



Appeal Decision

Hearing Held on 27 August 2020

Site visit made on 1 September 2020

by David Richards BSocSci DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2020

Appeal Ref: APP/F2415/W/19/3238895

Vale Cottage, Frolesworth Road, Leire, Lutterworth, Leics LE17 5HP

- 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 Mark Buddha against the decision of Harborough District Council.
 - The application Ref 19/00380/FUL, dated 19 August 2018, was refused by notice dated 16 April 2019.
 - The development proposed is extension of existing building.
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Decision

1. The appeal is allowed and planning permission is granted for the extension of existing building at Vale Cottage, Frolesworth Road, Leire, Lutterworth, Leics LE17 5HP in accordance with the application Ref 19/00380/FUL, dated 19 August 2018, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: SP04-Rev A; P01-Rev A; E01; E02; E03; E04.
 - 2) Within three months of the date of this decision, the structure shall be painted dark brown or dark green and retained in the like colour thereafter.
 - 3) Within three months of the date of this decision, the residential curtilage of the dwelling as delineated by the red line on the site location plan (ref SP04-Rev A) shall be marked out on the ground by a post and rail fence which is not higher than 1.2 metres and retained thereafter in perpetuity.

Main Issues

2. The main issues are the planning status of the original building, and the effect of the proposed extensions on the character and appearance of the area.

Background

3. The site has an extensive planning history. The Appellant states that 'a modular structure was located on the site in 2004, following which the wheels were removed from the unit, it was joined to another modular unit (without wheels and this new structure was secured via bolts to concrete foundations, apertures into the new modular structure were created and two extensions (built from traditional foundations) were constructed supporting the new unit. The structure was accepted by Harborough Council as immune from

enforcement action as it had been established for over four years'. An application for a certificate of lawful use was submitted in 2008, but the Appellant states 'this has never been acknowledged by Harborough Council'. I was informed at the hearing that the application was not determined due to non-payment of the requisite fee and the building does not benefit from a certificate of lawful use.

4. The Appellant further argues that the fixed building has been occupied since its establishment by a variety of workers including horse groomers, builders, housekeepers and agricultural workers and provides accommodation for an essential worker. As such the Appellant considers that it is immune from enforcement action and is therefore to be considered to be a rural dwelling house. There have been no planning conditions attached to restrict its use to agricultural workers, or staff employed by the main house, and hence the building cannot be considered to be an agricultural worker's dwelling as claimed by the Council.
5. Officer's from the Council's Planning Enforcement team visited the site on 22 July 2015 and photographed the structure as it then appeared. This structure was considered by the Council to be a mobile home. When officers visited the site again in February 2018 it was evident that the existing mobile home on the site had been extended at some point in the intervening period. The Council therefore refutes the Appellant's statement that the structure has been established for over 4 years and is therefore immune from enforcement action, or lawful.
6. With regard to the lawful use application made by the Appellant in 2008, the Council states that this was found to be invalid for 5 reasons, including non-payment of the required fee. This was communicated to the Appellant but the Council does not have any record of a response from the Appellant, and no appeal against non-determination was ever lodged.
7. The Council stated in the Committee report that *'it appears that the existing lawful mobile home on the site has been retained, with extensions erected around it, primarily to the east and west.'*
8. This is elaborated in the Appeal statement as follows: *'... the mobile home was lawful, and that at some point after our site visit in 2015 it was bolted to the ground and attached to other structures which had permanent foundations, becoming a permanent building which was substantially complete in 2018. This building has not been in place for 4 years so does not have immunity from enforcement action. Furthermore it has not been occupied continuously since 2018 so its use is not immune from enforcement action.'*
9. On this basis, the Council amended the Appellant's description of development from *'Extension of existing building'* to *'Extensions to mobile home (retrospective)'*. For reasons explained below I have chosen to revert to the Appellant's description.

Reasons

10. The development plan is the recently adopted Harborough District Local Plan (HDLP). Policy GD8 requires a high standard of design that, amongst other things, respects the context and characteristics of the individual site, and the wider local environment to ensure that it is integrated as far as possible into

the existing built form. Policy SS1 establishes a clear settlement hierarchy for new residential development which seeks to locate new residential development in the most sustainable locations, with a range of key services and/or good public transport links. Leire is not included in the list of appropriate locations for development within SS1, falling within the category of 'other villages, rural settlements and countryside where development will be strictly controlled'. Policy GD4 sets out the circumstances in which new housing within the countryside will be acceptable, allowing development where it is for housing to meet the needs of a rural worker, provided that there is an established existing functional need for a full time worker that is directly related to the commercial enterprise or operation concerned, and subject to a number of detailed criteria being satisfied. Policy GD4 f. allows the rebuilding or replacement of an existing dwelling providing that the resultant dwelling preserves or enhances the character and appearance of the countryside.

11. The site is an area of agricultural field which is currently uncultivated. It has a number of overgrown hawthorn trees both within the site and on its eastern boundary. The western boundary is more densely wooded. A disused railway line in a deep cutting lies to the west of the site. The wider site rises gently from the north to the south and south east. A modern shed of agricultural appearance occupies land towards the south of the site.

The building to which the appeal relates is on site, the application having been made retrospectively. It faces north and is single storey, with flat or very shallow mon-pitched roofs. It is currently un-occupied, the Appellant having stopped work when the Council invited him to submit the planning application which is the subject of this appeal.

Planning status

12. A key argument advanced by the Appellant is that the building as it existed at the time of the Council's site visit in 2015 (i.e before the recent extensions were commenced) had an established use as a dwelling which was not subject to any occupancy restriction.
13. In the committee report, the Council appeared to accept that there was a lawful use as 'temporary' mobile home for an agricultural worker. However, in the Appellant's view, if the residential use was accepted as being lawful, the nature of the use could only be restricted by the imposition of express conditions in accordance with the principles set out in the 'I'm Your Man' case. As a matter of fact there are no conditions which restrict residential use to a temporary period or which limit occupancy to a rural worker.
14. Subsequently, the Council argued that the building only became a fixed structure during the course of the recent extensions, and implied that the principle of permanent residential use could be still be enforced against as the relevant enforcement period has not expired.
15. The Appellant has submitted some evidence that the original building was bolted to the ground and in effect became a permanent fixture at the time of the earlier extensions. In the appeal statement it is stated that '*a number of modular structures were located on site in 2004, following which the wheels were removed from one unit, joined to another modular unit (without wheels and this new structure secured via bolts to concrete foundations, apertures into the new modular structure were created and two extensions (built from*

traditional foundations)'. While the evidence is limited, it appears to me that the likelihood is that the various elements effectively became a fixed structure at the time the two extensions were erected. This is the building that appears in the Council's 2015 site visit photograph.

16. To my mind there are some internal contradictions in the Council's stance. I accept that no substantive evidence of the nature and duration of occupancy was submitted by the Appellant to this appeal, beyond the assertion that a lawful use existed and could not be enforced against. Nevertheless, the issue was a matter of dispute between the parties in 2008 (as indicated by the application for a certificate of lawful use) and the elapse of a further 12 years without enforcement action being taken in respect of the appeal building must give rise to questions as to the prospects of any enforcement action against residential use having a successful outcome. It is a matter of fact that there are no conditions limiting occupancy of the building as it existed before the recent extension, and I do not consider that it would be legitimate now to attach such a condition in the event of the current appeal succeeding.
17. On the available evidence I find that it is more likely than not that the building was a fixed structure and that residential use of the original building as it existed in 2015 has become lawful with the passage of time. However, it remains the case that planning permission is required for the extension works which have been carried out since 2015.

Character and Appearance

18. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. To my mind the design of the extensions is at best mediocre and not of the high standard of design sought in Policy GD8. In particular the use of render for the external surfaces, while it can be found on extant buildings in the locality is not characteristic of this part of rural Leicestershire, where the use of red brick is traditional. In addition, the gables are poorly proportioned and the scale and extent of the extensions are disproportionate to the building as it existed in 2015.
19. However the finished building would, as evidenced in the Appellant's landscape and visual appraisal and accepted by the Council, have little impact on the wider landscape character of the area. It is also partially screened by vegetation and I accept that it is not unduly prominent when viewed from the footpath. I note the analysis set out in the Appellant's landscape and visual appearance report, which describes a winter view of '*a derelict agricultural scene, with farm machinery, branches, brambles and debris, set within a wide neglected field setting*'. While I acknowledge the Council's concerns about design, including the roof profiles, the impact on the character and appearance of the countryside would be limited. The building as it existed in 2015 was of no architectural merit, comprising an accretion of modular units. While the untidy state of the surroundings is not a justification for poor design of the extensions, the design would at least preserve the character and appearance of the countryside hereabouts, in accordance with Policy GD4 f. of the HDLP.

Other matters

20. The Appellant drew my attention to a number of other cases in the locality which he regarded as evidence that the Council was treating him unfairly. With

regard to the temporary permission for a mobile caravan at Kimberley House – Ref: 16/00413/FUL (next door to the appeal site) - this temporary permission was granted explicitly for a mobile home, rather than for extensions to an existing unit, as is the case here. Although the time limit has expired it would be open to the Council to initiate enforcement action if it considered it expedient. With regard to the dwelling on land off Ashby Lane, Bitteswell – Ref: 16/01793/FUL, although in the open countryside the Council considered that this represented outstanding design in accordance with Paragraph 55 of the NPPF and so there is a different policy context for granting approval. With regard to the development at Sunnyside, Ashby Lane, Bitteswell – Ref: 18/01602/FUL, this permitted the conversion of an existing building adjacent to an existing dwelling from agricultural use to residential with alterations to the fenestration. The Council did not raise an issue of poor design and in other respects found the appeal acceptable in the context of development plan policy as a matter of planning judgement. The circumstances in this appeal are different. In any event, as I have found in favour of the Appellant on the substantive issues, I do not think he has been disadvantaged.to

21. Leire Parish Council was concerned (amongst other things) that the access to the site would use an access to the east of Vale Cottage which was closed off under the terms of a planning permission Ref 10/00838/FUL. However this issue was not pursued by the local planning authority at the hearing. I consider that the new access to the west of Vale Cottage, which is in the control of the Appellant, would be adequate to serve the appeal property without giving rise to any highway safety concerns.

Conditions

22. A condition referencing the application plans is necessary to define the permission. I have noted the Appellant's willingness to accept a condition which would require the building to be painted dark brown or dark green in the event of the appeal being successful. I agree that this would help to mitigate the visual impact in relation to the present rather strident exterior finish. A condition requiring the curtilage to be defined and marked out in accordance with the submitted application plans is necessary to define the extent of the residential use permitted and to prevent any further incursion of residential use into the countryside. These conditions are reasonable and necessary and meet the tests for conditions set out in the NPPF and PPG. For reasons set out above, I do not consider that it would be legitimate to impose a condition restricting occupancy to a rural worker, having regard to the planning history of the site. For the same reason, I do not consider that there is any justification for requiring occupancy to remain ancillary to Vale Cottage. The Council requested the attachment of an advisory note in respect of the adjoining habitat, but no harm was identified to wildlife arising from the proposal, and it is not usual practice to attach such notes to appeal decisions.

Planning balance

23. Having regard to the planning history of the site I consider, on the balance of probabilities, that the pre 2015 building is a permanent residential building that has an unrestricted residential use. I accept that the design of the extensions is of indifferent quality which falls short of the standards of design envisaged in Policy GD8 of the HDLP. However Policy GD4 f. of the HDLP allows for the rebuilding or replacement of existing dwellings providing that the resultant

building preserves or enhances the character and appearance of the countryside. In this case, the preservation test is met and I consider that overall the proposal accords with the development plan. There would be a limited economic benefit from the completion of the works, and a small social benefit from the residential accommodation provided. Accordingly I conclude that the Appeal should be allowed.

David Richards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Mark Buddha, Appellant
Giles Atkinson, of Counsel

FOR THE LOCAL PLANNING AUTHORITY:

Ruth Meadows-Smith, Planning
Heather Wakefield, Planning
James Felton, Legal