



Appeal Decisions

Hearing Held on 7 January 2020

Site visit made on 7 January 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal A: APP/C1435/C/18/3217857

Land at Woolpack Farm House, Bell Lane, Fletching, East Sussex

- 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 Gurney against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 15 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a studio/outbuilding ("the Building") in the approximate position shown coloured green on the attached plan.
 - The requirements of the notice are: (i) Demolish, dismantle and remove the Building from the Land, including the removal of any foundations thereof. (ii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the first requirement above.
 - 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 appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: APP/C1435/W/18/3218312

Woolpack Farm House, Bell Lane, Fletching TN22 3YB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs R Gurney against the decision of Wealden District Council.
 - The application Ref WD/2018/1484/FR, dated 9 July 2018, was refused by notice dated 1 October 2018.
 - The development proposed is erection of a studio/outbuilding.
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Summary of Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B

2. The appeal is allowed, and planning permission is granted subject to conditions set out below in the Formal Decision.

Preliminary Matters

3. The reasons for issuing the enforcement notice as well as for the refusal of planning permission cite policies from the draft Wealden Local Plan, 2018. However, at the Hearing the Council advised¹ that following the Stage 1 examination of the submission version it had been concluded that the Plan cannot be taken forward to adoption because it failed one of the requirements for legal compliance. The Council therefore advised that the Plan was to be withdrawn and that no further consideration should be given to these policies for the purposes of this appeal.
4. It was agreed between the parties at the Hearing that Policy EN1 of the Wealden Local Plan 1998 (the LP), which relates to sustainable development, was of lesser relevance to this appeal. It was further agreed that Policies SPO2 and WCS12 of the Wealden District Core Strategy Local Plan (the CS), which relate to the historic environment and biodiversity, were not of direct relevance to this appeal. These policies had also not featured in the signed Statement of Common Ground. I have no reason to disagree and accordingly have not considered these policies further.
5. There was evidence that the outbuilding had been used by the appellants for a period as a business relating to hat hire. It was however confirmed at the Hearing that the business had relocated and so I have no need to consider this matter in any further detail.
6. It was confirmed by the parties at the Hearing that the refusal of planning permission related to exactly the same development, namely the outbuilding, that was shortly thereafter the subject of the enforcement notice. I will consequently consider the planning merits of Appeals A and B together below.

Appeals A and B: The ground (a) appeal and refusal of planning permission

Main Issues

7. The main issues are:
 - i. the location of the outbuilding; and,
 - ii. the effect of the outbuilding on the character and appearance of the area, having particular regard to the High Weald Area of Outstanding Natural Beauty (the AONB).

Reasons

8. The site is situated in rural surroundings outside of any settlement boundary. It is within the AONB. The area consists of large parcels of woodland and irregular shaped fields interspersed with sporadic residential and agricultural development.
9. The development that has been refused planning permission and subsequently enforced against relates to an outbuilding finished in timber weatherboarding under a tiled roof. It has a footprint of approximately 50sqm and height to ridge of 4.2m. Internally it consists of a single room and contains no cooking or bathing facilities.

¹ Letter to Wealden District Council (Wealden Local Plan Examination) dated 20 December 2019

10. The site itself is gently sloping with some open views to surrounding countryside. It is approached via a private track which consists of an older large property, a former farm house. In close proximity of the outbuilding is a full-sized tennis court, with associated means of enclosure, as well as a substantial pergola structure with outside seating area.

Location

11. As there is no enforcement action or corresponding refusal of planning permission pertaining to use or curtilage before me, I am not formally determining the use or status of the land concerned. Rather, I am looking to establish whether the outbuilding complies with the development plan and in particular Policy DC19 of the LP which requires for such outbuildings to be located within a curtilage.
12. A large part of the Hearing centred on the location of the outbuilding and whether it was within the curtilage of the dwelling. To summarise the position, the appellant strongly contends that the land has always been part of the curtilage of the farm house and provided some evidence to support this view. The Council however does not consider this to be the case, although it had no specific evidence to counter the appellant's position. Rather, a smaller area of land was identified by the Council as being curtilage; being confined to an area north of the tennis court where part of a leylandii hedge is present.
13. The land concerned is in residential use and contains a tennis court, two small outbuildings, the outbuilding enforced against and a substantial pergola structure alongside. The land is largely bounded by domestic hedgerow planting, such as laurel, as opposed native species. The outbuilding is situated on the footprint of one of two former buildings at the site. These have been described as chicken sheds and there is a letter from a former owner of over three decades² attesting to their use for domestic purposes. This use continued through the appellants occupation of the site from 2002 until 2014, when they were demolished to make-way for the outbuilding.
14. I was able to establish at the Hearing that the Council was not considering enforcement action in respect of any change of use or indeed the substantial pergola structure alongside the outbuilding. This was on the basis that it is currently satisfied that a residential use of the land would be immune from enforcement action, although it was highlighted that there is no certificate of lawfulness and so its position could change if contrary evidence came to light. Whilst it was satisfied about the residential use of the land, it was highlighted that it did not automatically follow that the land was then curtilage³. It is the case that curtilage defines an area of land in relation to a building and not a use of land.
15. The Council also suggested that the land could have been in mixed use, given the chicken sheds could have been built for agricultural purposes, or, had transitioned between different uses over many years, given the age and origins of the farm. This was however only a hypothesis rather than based on specific evidential facts.
16. There is no all-encompassing, authoritative definition of the term curtilage. Generally, to fall within the curtilage of a building, it is enough that land serves

² Letter from Robert Mann dated 5 November 2018

³ Adrian Burford v SSCLG and Test Valley BC [2017] EWHC 1493 (Admin)

the purpose of a building in some reasonably necessary or useful manner. It is usually confined to a small area about a building, but at the Hearing the Council commented that it need not necessarily be small. I agree that expressing the view that the curtilage of a building must always be small, or the notion of smallness is inherent in the expression, is not necessarily correct. Whether something falls within a curtilage is a question of fact and degree.

17. In my view, the land concerned is of a commensurate scale to this large dwelling. It is known that the ownership past and present of the site has been the same. The use and function, past and present, is inextricably linked to the dwelling and whilst the chicken shed may have originally been constructed as an agricultural building, although this is not expressly known, there is nothing to say that this was not constructed within the curtilage of the farm house, although it could perhaps point to an intervening use.
18. Notwithstanding this, based upon the available evidence, including historic mapping and the use of the land concerned by the appellants and the previous occupier, I am inclined for the purposes of this appeal to accept the view that the land concerned is within the curtilage of the dwelling. Compliance with Policy DC19 of the LP in this regard therefore follows. This was also reaffirmed by my site visit where I observed the physical layout of the site and its attachment to the farm house. I will however return to this matter later in my decision.

Character and appearance

19. The site is within National Character Area 122 which embraces the High Weald AONB. It is also within the Upper Ouse Valley character area. There is a corresponding AONB Management Plan. The area is thus defined as being a largely unspoilt and tranquil rural landscape. The farmstead at Woolpack Farm has been in existence for many years and whilst some of its building stock is more contemporary, its overall nature contributes to the agrarian character of the area.
20. The outbuilding replaced two former buildings in this location and is approximately the size of one of these. The extent and pattern of fenestration appears to me to be modest and whilst domestic in nature is constructed and finished in natural timber. The roof pitch might be slightly shallower than a traditional building, but not excessively so, and the use of materials results in a building of traditional form and appearance which promotes local distinctiveness.
21. In respect of scale, the outbuilding did not have the appearance of a substantial domestic outbuilding given its subtle use of materials and size in relation to the farm house, which is a large property said by the appellant to be approximately 300 sqm in floor-space. It is therefore subordinate to it. For the same reasons it also does not have the appearance of a dwelling or resemble a "Colt" bungalow.
22. Whilst I appreciate the Council's concern that the outbuilding results in domestic encroachment and introduces residential activity into this part of the site, the reality is that there is already a tennis court and substantial pergola structure here. I therefore do not accept that the presence of the outbuilding results in activity that changes the character of the area.

23. There are filtered views of the top of the outbuilding from the lane, where parts of it can be glimpsed through the hedgerow. It is however not prominent or conspicuous. There are views of the outbuilding from the west, across a field owned by the appellant's, but it was accepted at the Hearing that these views do not extend as far as the Fletching 3A footpath that lies beyond. There is a distant view from the Wilmshurst footpath to the north-west, but this was said to not be a nuisance and I do not consider that, given the distance involved, the outbuilding could be regarded as intrusive in the wider landscape.
24. The outbuilding is therefore of an appropriate size and character relative to the dwelling. Whilst it is located some distance from the dwelling, it does not present as an isolated or visually jarring building in the landscape. It is of high-quality design and materials and consequently conserves the landscape and scenic beauty of the AONB.
25. I conclude that the outbuilding is not harmful to the character and appearance of the area, having particular regard to the High Weald Area of Outstanding Natural Beauty. It therefore accords with saved Policies GD2, EN6 and EN27 of the LP and Policies SPO13 and WCS14 of the CS. These policies, amongst other things, require development to conserve or enhance the natural beauty and character of the landscape, promote local distinctiveness, encourage development of high quality and to accord with the objectives of sustainable development. For the same reasons it accords with the Wealden Design Guide 2008 Supplementary Planning Document and the achieving sustainable development, achieving well-designed places and conserving and enhancing the natural environment objectives of the National Planning Policy Framework.

Other considerations

26. Even if I am wrong and the land is not within the curtilage of the dwelling, it is accepted by the Council that the land is in lawful residential use and it contains substantial domestic accoutrements in the form of the tennis court and pergola. Furthermore, the outbuilding replaced a building in the same location and of the same footprint and similar height. In my view, there was already a significant node of residential activity as well as built form in this location. These are matters to which I attach significant weight. Therefore, even if there was a conflict with Policy DC19 of the LP in this regard, I consider these are material planning considerations which outweigh any conflict with this aspect of that policy.
27. Moreover, I have found that the outbuilding is not intrusive in the landscape and is of an appropriate size and character relative to the dwelling and so accords with the other criteria of that policy. I appreciate the Council is concerned about the precedent of outbuildings being located outside of curtilages, however, even if that were to be the case, there are very specific circumstances that have brought about my findings.

Planning conditions

28. Two planning conditions had been agreed between the parties prior to the Hearing. In light of my findings I consider it necessary for a condition to restrict the use of the outbuilding for purposes ancillary to the residential use of Woolpack Farm House. This also addresses concerns about a future independent or business use being made of the outbuilding. Given the outbuilding has already been completed, I do not find it necessary or relevant

for a plans condition to be imposed. A landscaping condition was also proposed by the appellant, but I have not found harm to character and appearance that requires amelioration.

29. At the Hearing the Council also suggested a condition to restrict external lighting being affixed to the building. The appellants advised that there was already some lighting on the building but there was no intention to add to this. The parties then agreed that a condition prohibiting any further lighting would be reasonable. I agree that such a condition is necessary in the interests of protecting the character and appearance of the area. However, in order to formally establish the current extent of lighting it will be necessary for details of that to be provided to the Council, and hence nothing thereafter shall be affixed to the outbuilding.

Overall Conclusion

30. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered. For the same reasons I conclude that Appeal B should be allowed.

Formal Decisions

Appeal A

31. The appeal 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 studio/outbuilding on land at Woolpack Farm House, Bell Lane, Fletching, East Sussex referred to in the notice, subject to the following conditions:
- 1) The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of Woolpack Farm House, Bell Lane, Fletching TN22 3YB. In particular, the outbuilding shall at no time be severed and occupied as an independent residential dwelling.
 - 2) Within 1 month of the date of this decision details of the external lighting that was affixed to the outbuilding on the date of this decision shall be submitted to the Council. No additional external lighting shall be affixed to the outbuilding without the prior written consent of the Local Planning Authority.

Appeal B

32. The appeal is allowed and planning permission is granted for erection of a studio/outbuilding at Woolpack Farm House, Bell Lane, Fletching TN22 3YB in accordance with the terms of the application, Ref WD/2018/1484/FR, dated 9 July 2018, subject to the following conditions:
- 1) The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of Woolpack Farm House, Bell Lane, Fletching TN22 3YB. In particular, the outbuilding shall at no time be severed and occupied as an independent residential dwelling.
 - 2) Within 1 month of the date of this decision details of the external lighting that was affixed to the outbuilding on the date of this decision shall be submitted to the Council. No additional external lighting shall be affixed to

the outbuilding without the prior written consent of the Local Planning Authority.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Judith Norris	Agent for the appellant, The Rural Planning Practice
Abi Gurney	Appellant
Richard Gurney	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Buckingham	Planning Officer, Wealden District Council
Doug Moss	Development Management, Wealden District Council
Niall Mileman	Enforcement Officer, Wealden District Council

INTERESTED PERSONS:

S. Amery	Local resident
S. Radmore	Local resident

DOCUMENTS

- 1 Council's letters of notification dated 4 November 2019 and 25 November 2019 and list of persons notified
- 2 Letter to Wealden District Council (Wealden Local Plan Examination) dated 20 December 2019
- 3 Rights of Way in East Sussex map provided on behalf of the appellant
- 4 Old-maps.co.uk map provided on behalf of the appellant