



Appeal Decision

Site visit made on 9 June 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/P2365/C/19/3240890

Land at Old Oak Barn, Sanderson Lane, Hilddale

- 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 Mrs Susan Sutton against an enforcement notice issued by West Lancashire Borough Council.
 - The enforcement notice was issued on 25 September 2019.
 - The breach of planning control as alleged in the notice is the erection of a building.
 - The requirements of the notice are:
 1. Dismantle the building
 2. Remove all the materials resultant from step 1 from the site.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Ground (c)

2. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant.
3. Section 55(1) of the Town and Country Planning Act 1990 (the Act) defines development as: the carrying out of building, engineering, mining or other operations in, on, over, or under land or the making of a material change in the use of any buildings or other land. A building is defined by s336 of the Act as: any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
4. Established case law has identified three primary factors that should be considered in determining what constitutes a building; (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive and any judgement will be a matter of fact and degree based upon the specific circumstances of the case. This was endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102*.
5. The appellant contends that, due to the lightweight construction of the summerhouse, its lack of permanent attachment to the ground and that it

- could easily be dismantled, it is not a building and therefore is not a breach of planning control.
6. The summerhouse is of a size that is typical of other garden buildings such as timber constructed summerhouses or large garden sheds. Indeed, it has the appearance of a summerhouse building.
 7. During my site visit, I noted that it was not attached to the ground by any means although each of the four corner feet had holes which would enable them to be screwed/bolted to the ground. The appellant confirms that it is affixed to the ground during the winter months to protect it from strong winds.
 8. The materials appear lightweight and I acknowledge that it would not be overly complex to dismantle it with the use of basic tools and a moderate degree of competence. However, despite its lightweight construction and lack of attachment to the ground for parts of the year, it is evidently intended to be retained permanently in situ. This is supported by the appellant's confirmation that it has been in situ since 2017.
 9. Overall, due to its size and degree of permanence, I consider that the summerhouse is a building and amounts to development for the purposes of section 55 of the Act. As such, planning permission would be required for the appeal building. In the absence of any planning permission it is clear that a breach has occurred and the appeal on ground (c) fails.

Ground (a) and the Deemed Planning Application

Main Issues

10. The main issues are the effect of the development on the character and appearance of the setting of the grade II listed building, 'Barn at Sanderson Farmhouse'; and, whether the proposal is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

Setting of the Listed Building

11. The appeal building lies within the garden area of Old Oak Barn, which forms part of the grade II listed building, Barn at Sanderson Farmhouse. The listed building comprises a traditional stone and slate agricultural building that has been converted into residential properties, set within a group of similar buildings, including the farmhouse itself, that have a significant historical agricultural context. A prominent feature of the listed building is its asymmetrical pitched roof, with the larger roof plane facing the lane forming a dominant feature within the streetscene.
12. The appeal building comprises a square shaped, single-storey building. It is constructed of a metal frame with mesh screen panels for the walls and polycarbonate panels for the roof, which gives it a high degree of visual permeability and a lightweight appearance.
13. A high hedge and stone wall form the boundary with the adjacent lane and screen the lower portion of the building from public view, with only the roof being readily visible rising above the hedge and wall. Nevertheless, as the building sits closer to the lane than the listed building, it partly obscures the listed building in views from the lane. In particular, it visually disrupts the

- rhythm of the low eaves of the roof, which assist in framing the large roof plane, therefore diminishing its dominant appearance and overall significance.
14. Furthermore, the use of modern materials such as the metal framing, mesh screens and polycarbonate panels results in the building having a contemporary, domesticated appearance that fails to reflect the traditional, historical agricultural context of the listed building and the wider group of similar buildings.
 15. Consequently, as a result of its design and siting, the appeal building detracts from the setting of the listed building.
 16. Paragraph 196 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use. The appeal building causes less than substantial harm to the significance of the setting of the listed building.
 17. I acknowledge that the building allows the appellant and her grandson, who both have specific medical conditions, to utilise the garden space without fear of compounding their conditions. Whilst this is a material consideration to which I attribute significant weight, I do not consider that it amounts to a public benefit that outweighs the harm to the setting of the listed building, the significance of which is attributed great weight¹.
 18. I therefore conclude that the proposal would significantly harm the setting and also the significance of the listed building as a heritage asset. As such, it is contrary to Policies EN4 and GN3 of the West Lancashire Borough Council Local Plan 2012-2027 Development Plan Document (DPD), which, amongst other matters, seek to ensure that development has regard to historic character and preserves and enhances heritage assets. Furthermore, it would fail to accord with the heritage objectives of the Framework.

Green Belt

19. Paragraph 145 of the Framework identifies a number of exceptions to the general presumption against the erection of buildings in the Green Belt. These include 'the extension or alteration of a building provided that it does not result in disproportionate additions above the size of the original building'.
20. The Council confirm that the relatively small volume of the building in comparison to the host dwelling would comply with the volume guidelines set out in the Council's Supplementary Planning Document (Development in the Green Belt). It contends that it is the location of the building within an area of the garden to the front of the dwelling that was once free from development that results in it being disproportionate to the original dwelling.
21. However, I do not agree with the Council's interpretation of what a disproportionate addition is for the purpose of this exception in paragraph 145. The exception refers to the 'size of the original building'. Therefore, the development should be considered on the basis of its size in comparison to the original building and not on its location. In this instance the building has a relatively small volume and footprint in comparison to the original building and

¹ Paragraph 193 of the Framework

therefore, irrespective of its location to the front of the property, I consider that it is not disproportionate to its size.

22. Accordingly, the proposal would not be inappropriate development in the Green Belt. As such, it would comply with GN1 of the DPD, which states that development within the Green Belt will be considered against national policy. It would accord with the Green Belt objectives of the Framework.

Other Matters

23. I have had regard to the appellant's contention that she seeks a personal permission for the appeal building, based on her and her grandson's personal circumstances. Whilst these are important material considerations, I do not consider that they attract sufficient weight to justify the harm the appeal building has on the setting of the listed building. Were I to impose a condition limiting the building to only be used by the appellant and her grandson, there is no indication of how long the building would remain in situ, and consequently how long the unacceptable harm to the setting of the listed building would continue. Therefore, I am not satisfied that there are material considerations that justify allowing the development contrary to the development plan.

Conclusion on ground (a)

24. Whilst the appeal building does not harm the Green Belt, it does cause unacceptable harm on the setting of the listed building. Consequently, having regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Conclusion

25. For the reasons given above, and having regard to all the other matters raised, I conclude that the appeal should be dismissed.

Alexander Walker

INSPECTOR