



Appeal Decision

Site visit made on 16 March 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2020

Appeal Ref: APP/C1760/C/18/3215951

Land at Testwood Trout Farm, Mill Lane, Longparish, Hampshire SP11 6PS

- 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 Nigel Jackson against an enforcement notice issued by Test Valley Borough Council.
 - The enforcement notice was issued on 10 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of a garage building as an extension to an existing farm building in the position shown approximately by a blue cross on the plan attached to the notice.
 - The requirements of the notice are: a) To demolish the said garage building to ground level, and; b) Remove from the land all materials and waste resulting from compliance with step (a) above.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) 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.
 - This decision supersedes that issued on 13 June 2019. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld.

Procedural Matter

2. An appeal, brought under section 289 of the 1990 Act, challenged the Decision of the First Inspector issued on 13 June 2019. Those proceedings only appealed that aspect of the Decision in relation to the appellant's appeal before the First Inspector under section 174(2)(f) of the Act. The appellant did not appeal the Decision in relation to the First Inspector's findings under section 174(2)(c)-(d) and therefore they still stand.

The ground (f) appeal

3. The garage building enforced against relates to a small extension to a farm building. It is finished in matching materials. It is accessed via a door to the front and consists of a single small room. The roof-space is accessed internally via the first floor of the original farm building.
4. The requirements of the enforcement notice require the garage building to be demolished and removed. The purpose of the enforcement notice is clearly to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps

required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.

5. The appellant suggests that the building has or could be altered further so that it would result in a development consistent with that which could be erected as permitted development by virtue of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). However, permission granted by the GPDO cannot be gained retrospectively by carrying out subsequent alterations to an existing development. A planning permission granted by the GPDO is 'crystallised' when the development begins or, in the case of prior approval development, when the Council has stated that prior approval is not required, or it fails to make a determination within the specified period. As the development constituting the matters alleged in the enforcement notice were not undertaken in accordance with any part of the GPDO, then no planning permission has been granted by the GPDO. The whole development is unlawful, not just any element considered to be in excess of what may have been permitted development.
6. Accordingly, the making of any such modifications as carried out or suggested, would not remedy the breach of planning control which occurred because the appellant constructed something that does not have planning permission. The modifications would not therefore remedy the breach. The requirement of the notice is not therefore excessive to achieve the purpose of the notice.

The fall-back position

7. The appellant suggests that an extension permitted under Part 6, Class A of the GPDO represents a realistic fall-back. If such a valid fall-back position exists, then it might be argued that a requirement to remove the extension would not achieve anything. However, no confirmation is before me that either the development that now exists, or with further suggested alterations, would be akin to development granted planning permission by the GPDO. Notwithstanding this, like the First Inspector, I have considered the likelihood of an extension that would benefit from permitted development being built should the enforcement notice then be complied with. It would appear that the unit is now of a size that would bring it into the threshold of Part 6 of the GPDO.
8. The principle of the permitted development right granted by the GPDO is only available to developments '*which are reasonably necessary for the purposes of agriculture within that unit.*'
9. According to the appellant, the garage building is used for covered storage of equipment including aerators, being an insurance requirement, and separate storage for large fish nets, being for reasons of biosecurity. During my site visit it contained some equipment which appeared to be the same or similar to that described, as well as a lawnmower. The roof-space appeared to be used for general storage.
10. Whilst I accept the reasons why the garage is used as currently described, it was originally used for the storage of a tractor which trimmed the grass adjacent to the fishponds. That raises the question as to where the aerators and fish nets, or indeed any such equivalent items or equipment, were stored when the garage was used to store a tractor, or indeed prior to the erection of the garage.

11. I have very limited evidence concerning this matter which casts considerable doubt in my mind that there would not be another suitable solution for such items or equipment to be stored at the site. The size of the garage currently fulfilling this requirement is also very small.
12. During my site visit I inspected inside all the buildings, aside from the dwelling. There are accordingly a range of different agricultural buildings at the site. All of these, aside from one which I shall address next in my decision, were in active use. It has however not been demonstrated on the evidence before me, including from my site visit, why it could not be suitable for the small area required for such items and equipment to be stored to take place within one of these existing buildings; even if that meant creating a small room or pod within an existing building or making other modest layout or storage changes.
13. Furthermore, the Council has brought to my attention a recently dismissed appeal¹ relating to a planning application for the change of use of a redundant agricultural building to tourist self-catering accommodation. This building had been used, or was intended for use, for secondary fish processing. Either way, it is now a redundant agricultural building. The Council's point being that until this building is used for agricultural purposes, no further building, including the garage before me, could be reasonably required for the purposes of agriculture.
14. The appellant says that this building cannot be put to the same use as the garage building for reasons of biosecurity. This is principally because of the proximity of this building to the primary fish processing building. However, whilst these buildings are linked by a small glazed structure with pedestrian doors, they are otherwise two separate buildings that each have their own respective external accesses as well.
15. The overall evidence, which includes biosecurity measures and reference to environmental health legislation, does not demonstrate on the balance of probabilities that this building could not be suitable for the storage of the said items and equipment. Even if I am wrong, there is very little evidence to then suggest why differing items or equipment could not be stored in this building, thus making suitable provision elsewhere within the various buildings on this agricultural unit.
16. On this basis, I do not consider, on the balance of probabilities, that the development would be reasonably necessary for the purposes of agriculture within the unit. The relevant part of the GPDO would not therefore apply.
17. Moreover, the works undertaken to the extension by the appellant since the issue of the enforcement notice only resulted in the creation of a veranda as based on the evidence before me the roof of the garage building remained unaltered. Listed within the interpretations of the GPDO it states: "*cubic content*" means the cubic content of a structure or building measured externally. In my view, even an open sided structure, such as for example a pergola, would have a cubic content that would be measured the same as if it had solid walls, given it would still be part of the building. Accordingly, opening part of the garage building, but with the roof remaining above as I observed during my site visit, would not reduce its cubic content for the purposes of the GPDO. It is therefore not ground area outside of the building. The garage

¹ APP/C1760/W/19/3230099

building therefore still amounts to a significant extension for the purposes of the GPDO.

18. A significant extension is only permitted by Class A of the GPDO conditional that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. That has not occurred. Such prior approval requires a consideration of planning merits which it is not open to me to do in the absence of an appeal on ground (a).
19. In any event, and notwithstanding all of my findings above, I do not consider it would be possible to draft any requirement so that it tells the appellant precisely what he has to do in order to modify the building. There would be a risk of granting planning permission for something different to that permitted by the GPDO, via s173(11) of the Act, particularly as some of the conditions are on-going. Furthermore, it would leave all parties uncertain of their position in any future proceedings.

Conclusion

20. No lesser steps have been suggested that would remedy the breach of planning control. Consequently, the appeal on ground (f) fails as the required steps do not exceed what is necessary to remedy the breach of planning control.

Overall conclusion

21. For the reasons given above I conclude that the appeal should not succeed.

Formal decision

22. The appeal is dismissed and the enforcement notice upheld.

Paul T Hocking

INSPECTOR