The Planning Inspectorate

Appeal Decision

Site visits made on 14 October 2019 and 13 January 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 6 February 2020

Appeal Ref: APP/P1133/C/19/3220781
Land adjacent to Woodlands Farm, Holcombe Down Road, Teignmouth TQ14 9NS

- 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 Richard Booker against an enforcement notice issued by Teignbridge District Council.
- The enforcement notice was issued on 12 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the rebuilding and increase in height of an agricultural building in the approximate position hatched blue on the attached plan *[attached to the enforcement notice]*.
- The requirements of the notice are Remove the unauthorised agricultural building in the approximate position hatched blue on the attached plan *[attached to the enforcement notice]*.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Procedural Matters

1. Due to adverse weather conditions and consequent poor visibility at my initial site visit, I conducted a second, unaccompanied, site visit at a later date in order to view from the surrounding area.

2. The postcode given above is taken from the appeal form as no postcode was stated on the enforcement notice.

The Appeal on Ground (c)

3. The appeal on ground (c) is that what is alleged in the enforcement notice does not represent a breach of planning control. The onus is on the appellant to demonstrate this on the balance of probability.

Development requiring planning permission

4. It is necessary to first consider whether the works alleged represent development requiring planning permission. Section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act) states that 'development' (which requires planning permission) means the carrying out of building, and other operations or the making of a material change in the use of land. Section

55(1A) clarifies that 'building operations' includes 'rebuilding'. Section 55(2) then excludes certain operations from the definition of development, including works for the maintenance, improvement or other alteration of any building - which only affect the interior or do not materially affect the external appearance of the building.

5. It is a matter of fact and degree whether works amount to rebuilding. Given the extent of the original building remaining, the works undertaken do not represent rebuilding. The works instead fall within the Section 55(2)(a) maintenance/improvement/alteration category. Consequently, in order to determine if they represent development, I must consider whether these have materially affected the external appearance of the building.

6. In my view they have. On the evidence before me, the works alleged have introduced a substantial amount of metal sheeting to the walls. They have also noticeably increased the height of the building, with the lower section increased in height by some 0.75m and the taller section by around 1.75m. The works are clearly visible in the landscape both from the nearby public footpath and also on approach along Higher Woodway Road.

7. Although I note comments that the partial replacement of block work walls with metal sheeting may give a false impression of the height increase, nonetheless I find that as a matter of fact and degree, the works have materially affected the external appearance of the building.

8. As such, the unauthorised works represent development requiring planning permission as they are not excluded by Section 55(2)(a).

Permitted development rights

9. Schedule 2, Part 6, Class A and Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) grant planning permission for works for the 'erection, extension or alteration of a building' provided that these are 'reasonably necessary for the purposes of agriculture within that unit' on units of 5 hectares or more.

10. This permitted development (PD) right is granted subject to various conditions and limitations. One such limitation is in paragraph A.1.(h) which applies where: any part of the development would be within 25 metres of a metalled part of a trunk road or classified road. Based on the proximity of the appeal development to Holcombe Down Road, it does not comply with this limitation. Thus it is not PD under Class A.

11. The Council makes reference to whether the works should in fact be considered under Schedule 2, Part 6, Class E of the GDPO which relates to forestry development. However, the same limitation related to proximity to the metalled part of a trunk/classified road would apply in that case also.

12. The matters alleged thus do constitute a breach of planning control and the appeal on ground (c) fails. I shall though correct the notice to refer to the works as an 'alteration' rather than as 'rebuilding' as a consequence of my finding above.

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

13. The main planning issues are whether the unauthorised works are acceptable in principle bearing in mind the location of the site within the undeveloped shoreline; and the effect on the character and appearance of that area.

Policy context

14. The appeal site is located on land designated as 'undeveloped coast' for the purposes of Policy EN2 of the Teignbridge Local Plan (2014) (LP). This policy indicates that development which would have a detrimental effect on the character of the undeveloped coast will not be permitted. New development is regarded as inappropriate in this location except in certain limited circumstances including where it has regard to the Shoreline Management Plan, and is required for the purposes of agriculture or forestry.

15. Policies S1, S1A and S2 of the LP similarly seek to ensure that new development responds to the characteristics of the area and maintains the character and appearance of affected landscapes.

Location on undeveloped shoreline

16. The appeal site was, I understand, formerly part of Woodlands Farm, and land within the appellant's ownership also includes an area of woodland to the east of the appeal site.

17. Evidence from the appellant refers to the unauthorised works as being necessary for agricultural and forestry activities. No information is though given as to any agricultural activities that might have necessitated the unauthorised works. As regards forestry, I have considered the comments from the appellant that the works enable him to accommodate the vehicle and equipment used for manoeuvring timber from the woodland, and avoid the need for processing off-site.

18. I have though very limited information regarding the nature and extent of the agricultural/forestry business in question. Consequently, I cannot properly determine whether the development would be reasonably necessary for the purposes of agriculture or forestry. As such, on the evidence before me, it has not been adequately demonstrated that the works were required for agriculture or forestry purposes.

19. On the first main issue I find then that the unauthorised works are not acceptable in principle bearing in mind the location of the site within the undeveloped shoreline. There is thus an in principle conflict with Policy EN2 of the LP.

Character and appearance

20. The immediate locality is characterised by a patchwork of fields and woodland cover. Only sporadic buildings are close to the site, including a small number of dwellings to the south and west. Large scale agricultural/forestry buildings are not a characterising feature of the immediately surrounding landscape. Clear views out to sea are available from nearby roads and overall, the sense is of an open and largely undeveloped coastal character.

21. As detailed above, the appeal site was part of Woodlands Farm and, aside from the appeal building, includes a modest number of small scale, low rise

buildings. Land at the appeal site slopes fairly dramatically from west to east. As such, the appeal building is in a significantly elevated position from public vantage points to the east.

22. The appeal building, prior to the unauthorised works, appeared to be a relatively low rise and discrete building within the landscape, even if in a dilapidated state. However, the use of metal sheeting on the walls particularly brings attention to the increase in height, and means that the building now draws the eye in public views. The resulting utilitarian design is fairly typical for a building of this sort. However, the unauthorised works have rendered the building a noticeably taller and visually intrusive building within the largely undeveloped landscape, which erodes the openness of the area. This is apparent in views from the nearby footpath and on approach from Higher Woodway Road.

23. The appellant comments that the building previously had a two storey element and that the works have thus not added a storey, and that the removal of block work has given a false impression of the height increase. Even so, the works have clearly materially increased the height of the building and introduced large areas of metal sheeting to the walls, which has resulted in visual harm. The building is at a lower level than Holcombe Down Road and is partly screened by roadside vegetation but is prominent in other views. For clarity, my assessment is based upon my own site inspection rather than on the photographs taken by the Council.

24. The appellant proposes that a condition could be imposed to require the metal sheeting to be painted a dark colour - to be agreed - in order to better absorb it into the landscape. However, in view of the height increase of the building and its prominent location, I do not consider that this would be enough to overcome the harm identified to the open character of the undeveloped coast, given that the altered building would remain clearly visible from the public vantage points identified.

25. The appellant refers to local and national policy supporting rural enterprise including paragraph 83 of the National Planning Policy Framework (2019) and LP Policy EC3. These seek to enable sustainable growth and expansion of all types of business in rural areas, along with the development and diversification of agricultural and other land-based rural businesses.

26. Related to this, the appellant states that a balance should be struck between design standards and the needs of a rural enterprise and explains that he is not in a position to construct a new building. As outlined above, few details are though given as to how the needs of the rural enterprise necessitate the unauthorised works, and as to how these support the rural business. Financial constraints referred to are also not substantiated.

27. Thus, I have found that the unauthorised works have had a detrimental effect on the character and appearance of the undeveloped shoreline. The detrimental effect would not be considerable, but new development in the undeveloped coast landscape is to be avoided in order to conserve the open character of the landscape, hence the Policy EN2 requirement to demonstrate the need for the building. Without such justification I consider that the development conflicts with Policies EN2, S1, S1A and S2 of the LP as outlined above.

Conclusion on Ground (a) and the DPA

28. The unauthorised works result in an in principle conflict with Policy EN2 and have harmed the character and appearance of the undeveloped coast. Although some benefits are suggested related to enabling rural enterprise, on the evidence before me, these do not outweigh the harm found. I find thus that there would be conflict with the development plan, read as a whole.

29. For the above reasons, and taking into account all of the matters raised, the appeal on ground (a) does not succeed and the DPA is refused.

The Appeal on Ground (f)

30. The appeal on this ground seeks to show that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control identified or, as the case may be, to remedy any injury to amenity.

31. The notice requires removal of the building – presumably reflecting the word 'rebuilding' in the allegation, albeit that I have found this term to be incorrect. In my view it is therefore seeking to restore the land to its previous condition and so the purpose of the notice is to remedy the breach of planning control.

32. The Council has acknowledged that requiring removal of the building may be excessive given that the building, in some form, was previously in existence and that the appellant was entitled to refurbish it to some degree. I agree with this approach and it is therefore necessary only to require building to be restored to its previous condition.

33. The Council has put forward some detailed stipulations in this regard. However, the appellant is best placed to know what works were carried out to the building, and thus how it can be restored to its former condition. As such, I shall vary the notice to simply require restoration to the previous condition.

34. The appellant's proposal to paint the metal sheeting was properly considered under ground (a) and I still found that planning permission should be refused. The authorised works represent a breach of planning control and planning permission has been withheld. To require the building to be restored to its previous condition is not therefore excessive.

35. No other lesser steps have been put forward by the appellant. The appeal on ground (f) therefore succeeds only to the extent detailed above.

The Appeal on Ground (g)

36. The appeal on ground (g) is that the period for compliance specified in the notice falls short of what is reasonable. The notice specifies a period of three months.

37. The appellant requests six months for compliance in order to enable the works to be undertaken carefully so as not to harm the structural integrity of the building, and also to allow for any delays due to inclement weather. These are, in my view, valid reasons to grant the additional time requested.

38. I therefore conclude that the appeal on ground (g) should succeed and I vary the notice accordingly.

Overall Conclusion

39. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

Formal Decision

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

- Deleting from paragraph 3 of the notice the words: "rebuilding and increase in height" and substituting "alteration including increase in height"

and varied by:

- Deleting from paragraph 5 of the notice the words: "Remove the unauthorised agricultural building in the approximate position hatched blue on the attached plan" and substituting: "Restore the building in the approximate position hatched blue on the attached plan to its previous condition before the unauthorised works were carried out."
- Deleting from paragraph 6 of the notice the words: "Three months" and substituting "Six months".

41. Subject to these corrections and variations the appeal is dismissed and 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.

V Bond
INSPECTOR