



Appeal Decisions

Site visit made on 18 August 2020

by Stephen Brown MA(Cantab) DipArch RIBA

Decision Date: 20 October 2020

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

Decision date:

Appeal A: ref. APP/C1570/C/20/3246859 Little Blossom, Stebbing, Dunmow CM6 3AH

- 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 by Ms A Timco against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice, ref. ENF/19/0181/C, was issued on 10 January 2020.
 - The breach of planning control alleged in the notice is the addition of an upper floor to an existing detached storage building shown hatched in green on the plan attached to the notice.
 - The requirements of the notice are to:
EITHER
Remove the additional upper floor to the detached storage building shown hatched in green in its entirety.
OR
Construct the building in accordance with the approved plan labelled 11/17/05 and dated 23/04/2011 which was approved under reference UTT/1110/11/FUL on 25/10/2011.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.
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Appeal B: ref. APP/C1570/C/20/3246798 Little Blossom, Stebbing, Dunmow CM6 3AH

- 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 by Ms A Timco against an enforcement notice issued by Uttlesford District Council.
- The enforcement notice, ref. ENF/19/0181/C, was issued on 10 January 2020.
- The breach of planning control alleged in the notice is the erection of a detached outbuilding shown hatched in blue on the plan attached to the notice and associated engineering works creating a basement area.
- The requirements of the notice are to:
 - Remove the outbuilding shown hatched in blue on the plan attached to the notice.
 - Infill the basement area of this building to its original site level.
 - Remove all resultant debris from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A: ref. APP/C1570/C/20/3246859

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.

Appeal B: ref. APP/C1570/C/20/3246798

2. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *3 months*: and,
SUBSTITUTION of *6 months* as the period for compliance.
Subject to this variation the enforcement notice is upheld.

Preliminary matters

3. The appeal property 'Little Blossom' is a Grade II listed building. Insofar as I am determining whether to grant planning permission for development I have therefore had special regard to the desirability of preserving the setting of the listed building as required by s.66(1) of the Planning (Listed buildings and Conservation Areas) Act 1990 as amended.

Background

4. The appeal site lies on the northern side of the B1256 Braintree Road. It is an extensive site with the listed building and its immediate garden area in the south-western corner.

Appeal A on ground (b)

5. This ground is that the matters alleged in the enforcement notice have not occurred as a matter of fact. In appeal on this ground – known as a 'legal' ground – the burden of proof is firmly on the appellant to show that on the balance of probabilities this is the case.
6. The appellant argues that the Council have not identified the correct building on the enforcement notice plan – and says the building hatched in green is in fact a single storey building to which there is no additional floor.
7. I saw that there are several dilapidated single storey sheds near the south-eastern corner of the site and close to the road – possibly some form of former animal shelters. However, the position shown on the plan is very much closer to the position of the building enforced against. It is also clear from the second alternative requirement of the notice that the building in question is that for which planning permission was granted in 2011¹.
8. It is long established law that an enforcement notice should enable any person on whom a copy of it is served to know what the matters alleged to constitute the alleged breach are, and tell the recipient fairly what he has done wrong and what he must do to remedy it. In this case the notice alleges the addition of an upper floor to an existing detached storage building. Although the building enforced against may not be very precisely located on the plan, there is no

¹ Decision notice ref. UTT/1110/11/FUL, dated 25 October 2011.

other building close by with which it might be confused, and the building identified is clearly intended to be the one granted planning permission in 2011.

Appeal A on ground (a) and the deemed planning application

9. From all that I have seen and read I consider the main issue to be the effect of the development on the setting of the listed building and the character and appearance of the surroundings.
10. The appeal site is in the countryside, and outside any development boundaries. The irregular shape of the site results from it being largely defined by the winding course of Stebbing Brook to eastern and northern sides, and the fields to the west.
11. The building granted planning permission in 2011 was a double garage with pitched roof, and a storage area below, sited to the east of Little Blossom. I understand construction of the storage area was started in 2011. In justification for the development the appellant stated that the store was needed to keep a tractor and animal feed, with the garage for the smallholder.
12. I saw that the building now there differs significantly from that approved, and is unfinished. The storage area has been built and there is double garage above. A two-storey wing has been built to the northern side of the double garage with a floor above the garage itself. An entrance door is adjacent to the garage, giving access to an entrance hall and a single large room on the ground floor of the two-storey wing, as well as a staircase giving access to rooms on the upper floor of that wing and the upper floor of the garage. The resulting building is rendered and has a red plain-tiled pitched roof. The ridge of the roof over the northern wing is at a right-angle to the ridge of the roof over the garage/store, and at a slightly lower level.
13. All rooms are largely unfinished, but I noted there are small separate spaces with a soil and vent pipe running through, indicating that sanitary fixtures are likely to be installed. I also saw that hardwood flooring is being laid in the upper rooms. While it cannot be regarded as substantially complete, it appears to me from the layout it may be intended for some form of occupation.
14. Irrespective of possible use, this is a more substantial and bulky building than that approved, and a prominent feature on the site. Little Blossom itself appears as a cottage set in its own rural surroundings. The siting of the new building, relatively close to the listed cottage, diminishes the openness of the land and the rural character of the listed building's setting. Although the building might yet be clad in black feather-edge boarding – as indicated on the approved scheme – and I accept that red plain tiles may be appropriate as the roofing material, these factors do little to remedy the harm caused in terms of the bulk and prominence of the building.
15. When seen from the road the building may be less prominent than from within the site and little more than the approved scheme. However, the special interest and setting of a listed building are of intrinsic value, quite independent of views or appearance assessed from the public realm. Similarly, as advised by National Planning Policy Framework (NPPF) paragraph 170(b), decisions on new development should recognise the intrinsic character and beauty of the

countryside. I do not therefore consider the limited views available from the road significantly reduce the harm that I find.

16. I have found that the development subject of the notice causes significant harm to listed building interests, but this must be regarded as less than substantial harm in terms of NPPF paragraph 196. Such harm should be weighed against the public benefits of the proposal, including securing the optimum viable use. Little Blossom is clearly in its optimum viable use as a dwelling. However, the new development provides no significant public benefit, and I do not consider the harm caused to be outweighed by these factors.
17. I conclude on the main issue that the development causes significant harm to countryside interests and to the setting of the listed building. It does not accord with the aims of the development plan, particularly with respect to Policies S7, GEN2 and ENV2 of the Uttlesford Local Plan of 2005. Amongst other things, these seek to protect the countryside, its intrinsic character and beauty, and to limit development to appropriate rural uses; to ensure the design of development is compatible with the characteristics of its surroundings, and to prevent development that harms the setting of a listed building. The appeal on ground (a) therefore fails, and I intend to refuse planning permission on the deemed planning application.

Appeal A on ground (f)

18. The appellant suggests that a lesser step would be to require the development to be completed in accordance with the submitted plans of the building as built, with the addition of details of external constructional materials.
19. I have come to the view above that it is not the external materials that cause the harm, but the scale and bulk of this building. To permit it with different materials would not significantly lessen this harm. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

20. This ground is that the compliance period is too short. It is argued that the restrictions on working practices during the Covid-19 pandemic mean that the period required to carry out the works will be unpredictable and a longer period should be allowed.
21. I accept the argument about unpredictability. However, the Council have the power under s.173A(1)(b) of the Act to relax any requirement of a notice and, in particular to extend the compliance period. Provided the appellant is able to supply fully documented evidence of restrictions that lead to a longer period being necessary, I can see no reason why the Council should not make such a relaxation. The appeal on ground (g) therefore fails.

Appeal B on ground (f)

22. As a lesser step the appellant suggests that there should be an alternative requirement to alter the development as now partly built to be in accordance with the scheme approved under the 2012 planning permission UTT/1378/11/FUL for the construction of a barn for agricultural purposes. This was subject to the standard condition that the development should be begun before the expiration of 3 years from the date of the decision – that is, from 20 January 2012.

23. However the Council say that this development was not begun within that period, and that the appellant has not put in any significant evidence to show that it was.
24. I saw that there is a building in the course of construction in the location of the previously approved scheme. This differs very significantly from the 2012 approved scheme, which had an essentially rectangular plan, with a projecting central wagon bay, and a steeply pitched roof. There would have been areas of flooring within the roof space, lit only by windows in the gable ends. Overall it would have had the appearance of a traditional agricultural barn in this region.
25. The building now in progress has a part basement/semi-basement, and two full storeys above. The plan has a projection at the southern end. The roof is of lower and varied pitch as compared with the approved scheme, and is of complex form with gables and dormer windows. There are numerous windows in all elevations. In my opinion it has the appearance of an institutional building rather than a barn. Even had construction started within the 3-year period, this is a very significantly different building from that approved, and as a matter of fact and degree I consider this building is not the one for which planning permission was granted. The 2012 permission has therefore lapsed.
26. However the appellant acknowledges that she does not rely on the argument that development was commenced, but that requiring the development to be carried out in accordance with the approved plans would remedy any harm to amenity arising from the unauthorised development. My first observation on this is that the enforcement notice does not seek to remedy a breach of amenity but to return the land to its condition before the breach occurred.
27. I appreciate that a planning permission runs with the land and that the appellant's intentions are not a consideration. However, there is no extant planning permission for the agricultural barn. Should the appellant now want to construct this building it is open for her to apply for a new permission, or for permission for a different building for some other purpose.
28. I do not consider the proposal to introduce an alternative requirement would achieve the purpose of the enforcement notice to restore the land to its condition before the breach took place, or - as the appellant requests - to remedy any breach to amenity. The appeal on ground (f) therefore fails.

Appeal B on ground (g)

29. The appellant first raises the same argument as for Appeal A – that the compliance period should be extended because of uncertainty about timing during the Covid-19 pandemic. I come to the same conclusion on this as for Appeal A.
30. It is also argued that time is required to obtain pre-application advice and to make a planning application for a new scheme for rural holiday accommodation. In order to do this I accept that a period longer than 3 months would be needed. I consider it would be reasonable to allow 3 months for negotiation and submission of an application, and a further 3 months for determination.
31. Should preparation and determination take longer for any good reason, it would still be open for the Council to extend the compliance period if they were satisfied that the process was being diligently pursued.

32. The appeal on ground (g) therefore succeeds, and I will vary the enforcement notice accordingly.

Conclusions

33. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold enforcement notice A and refuse to grant planning permission on the deemed application. I conclude in Appeal B that it succeeds to the limited extent on ground (g) and that a reasonable period for compliance would be 6 months. I will vary enforcement notice B accordingly, prior to upholding it.

Stephen Brown

INSPECTOR