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## Appeal Decisions

Site visit made on 27 July 2020

**by K R Saward Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 August 2020**

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### **Rosery Cottage Barn, Lodge Road, Great Bealings, Woodbridge IP13 6NW**

#### **Appeal A: APP/X3540/C/19/3237075**

#### **Appeal B: APP/X3540/C/19/3237076**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mark Aldridge (Appeal A) and Mrs Marina Stubinski (Appeal B) against an enforcement notice issued by East Suffolk Council.
- The enforcement notice was issued on 16 August 2019.
- The breach of planning control as alleged in the notice is without planning permission the change of use of an agricultural building to a use for non agricultural storage and a domestic use introducing the capability of a potential residential accommodation use. In addition the development has not been built in accordance with the plans submitted under DC/15/1079/AGO.
- The requirements of the notice are:
  1. Permanently cease using the building for domestic storage.
  2. Permanently remove all items from the building associated with a residential use.
  3. Permanently remove all items not directly associated with agriculture.
  4. Change the appearance of the building to that approved under DC/15/1079/AGO in accordance with Plans 1872 DE 20-01 Rev A and 1872 DE 20-02 Rev A as approved.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(b),(c)&(f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- Appeal B is proceeding on the grounds set out in section 174(2)(b),(c)&(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.

**Summary of Decisions: No further action is taken.**

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#### **Appeal C: APP/X3540/W/20/3246581**

- 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 Mark Aldridge against the decision of East Suffolk Council.
- The application Ref: DC/19/4066/FUL dated 15 October 2019, was refused by notice dated 3 December 2019.
- The development is an application for retrospective planning permission for the erection of open-sided lean-to, insertion of 14x No. rooflights and 2x No. woodburner flues.

**Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.**

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## **Applications for costs**

1. Applications for costs were made by the appellants in both appeals against East Suffolk Council. The applications are the subject of separate Decisions.

## **Procedural Matters**

2. Appellant B's surname is 'Stubinski' and not 'Stublinski' as it appears in the Appeal Form. I have corrected the spelling mistake in the heading above.
3. The development for which permission is sought in Appeal C has already been carried out. Section 73A of the Act allows permission to be granted for development carried out before the date of the application. The development as built appears to accord with the submitted plans. No differences were identified during my site visit.
4. East Suffolk Council was created on 1 April 2019 covering the former districts of Suffolk Coastal and Waveney. The appeal site lies within the former district of Suffolk Coastal. By virtue of the Local Government (Boundary Changes) Regulations 2018, planning policies for Suffolk Coastal District Council continue to apply until such time as they are replaced.
5. The Council's new Local Plan covering the former Suffolk Coastal area has been subject to examination on behalf of the Secretary of State and consultation on the main modifications has recently expired. Given its advanced stage of preparation, significant weight can be attached to the emerging plan pursuant to Paragraph 48 of the National Planning Policy Framework ('the Framework').

## **Matters relating to the enforcement notice**

6. It was confirmed at my site visit that there is an error in one of the plan numbers cited in the fourth requirement of paragraph 5. It should refer to Plan No. 1872 DE 10-02 Rev A and not 1872 DE 20-02 Rev A.
7. The appellants submit that the enforcement notice is a nullity for failure to state with clarity what matters are considered to constitute a breach of planning control. It is a well-established and well known principle of the *Miller-Mead*<sup>1</sup> judgment that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it. It is also important that the allegation is accurate because the deemed planning application arising under the ground (a) appeal is derived from its terms.
8. Following a prior notification made under the Town and Country Planning (Permitted Development) Order 1995 ('GPDO'), the Council confirmed on 10 April 2015 that a barn could be built at the appeal site as permitted development within the provisions of Article 3 and Schedule 2, Part 6, Class A. The enforcement notice concerns the barn.
9. The first part of the allegation refers to a change of use of an agricultural building to a use for non-agricultural storage. To be an act of development it must be a 'material' change of use. The omission of this one word is not fatal.
10. The allegation proceeds to attack 'a domestic use introducing the capability of a potential residential accommodation use'. Unless and until a material change of use takes place there is no breach of planning control against which the local

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<sup>1</sup> *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 4592

planning authority can issue a notice under s172 of the Act. The possibility of a residential use taking place does not constitute a breach. The wording suggests that a 'domestic use' has occurred but 'domestic' is not a use of land that can be interpreted in any meaningful way and the words that follow indicate there is not yet a residential use. As the non-agricultural storage and domestic uses are separated out in the allegation it suggests they are somehow different. Added to this, there is a requirement to permanently cease the use of the building for domestic storage whereas the language used in the allegation is for 'non-agricultural storage'. The allegation and requirements should match to avoid uncertainty.

11. In its Appeal Statement the Council suggests that the building could be used for residential purposes in its current form due to the level of associated domestic paraphernalia. That reinforces the notice is pre-empting a residential use which might never occur.
12. An additional breach is mentioned in the last sentence of the allegation. It is framed as development not built in accordance with the approved plans. Whilst described in this way, s171A of the 1990 Act expresses a breach of planning control as either- (a) carrying out development without the required planning permission, or (b) failing to comply with any condition or limitation subject to which planning permission has been granted. The notice has been issued solely under (a).
13. I note that the reasons for issue of the notice refer to a contravention of Condition A.2(5) of the GPDO 'as the use of part of the building has ceased within 10 years'. This is not mentioned in the allegation, only the non-compliance with the plans without further elaboration apart from mention of a kitchen and bathroom in the reasons. If the breach arises from a GPDO condition then the notice would be expected to allege a breach of condition (unless it is a breach of a pre-commencement condition).
14. If the Council intended to allege a breach of condition then the notice should have said so and been issued under s171A(b) rather than s171A(a). Furthermore, the nature of the departure and condition concerned should have been made plain. Merely alleging a material change of use instead of a breach of condition is in itself correctable but, as drafted, the reader has no means of knowing from the notice how or why the Council considers there is a breach of planning control. It is wholly uncertain what is intended on the face of the notice with regard to how the development has been built or laid out and what must be done to remedy it. No assistance is provided in the reasons for issuing the notice which refer solely to use of the building.
15. The Council suggests the appellants knew what physical elements of the appeal building were being attacked because of the appeal on ground (a) and the failed retrospective application for operational development which is subject to Appeal C. The appellants accept that the barn does not strictly accord with the details submitted with the prior notification. On ground (a) submissions are made for the retention of the lean-to, the insertion of roof-lights and woodburner flues which are also subject to Appeal C. However, in the Council's Appeal Statement reference is made to the Officer's report identifying other 'unlawful elements' such as an oil tank, bi-fold doors, additional first-floor and hardstanding. It is unclear if those elements were intended to be encompassed within the notice. They have not been addressed by the appellants. The reasons for issue of the

notice do not specify the works with which the Council is concerned. Even if the appellants could guess what was meant, that does not obviate the need for the notice to clearly identify those matters which are claimed to be in breach of planning control. As it is, I cannot correct the notice to change it to a breach of condition and add in items to the allegation which the appellants have not had chance to address and would clearly be prejudiced.

16. Therefore, the notice is defective, but there is a distinction between a notice which is null and one which is invalid. Where a notice is a nullity, in law, it does not exist and there is nothing to quash. In cases of invalidity I have wide powers of correction under s176 but only if no injustice would arise to either party. If a notice is invalid because of some fundamental misunderstanding or illogicality and cannot be corrected without causing injustice it must be quashed.
17. The appellants draw my attention to the High Court judgment in *Oates v SSCLG and Canterbury City Council* [2017] EWHC 2716 (Admin) where His Honour Judge Waksman QC distilled the relevant principles on the distinction between nullity/invalidity. If an enforcement notice does not comply with the statutory requirements in s173(1) or (3) and (4), then it is a nullity and cannot be saved by the curative powers contained in s176(1). The relevant part must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.
18. To comply with s173(1) the notice must state the matters which appear to the Council to constitute the breach of planning control to enable any person on whom it is served to know what those matters are. To fulfil s173(3) and (4) the notice must specify the steps required to be taken to remedy the breach of injury to amenity. In this case, there are steps identified but the issue is over the uncertainty arising from the alleged domestic use and non-compliance with plans and how that also feeds into the requirements.
19. The Judge in *Oates* went on to say that the fact there may be some degree of uncertainty or other defect in the relevant section does not mean that there is, without more, non-compliance with the statutory requirements. The exercise should not be approached in an unduly technical or formalistic way.
20. Whether a defect renders the notice a nullity must be viewed in context and in particular the importance or otherwise of that part of the notice which contains it. If a notice is null, it is in its entirety. Nevertheless, there can be occasion as acknowledged in *Oates* where it is open to an Inspector to conclude that while one section of a notice is too uncertain to stand, taken as a whole the notice complies with the statutory requirements.
21. The Council's concerns over the presence of domestic items could properly be captured under an allegation concerning non-agricultural storage. However, the notice could not in my judgement be saved by striking out all the other text in the allegation (and their corresponding requirements) without radical changes which also affect what development could be approved under ground (a). Even if part of the notice were capable of being saved on the basis that it would otherwise be valid, both parties might well have argued their case differently had the allegation been restricted to the one issue. I cannot be satisfied that no injustice would arise if I were to exercise my corrective powers.
22. This all leads me to the view that the flaws are so fundamental that the notice is hopelessly ambiguous and uncertain failing to comply with s173(1).

### **Conclusion on the enforcement notice**

23. I conclude that the notice is a nullity. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered. Nothing in this decision prevents the Council from exercising its power to re-issue the notice under section 171B(4)(b) of the 1990 Act, if it considers it expedient to do so.

### **Appeal C**

#### *Background*

24. The application for retrospective planning permission concerns the erection of an open-sided lean-to, insertion of 14x No. rooflights and 2x No. woodburner flues to the barn which is located in a rural area within the Fynn Valley Special Landscape Area ('SLA').
25. The Council expresses concern over the domestication of the building from the insertion of the rooflights and flues. The Council identifies other unauthorised works requiring planning permission such as additional hardstanding, an oil tank, additional first floor but the appeal concerns only those applied for.
26. The Council's decision notice cites how the development would further permit the unauthorised use of the building for non-agricultural purposes. The Council is obviously concerned that the aim is to turn the building into a dwelling or another form of residential use, but the application is not for a material change of use. No permission is being sought for a non-agricultural use. The application is to add external features to an already permitted building. If that development is allowed, all that the building could lawfully be used for is agricultural purposes.
27. Even though planning permission was previously refused for use of part of the first floor as a holiday let, there is no application for any form of residential use. As it is, a Unilateral Undertaking<sup>2</sup> made on 6 February 2020 came into immediate effect in favour of the Council for a term of 99 years in which the owners covenant not to use nor allow the use of the property in whole or in part for residential use. There is no requirement for the deed to identify the existing use of the barn. As drafted, it prevents any residential use without the consent of the Council. Given the works applied for, there appears to be no need for the deed but it should provide the Council with some comfort that its fears over future use will not occur without its consent.
28. The Council points out that had the works been included within the agricultural prior notification then they would have been assessed on whether reasonably necessary for agricultural purposes within that unit. In particular, Schedule 2, Part 6, Class A.1(d) does not permit a building, structure or works not designed for agricultural purposes. However, this application is not to be assessed against Part 6. It is for other works requiring express planning permission which must be assessed against prevailing development plan policies.

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<sup>2</sup> Made under section 106 of the Town and Country Planning Act 1990.

### *Policy context*

29. Although not mentioned in its decision notice, the Council cites Policies SP15 and DM21 of its Core Strategy and Development Management Policies 2013 ('LP'). The former aims to protect and enhance the various landscape character areas whilst the latter states that proposals that comprise poor visual design and layout, or otherwise seriously detract from the character of their surroundings will not be permitted.
30. The Council's settlement hierarchy is set out in LP Policy SP19 but as stated above the application is not for a dwelling or new building, but additions to an existing agricultural building. Similarly, Policy DM13(a) as cited by the Council concerns the re-use and conversion of redundant buildings in the countryside which is not directly applicable to this application for operational development.
31. LP Policy SP29 aims to protect the countryside by limiting development outside the physical settlement limits to that which of necessity requires to be located there and accords with other relevant policies. Under LP Policy DM15(a) agricultural buildings will be permitted in the countryside provided that they do not intrude materially into the landscape, particularly within the SLA. Development in the SLA is not permitted by LP Policy SSP38 where it would have a material adverse impact on the qualities of the landscape that make it special.
32. LP Policy SP7 seeks to promote opportunities to maximise the economic potential of the rural areas. It is due to be replaced by emerging Policy SCLP4.5 concerning economic development in rural areas but is subject to consultation as part of the main modifications and therefore has limited weight at this stage.
33. Policy LP1<sup>3</sup> of the Great Bealings Neighbourhood Plan 2016-2030 aims to protect landscape quality and development must not have any detrimental impact on the SLA. Policy LP2 thereof concerns residential development and so is not directly relevant. Again, although not cited in its decision the Council also relies in its statement upon Policy BE1 of the Neighbourhood Plan which seeks good quality design which respects and enhances the character and appearance of the surrounding area.

### **Main Issue**

34. In light of the policy background, the main issue is whether the development accords with local policies which seek to restrict development within the countryside and protect its character and appearance.

### **Reasons**

35. Rosery Cottage Barn forms part of an agricultural holding of approximately 50 hectares. It is accessed off Lodge Road via a long track. The setting is distinctly rural with open fields all about affording long range views across the landscape and towards the road. The Council identifies a group of farm buildings centred on the listed Rosery Farm adjacent to the appeal site as forming a significant element in the landscape and forming a composition requiring protection.
36. The existing barn is a large 'T' shaped building with black weatherboard and clay pantile roof. The Council has no objection in principle to the open-sided lean-to

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<sup>3</sup> Listed in the Council's decision notice as LPA1 and LPA2

extension which spans the full length of the western elevation of the barn. However, it argues that it has not been demonstrated that additional covered storage is needed which could not be accommodated within the barn. As such, the Council suggests that the development contravenes LP Policy SP7 as it does not support agriculture. The appellant argues that the lean-to is reasonably necessary for the purposes of agriculture. At the time of my visit a wide array of large agricultural equipment, vehicles and machinery were sheltered beneath the structure. There did not appear to be spare storage capacity for large machinery and suchlike inside the barn and any items of domestic storage had been removed. There is nothing before me that would cause me to believe that the lean-to is an unnecessary addition to offend strategic policy SP7.

37. Six of the rooflights are not easy to spot because of the roof pitch and their location to the rear of the building near to the boundary where trees provide high screening. The other rooflights on the front/side facing roof planes are visible but they appear small against the expanse of roof. They serve a functional purpose of allowing light into the internal areas. The two black chimney flues protrude above the roof slope, but not above ridge height. They are slender in form and their colour, size and position towards the outer edge of the roof mitigates their visual impact. The flues are for two wood-burners providing a heat source for internal working areas said to be required for health and safety reasons. The Council argues that there are other methods available to provide light and heating. That may be so, but it is the particular development applied for which must be assessed and neither the type of rooflights nor the flues are incompatible with an agricultural building.
38. Given the size, scale and design of the roof, the additions are not prominent. They do not alter the character of the building. When viewed as a whole it retains the appearance of a traditional agricultural building which the Council acknowledges has been built to a high standard. There is no material intrusion into the countryside arising from the additions nor do they detract from any landscape features, views or other buildings in the vicinity.
39. Therefore, I find that the development is not contrary to local policies which seek to restrict the location of development nor does it have an adverse effect on the character and appearance of the surrounding countryside, including the SLA, contrary to any of the aforementioned local policies or Paragraph 170 of the Framework which seeks to conserve and enhance the natural environment.

*Conclusion on ground (a), the deemed planning application and Appeal C*

40. For the reasons given above, and having had regard to all other matters raised, I conclude that Appeal C should be allowed.

*Conditions*

41. As the application is retrospective there is no need for a condition to require that the development be carried out in accordance with the submitted plans. Permission is granted for that development as shown in those plans.
42. In Appeal A, the Council suggested an additional condition to restrict the use to agricultural purposes only, but that appeal concerned a deemed planning application for a material change of use of land. It is not necessary for such a condition given the nature of operational development in Appeal C. In any

event, a planning obligation is in place which prevents any residential use which appears to be the Council's concern.

## **Formal Decisions**

### **Appeals A & B**

43. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

### **Appeal C**

44. The appeal is allowed and retrospective planning permission is granted for the erection of an open-sided lean-to, insertion of 14x No. rooflights and 2x No. woodburner flues at Rosery Cottage Barn, Lodge Road, Great Bealings, Woodbridge IP13 6NW in accordance with the terms of the application, Ref DC/19/4066/FUL, dated 15 October 2019, and the plans (01 Rev A; 03 Rev A & 04 Rev C) submitted with it.

*KR Seward*

INSPECTOR