The Planning Inspectorate

Appeal Decisions

Site visit made on 14 July 2020

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 August 2020

Appeals Ref: APP/P0240/C/20/3246869 & 3246870
Land adjacent to 21 Village Road, Cockayne Hatley, Sandy SG19 2EE

- 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 by James Ashby (3246869) and Carol Ashby (3246870) against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice, ref. EN/19/0561, was issued on 13 January 2020.
- The breach of planning control alleged in the notice is the material change of use of the land from an agricultural use to use as a residential garden and the erection of a timber building.
- The requirements of the notice are to:
  1. Cease the unauthorised residential garden use of the land.
  2. Remove all domestic paraphernalia including garden furniture and pot plants from the land.
  3. Remove all ornamental planting from the land.
  4. Remove the fencing from the north, west and south boundaries of the land.
  5. Remove the timber building and concrete slab on which it is located from the land.
- The period for compliance with the requirements is 3 months.
- The appeals are 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 case is exempt from the statutory fees, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decisions

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

Background

2. Retrospective planning permission for the change of use of the appeal site to garden, enclosure with a fence and erection of an outbuilding was refused in 2018[1]. A subsequent appeal was dismissed in 2019[2].

The appeals on ground (a) and the deemed planning application

3. This ground is that planning permission should be granted for the matters enforced against.

[1] Decision notice ref. CC/18/01509/FULL, dated 2 August 2018.
[2] Appeal decision ref. APP/P0240/W/18/3214705, dated 5 November 2019.

4. From all that I have seen and read I consider the main issue on this appeal to be the effect of the development on the character and appearance of the appeal site and the surroundings.

5. The appeal site is a rectangular parcel on the northern side of Village Road immediately to the west of no. 21 - the detached house belonging to the appellants – and separated from it by a painted render/brick wall. It is of similar area to the plot of no. 21. There is timber post and rail fencing along the other three site boundaries, and field gates onto the road and onto the field to the north. The building on the site is a timber cabin with pitched roof and a veranda, and I understand it is on a concrete base. There are areas of lawn and rougher grass, pots with flowers and ornamental shrubs, garden tables and chairs and a figurative statue, all of which are readily visible from the road. I understand the various works on the site were undertaken from the time the appellant bought the site in June 2017.

6. Immediately to the west of the appeal site is an area of open grassy land with mature trees, also bounded by post-and-rail fencing. There is a part-finished timber building there, which I understand is currently subject of an enforcement investigation. There are open fields to the north of the site, and on the opposite side of the road is an area of open land with trees, bushes and rough grass.

7. The appeal site is part of an area of Community Green Space (CGS), also including the land immediately to the west of the site, and on the southern side of the road, and identified in the Wrestlingworth and Cockayne Hatley Neighbourhood Plan of 2017 (CHNP). The CGS is recognised for its amenity value and contribution to the character and tranquil nature of the hamlet – qualities which CHNP Policy NE5 seeks to safeguard and retain.

8. It is apparent from photographs taken before the enclosure of the appeal site and the land to its west that the area was similar in appearance to the open land on the opposite side of the road and was of distinctly rural character. The appeal site effectively blended and merged with the open countryside to the north. To my mind the natural and somewhat wild appearance of the CGS prior to any development made an important contribution to the rural character of Cockayne Hatley, irrespective of whether it was in private ownership. I concur with the view of the Inspector in the s.78 appeal that this part of the village has a particularly open feel and the rural character partly derives from the small clusters of residential development with undeveloped areas between. I readily understand that the Neighbourhood Plan recognises the importance of this area to the hamlet and the community.

9. The timber building, areas of lawn, pots with flowers and ornamental shrubs, garden tables and chairs and the figurative statue have significantly changed the character from distinctly rural to that of a suburban domestic garden. Together with the fencing, this has changed the character of the appeal site, effectively cutting the land off from the countryside, and nullifying the value of the CGS as an open and tranquil area.

10. Policy DM4 of the Central Bedfordshire Core Strategy Development Management Policies of 2009 (CSDMP) provides that beyond settlement envelopes limited extensions to gardens should be permitted. However this is subject to the limitations that they should not harm the character of the area and that buildings should not be erected on the extended area. The appellant

accepts that the outbuilding should be removed. Nevertheless, I have come to the view that the character of the site and surroundings are significantly harmed. It follows that the development does not accord with the provisions of the development plan in terms of CSDMP Policy DM4.

11. The appellant suggests that removal of the timber cabin would mitigate any harm and make the development acceptable. However, this is only one component of the various elements that have changed the character of the site. While its removal may lessen the degree of harm, the character of the site as a domestic garden plot would remain, and I do not consider this action would lessen the harm sufficiently.

12. I conclude on the main issue that the development has caused significant harm to the character and appearance of the appeal site and area in its vicinity. The development does not accord with development plan aims, particularly with respect to CHNP Policy NE5.

The appeals on ground (f)

13. This ground is that the steps required by the notice are excessive and lesser steps would overcome the Council's objections.

14. The appellant accepts that the outbuilding and concrete slab should be removed and would therefore comply with Requirement 5. However, to omit this requirement would effectively grant planning permission for retention of that part of the development under the provisions of s.173(11)(a). I consider the requirement is necessary, and should stand.

15. Regarding the fencing, there are circumstances in which at least some of this would be development permitted by reason of Class A of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, under Article 3(5)(b) of the Order the permissions granted by Schedule 2 do not apply if, in the case of a permission granted in connection with an existing use, that use is unlawful. I have found that the use of this land as a residential garden is unlawful. I consider the fencing is a necessary component in creating the private nature of the residential garden and is therefore an integral part of the unlawful material change of use. It follows the permitted development right is not available.

16. I appreciate that there may be a covenant on the land requiring the owner to erect fencing. However, that is a private matter between the owner and the covenantor, outside the ambit of the planning regime.

17. It is also argued that the domestic paraphernalia and ornamental planting are not in themselves development subject of planning control, and it is excessive to require their removal. However, in my opinion as a matter of fact and degree these features facilitate the material change of use and are integral to it.

18. In the High Court case of *Somak*[3] it was concluded that a requirement to remove works that would not be regarded as operational development requiring planning permission but were part and parcel of achieving the material change of use could be necessary in order to return the land to its former condition. This approach was more recently endorsed by the Court of

[3] *Somak Travel v SSE and the London Borough of Brent Council* [1987] JPL 630.

Appeal in *Kestrel Hydro*[4]. The development in this case would retain much of the harmful character I have identified if these features were to remain, and I consider it reasonable and necessary to require their removal.

19. Overall, I consider the removal of the fencing, the domestic paraphernalia and ornamental planting are necessary steps to ensure cessation of the unlawful residential garden use and return the land to its previous use. The appeals on ground (f) therefore fail.

Conclusions

20. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed applications.

Stephen Brown

INSPECTOR

[4] *Kestrel Hydro v SSCLG and Spelthorne Borough Council* [2016] EWCA Civ 784.