork and green coloured insulated box profile sheeting consistent with a structure used for agricultural purposes. The roller shutter door is of a size enabling access by substantial agricultural machinery as demonstrated at my site visit. The amount of floorspace and internal height would similarly allow large scale agricultural machinery and equipment to be accommodated and serviced.

¹ [1996] JPL 311

² [1989] JPL 909

³ [2004] JPL 1405

25. Therefore, the building is of a type and design compatible with an agricultural use for workshop activities involving large scale equipment and machinery which is commonly in use in association with arable farming. Irrespective of whether it has been under-used, the current use of the building being undertaken is for agricultural purposes.
26. Thus, it seems to me that the building is of a specification and in a location, which is consistent with it being for agriculture and it is being used as such. A planning condition could be imposed to ensure that it is so used. When planning permission was granted in 2017 for a much larger workshop, it did not include a 'welfare' area and associated septic tank. That being so, the Council considers the toilet, washbasin and kitchen facilities are not essential, but there is no requirement for them to be essential so long as the building would be 'for agriculture' and they are consistent with that use.
27. According to the appellant the 'welfare' facilities were added for workers in the workshop. The provision of those facilities is not out of the ordinary within an agricultural building to be used as a workshop and I saw that they occupy a very small part of the building overall. The septic tank serves those facilities even if a smaller one could fulfil the same function. It can still be for an agricultural building. If a condition were imposed to restrict the use to agriculture, then there could be no legitimate concern that the 'welfare' area would facilitate a commercial use once more.
28. Subject to the imposition of a condition to control its use, I am satisfied that the building is 'for agriculture' as provided by Paragraph 145a) and it also fulfils Paragraph 145d) by being smaller than the building it replaced and for the same use. Accordingly, it is not inappropriate development in the Green Belt, and I find no conflict with LDF Policy DM10 or CS Policies GB1 and GB2 as aforesaid or LDF Policy DM12 which concerns rural diversification. In light of these findings there is no need for me to go on to consider whether there is a legitimate fallback position with regard to the 2017 permission.

Other Matters

29. The Government's Planning Policy Statement of 31 August 2015 indicated that intentional unauthorised development is a material consideration that should be weighed in the determination of appeals. The development was undertaken without authorisation and this weighs against the grant of planning permission. However, it does not give me sufficient cause to dismiss the appeal when the building otherwise complies with national and local policies on development in the Green Belt.

Conclusion on ground (a) and the deemed planning application

30. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the building which will now relate to the corrected allegation. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Conditions

31. The Council suggested two conditions in this eventuality which the appellant has agreed. I have considered those conditions in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance ('PPG'). As already indicated and given the Green Belt location, it is necessary and appropriate for

the use to be restricted to agricultural purposes. They are agreed in this case to be as an agricultural workshop for the storage and repair of farm machinery and equipment.

32. The PPG advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. In this instance, permission is only forthcoming on the basis that the building shall be used for the stated agricultural purposes only. For that reason, it is reasonable and necessary to prevent a change of use from agriculture which would otherwise be available. In view of the location within the Green Belt where development is strictly controlled it is also reasonable and necessary to remove permitted development rights for non-domestic extensions and alterations.

Formal Decisions

Appeal A

33. It is directed that the enforcement notice be corrected by:-

- deleting paragraph 3.1. and replacing it with "The erection of a building with kitchen and toilet facilities in the approximate position shown marked 'A' and hatched on the attached plan 2."; and
- inserting the number '2' after the words "attached plan" in paragraph 3.2.

34. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building with kitchen and toilet facilities and the installation of a septic tank at Oldbury Farm, Southend Road, Great Wakering, Essex SS3 0PS as shown on the plans attached to the notice and subject to the following conditions:

- 1) The development hereby approved shall be used only as an agricultural workshop for the storage and repair of farm machinery and equipment and no other purpose whatsoever, including any use otherwise permitted within Article 3 and Schedule 2, Part 3 (changes of use), Class Q, R, S or any other permitted change within the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification).
- 2) Notwithstanding the provisions of Article 3 and Schedule 2, Part 7 (non-domestic extensions, alterations etc.) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no construction involving extensions or alterations shall be carried out to the development hereby permitted.

Appeal B

35. In light of the success of Appeal A, the appeal does not fall to be considered.

KR Seward

INSPECTOR