



Appeal Decision

Site visit made on 3 December 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/L3815/C/18/3211107

Land at Little Oak Farm, Land North of Cowdry Nursery, Sidlesham Lane, Birdham, West Sussex PO20 7QW

- 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 Simon Cobden against an enforcement notice issued by Chichester District Council.
- The enforcement notice, numbered BI/40, was issued on 13 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber building with a tiled roof in the approximate position shown on the Plan.
- The requirements of the notice are:
 - i) Demolish the said building; and
 - ii) Remove the resulting debris from the Land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The forms and supporting documents suggest that the appeal has been made under grounds (a) and (f). However, the contents of those documents suggest that the appellant considers the development has proceeded in accordance with a permission under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). These considerations are normally considered under ground (c) that those matters (if they occurred) do not constitute a breach of planning control. As the Council has had the opportunity to respond to the points made by the appellant, I will deal with the appeal under that ground in addition to grounds (a) and (f).

The Appeal on Ground (c)

2. An appeal on this ground is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. There is no dispute that the building constitutes development within the meaning of Section 55 of the Act for which planning permission is required.

3. I understand that prior approval under Class Q, Part 3, Schedule 2 of the GPDO was permitted by the Council for the change of use of the building from a use as an agricultural building to a dwellinghouse, including building operations reasonably necessary to convert the building. The appellant states that the original walls had dry rot and woodworm so were removed. The ring beam, steddle stones, floor joists and boards were retained and were not altered. I note that some other materials, including two oak beams, were salvaged and reused. However, the building was effectively rebuilt above floor level.
4. The prior approval scheme showed the resulting building with a thatched roof, two windows of three panes wide to the front and another to the side. The building constructed has a tiled roof with two windows to the front, one of which is only two panes wide, and no side window. Consequently, it appears materially different to the building permitted under the prior approval application.
5. As a result, the works are more than could be considered a conversion of the original building, so do not accord with the prior approval under Class Q, Part 3, Schedule 2 of the GPDO. The resulting building does not, therefore, benefit from that planning permission. No other planning permission has been sought from or granted by the Council for the building.
6. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

7. The main issues are:
 - whether the location of the dwelling would be consistent with the strategy for development set out within the development plan, or if there are any material considerations sufficient to override any conflict with policy; and
 - the effect of the dwelling on the intrinsic character and beauty of the landscape.

Reasons

Location

8. The land at Little Oak Farm is located within the countryside outside the settlement of Birdham. There is dispersed development along Sidlesham Lane comprising dwellings and other development separated by open fields. To the opposite side of the lane from the appeal site are large open arable fields.
9. As a result, this is a remote location away from the services and facilities provided within Birdham and other local settlements. In this location, Policies 2, 37 and 45 of the Chichester Local Plan (LP) enable development that requires a countryside location and that would meet essential, small scale and local needs that cannot be met within or immediately adjacent to settlements, including accommodation for rural workers. However, it is unclear why the dwelling requires a countryside location, nor whether it meets an essential local need.

10. The National Planning Policy Framework (the Framework) seeks to avoid the development of isolated homes in the countryside, except in certain circumstances such as the re-use of redundant or disused buildings that would enhance its immediate setting. Taking account of the works carried out that replaced the majority of the building above floor level, the dwelling is essentially a new building. As a result, it does not comprise the re-use of a redundant or disused building.
11. For these reasons, I conclude that the location of the dwelling would not be consistent with the strategy for development set out within the development plan. As a result, the proposal is contrary to Policies 2, 37 and 45 of the LP and the Framework.

Landscape

12. The Framework recognises the intrinsic character and beauty of the countryside. Policies 33 and 48 of the LP seek to protect the landscape character of the rural area surrounding the land at Little Oak Farm.
13. The building essentially replaced the previous building and reflects its appearance to a large extent, albeit the thatched roof has been replaced by tiles and the fenestration differs. As a result, it has limited effect on the character and beauty of the countryside. However, as a dwelling it has a different relationship with the rural surroundings than the previous agricultural building. The nature of comings and goings from the dwelling differs and it will be surrounded by residential paraphernalia that will bring a more urban appearance to the site.
14. For these reasons, I conclude that the dwelling harms the intrinsic character and beauty of the landscape, contrary to Policies 33 and 48 of the LP and the Framework.

Other matters

15. The appellant had thought that it was possible to replace the windows, doors, roof and external walls of the building under the rights under Class Q of the GPDO. They considered the works carried out complied with those rights and I understand they were completed under the supervision of the Building Control department of the Council. Whilst I have sympathy for the circumstances described, this is not a material circumstance of such weight to override the conflict with policy.
16. My attention has been drawn to another redundant agricultural building with prior approval under the GPDO for conversion to a dwelling was approved to be replaced. However, limited information has been provided on that case and, in any event, I need to consider this appeal on its individual merits.
17. Reference has been made in the Officer report relating to the prior notification to the effect of this development on the Special Protected Areas (SPA) at Pagham and Chichester/Langstone Harbours. I understand that a payment was made in that case toward mitigation measures in order to overcome any harm to the SPA. Policy 51 of the LP requires appropriate avoidance and/or mitigation measures be provided to mitigate the effects of recreational disturbance on those sites from the occupants of new residential development. As SPAs are designated under the Habitats Directive, it would be necessary for me to carry out a Habitats Regulations Assessment (HRA) if I were to allow the

appeal. Given my above conclusions, I have not carried out an HRA and am unable to conclude whether any mitigation would overcome any harm to the SPAs or whether the development would comply with Policy 51 of the LP.

18. As I have concluded that the dwelling does not comply with Policies 2, 33, 37, 45 and 48 of the LP, it would also not comply with Policy 1 of the LP that supports development that accords with policies of the LP.

Conclusion

19. For the reasons set out above, I conclude that the proposed development would not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

20. An appeal on this ground is 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.
21. In this case, the requirements seek the demolition of the building. Of the previous building on the site, the ring beam, steddle stones, floor joists and boards were retained and some other materials were salvaged and reused. However, the building above floor level was rebuilt, with any reused materials subsumed into and forming part of the construction of the resultant building. Taking all of that into account, the resulting building is, effectively, a new building. Consequently, the effect of the notice is to remedy the breach of planning control.
22. For ground (f) to succeed it is necessary to show that the requirements are excessive to remedy the breach.
23. Given my conclusions as to the extent of the work, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).
24. The appellant suggests that they would like to work with the Council to resolve the issues within the notice. No appeal has been made under ground (g) that would enable a longer period for compliance with the notice and, in the absence of evidence to the contrary, I see no reason why the three month period in the notice would not be sufficient to explore options with the Council. Nevertheless, the Council have discretion, under Section 173A of the Town and Country Planning Act 1990 as amended, to extend the period for compliance with the notice in the event that they are persuaded there is sufficient justification for them to consider it is necessary to do so, such as to come to an outcome acceptable to everybody.

Formal Decision

25. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen INSPECTOR