
Appeal Decision

Site visit made on 15 June 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Appeal A Ref: APP/Y3425/C/19/3238553

Appeal B Ref: APP/Y3425/C/19/3241487

Land at The Stables, Four Lanes End, Garshall Green, Milwich

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Michael Mellor and Appeal B is made by Esther Titterton against an enforcement notice issued by Stafford Borough Council.
 - The enforcement notice was issued on 25 September 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an agricultural barn, in the approximate position marked with a black cross on the attached plan.
 - The requirements of the notice are
 - (i) Remove the agricultural barn.
 - (ii) Remove from the land all building materials and rubble arising from compliance with the first requirement above and restore the land to its former condition before the breach took place.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. The appellants ticked boxes indicating appeals under grounds (c) and (f) on the appeal forms. However, the information provided by the appellants related to grounds (c) and (g) as the appellants referred to the period for compliance which is ground (g) rather than ground (f). Although the appellants did not indicate in their appeal form that they wished to pursue an appeal under ground (g), I have addressed all of the points raised by the appellants under grounds (c) and (g). I do not consider that proceeding on this basis has caused injustice to any party.
3. There is no ground (a) appeal before me which would include an application for planning permission and the planning merits of the barn including size or design are therefore not matters before me for consideration.

The appeal under ground (c)

4. To succeed on a ground (c) appeal, the appellants would have to show on a balance of probabilities that the matters alleged in the notice, if they occurred, did not constitute a breach of planning control.

5. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in Section 55 of the Act and includes a building or structure. Section 57 of the Act then states that planning permission is required for the carrying out of development of land subject to listed exceptions. There is no dispute that a structure namely a barn has been erected and development has therefore occurred for which planning permission is required.
6. The appellants argue that "an agricultural barn should be allowed if the applicant is farming more than 5 hectares according to the permitted development rights for agriculture and forestry". The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 6 sets out the permitted development rights in connection with agricultural buildings which are reasonably necessary for the purposes of agriculture within that unit.
7. Schedule 2, Part 6 Class A sets out the requirements, restrictions, exclusions and conditions associated with the permitted development rights on units of 5 hectares or more. Sub-paragraph A.2 provides for conditions to be met before development is permitted by Class A. Sub paragraph A.2(2)(i) states that the developer shall, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the Council will be required as to the siting, design and external appearance of the building.... (the prior approval procedure).
8. However, as the appellants did not follow the prior approval procedure prior to beginning the development, they cannot rely upon the permitted development rights set out in Schedule 2, Part 6, Class A.
9. The parties are not in agreement with regard to the size of any agricultural unit as the Council believes that the unit is above 0.4 and less than 5 hectares which would take it outside Schedule 2, Part 6 Class A which relates only to units of 5 hectares or more. Schedule 2, Part 6, Class B provides for permitted development rights for smaller units. However, Class B is also subject to prior approval procedure and relates primarily to extensions and alterations to buildings. Nevertheless, the size of any unit or any further assessment of whether the development falls within Part 6 does not effect my findings as the absence of any prior approval procedure excludes the development from falling within Part 6 in any event.
10. To succeed on a ground (c) appeal, the appellant would have to show that the matters alleged in the notice if they occurred did not constitute a breach of planning control. However, development has occurred which requires planning permission. There is no express planning permission for the development and the permitted development rights referred to by the appellants do not apply. The development does therefore constitute a breach of planning control. The ground(c) appeal must therefore fail.

The appeal under ground (g)

11. An appeal under ground (g) relates to the period allowed for compliance with the notice. The appellants state in the appeal form that the " the barn is in use and could not possibly be removed in the time specified" although no further details are provided. The appellants have in their statement referred to farming on other land including Yew Tree Farm where there are likely to be farm

buildings. In the absence of any further information, I do consider that the one month compliance period is reasonable. However, the Council does have powers under Section 173A of the Act to extend the compliance period should it be satisfied that there were justifiable reasons to do so. The appeal under ground (g) therefore fails.

Other Matters

12. The appellants have referred to a previous Tuberculosis outbreak and advice from trading standards and vets to erect a suitable cattle shed and to have a shelter and a dry lying area. No details are provided as to when the outbreak occurred, where on the land it occurred and whether the advice related to a temporary or permanent structure. Nevertheless, irrespective of any other legislative requirements, the appellants still have to comply with the relevant planning legislation.

Conclusion

13. For the reasons given, the enforcement notice is upheld and the appeal should be dismissed.

E. Griffin

INSPECTOR