
Appeal Decisions

Site visit made on 28 September 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Appeal A Ref: APP/B5480/C/19/3235014

Appeal B Ref: APP/B5480/C/19/3237793

**The land known as Land at Sunnyside Farm, Risebridge Chase,
Romford RM1 4PR**

- The appeal is 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 Mr Stephen Smith and Appeal B is made by Mrs Carolyn Smith against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/238/18, was issued on 12 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the conversion and change of use of a detached barn, shown hatched on the attached plan, to a self-contained dwelling.
- The requirements of the notice are:
 - (i) Cease the use of the barn for residential purposes; And
 - (ii) Remove all structural alterations to the barn which have facilitated the conversion to a self-contained residential unit; And
 - (iii) Reinstate the opening in the Southern elevation of the barn; And
 - (iv) Remove all external alterations to the barn which have facilitated the conversion including but not limited to the Northern, Southern external elevations and the door opening on the Southern elevation; And
 - (v) Remove all fixtures, fittings, residential paraphernalia and cooking and bathing amenities from the building; And
 - (vi) Remove all materials and debris resulting from actions i, ii, iii, iv and v from the site.
- The period for compliance with the requirements is two months.
- Appeal A is proceeding on the grounds set out in section 174(2)[a], [b], [c] and [f] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is an identical appeal except there is no ground (a).

Decisions

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

Ground (b)

2. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.

3. The appellants say that a change of use to a self-contained dwelling has not occurred because the use of the barn amounts to either ancillary accommodation or an annex associated with the main dwellinghouse. These are arguments more appropriately dealt with under ground (c) and I have addressed them below.
4. The Council has provided evidence in the form of photographs to show that in April 2019 the barn had been fitted out with a living room/kitchen, bathroom and two bedrooms. It was noted at that time that there were no cooking facilities but that this could be remedied by electrical devices which could be plugged in. During my site visit I observed that the barn provides all of the facilities required to enable it to be used as a self-contained residential unit. There was a mini oven and hob plugged in in the kitchen and I also noted a washing machine and tumble dryer in the bathroom.
5. The barn is capable of being used as a self-contained unit of accommodation as alleged in the notice. On that basis the breach has occurred as a matter of fact. Any evidence to demonstrate that the dwelling is not being used in that way is a matter to be addressed under ground (c).
6. For the reasons set out above the appeal under ground (b) fails.

Ground (c)

7. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.
8. The appellants put forward three arguments in relation to ground (c). That the works to the barn do not amount to an engineering or building operation, that the barn is in the residential curtilage of the main house and that conversion/use of the barn as a dwelling would be permitted development under Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Works to the barn

9. The appellants say that as part of renovation works the barn was re-clad and that storage rooms and a small gym were created. Both parties refer to a site visit by the Council in September 2018 and it seems that the barn had not been fitted out as a residential unit at that time. However, in April 2019 another site visit was carried out and the Council noted at that time that the barn had been converted into a two bedroom self-contained unit. There was also reference to a parking space being converted to a living room/kitchen.
10. S173(5) of the Planning Act 1990 (the Act) gives the power to require alteration or removal of works for the purpose of remedying the breach and this power extends to works which on their own might not constitute development. In this case, even if the works which have been carried out to the building do not constitute development, they have facilitated the change of use to a self-contained dwelling. On this basis they can be included as requirements on the notice.

Residential curtilage

11. The appellants argue that if the location of the barn is regarded as within the curtilage of the main house then it constitutes an outbuilding which could be used for ancillary accommodation or as an annex without the need for planning permission.
12. The main house with which the converted barn is associated is set back some distance from Risebridge Chase and the space in front of the house is laid to garden. A single storey element of the house to the rear accommodates gym equipment and seating and there is also a rear parking/patio area. The barn which is the subject of the notice is positioned much further into the site and there is a substantial children's nursery building and play space between the back of the house and the barn.
13. The only reference to the nursery is in an email exchange which is attached to the copy of the enforcement notice which was submitted by the appellants. However, the presence of the nursery is decisive in my conclusion that the barn does not fall within the curtilage of the main house and is effectively a separate planning unit.
14. Consequently, even if it could be demonstrated that the use of the barn was for a purpose incidental to the main house it would not have amounted to permitted development because it is not in the curtilage of the dwellinghouse.

Permitted development under Class Q

15. The appellants refer to an application being submitted for the conversion of the barn and another on the site into a dwelling. This is listed as Council Ref. J0026.16 in the Council's statement. The application was withdrawn for reasons which the appellants suggest related to a misunderstanding on the Council's part regarding the requirements of legislation. However, whatever the reason for withdrawal of the application, a decision was not issued, and the appellants cannot rely on it as evidence that the matters set out in the notice have been permitted under Class Q.
16. The appellants are of the view that the building would have met all the requirements of Class Q at the time it was converted, and they have set these out in some detail. However, there is no evidence to demonstrate that the site was solely in agricultural use as part of an established agricultural unit on 20 March 2013 or that the building was in such use when in last use. The appellants statement that the barn was used for domestic storage and as a gym also raises the question about whether there was an intervening use.
17. It is also clear from the evidence that the conversion of the barn to a dwelling has commenced, therefore prior approval could not be granted as this is not possible when the development has already begun.

Conclusion on ground (c)

18. As set out in the preceding paragraphs I have not found that the matters alleged in the notice do not constitute permitted development under Class Q or because the barn falls within the curtilage of the main house. Furthermore, the works which have been carried out facilitate the change of use. It follows that I am not persuaded by the arguments put forward by the appellants in respect of ground (c). For the reasons set out above, the appeal fails on ground (c).

Ground (a) and the Deemed Planning Application (DPA) (Appeal A only)

19. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

20. The DPA derives its terms directly from the words of the allegation, which is the conversion and change of use of a detached barn to a self-contained dwelling. The main issues, which arise from the Council's reasons for issuing the notice are:
- Whether or not the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies.
 - Whether the development provides acceptable living conditions for occupants, with regard to privacy and the provision of private amenity space and car parking.
 - Whether the development makes adequate provision for any additional need for education infrastructure arising from the development.
 - If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal in accordance with the Framework.

Reasons

Whether Inappropriate Development/effect on openness

21. The appellant refers to a previously dismissed appeal (Appeal Ref. APP/B5480/W/17/3179510) (the 2017 Appeal) relating to the conversion of two barns to residential use, one of which is the barn the subject of this appeal. He argues that the use of the existing building is for ancillary purposes which would have a different impact on the Green Belt than the 2017 Appeal scheme. In particular he considers that the annexe would preserve the Green Belt as there is no separate garden and no separation from the house in terms of boundary treatments.
22. These comments do not address the question of whether the change of use from a detached barn to a self-contained dwelling would be inappropriate development in the Green Belt. On this basis the evidence provided by the appellant does not contradict the view of the Council that the change of use to a self-contained dwelling would be inappropriate development in the Green Belt. Furthermore, the Inspector concluded in the 2017 Appeal that the conversion of two barns would be inappropriate development and there is nothing before me to suggest that his reasoning would not apply equally to one of the two dwellings.
23. I conclude that the development is inappropriate development in the Green Belt having regard to the Framework and its effects on the openness of the Green Belt. Therefore, the development is contrary to national policy as set out in the Framework.

Living conditions

24. The appellant suggests that on that basis that the barn provides ancillary overspill accommodation with access to a shared garden and parking area and use of the main house, adequate living conditions are provided for its occupiers. However, this does not demonstrate that the level of privacy and the provision of private amenity space and car parking which has been provided for the use of the barn as a self-contained dwelling is adequate. Again, there is no evidence to counter the Council's position that it is not.
25. During my site visit I observed the position of the barn in relation to a large area of hardstanding and access to parking spaces and other adjacent buildings which did not appear to be in domestic use, including the nursery. There was an access gate to the nursery close to one end of the barn and one of the windows faced the play area. The only private amenity space available to the occupants of the barn was a narrow strip of land between the barn and the boundary which was compromised by its size, shape and enclosing fences.
26. The detail of the 2017 Appeal scheme is not before me, but I note that the adequacy of living conditions was not a matter for the Inspector in that case. However, based on my own observations and the comments made by the Council I conclude that the development does not provide acceptable living conditions for occupants, with regard to privacy and the provision of private amenity space and car parking. Therefore, it is contrary to Policies DC3, DC55 and DC61 of the Core Strategy and Development Control Policies Development Plan Document (2008) (the Core Strategy and DC Policies DPD). These policies jointly support good housing design and resist development which results in exposure to noise and loss of privacy.

Education infrastructure

27. The Council says that the development fails to mitigate its impact on education provision. Nevertheless, there is no evidence to support this, in contrast to information which was before the Inspector in the 2017 Appeal. The appellant invites me to secure mitigation via a planning condition or by requiring the Community Infrastructure Levy (CIL) to be provided. However, there is no justification for such a condition thus it would not pass the tests of being reasonable and necessary and CIL is a matter for the Council.
28. On the basis of the information before me I have not found that the development would have a harmful effect on education provision such that any mitigation is necessary. Therefore, the development complies with Policies DC29 and DC72 of the Core Strategy and DC Policies DPD which ensure that new development meets the need for education facilities where appropriate.

Other matters

29. The appellant refers to a potential fallback position through the extension of the main house or construction of an outbuilding under permitted development rights which could provide additional living accommodation for the family. However, this fall back does not relate to the alleged breach which is a self-contained dwelling. Therefore, even if such development were to be carried out without the need for planning permission it does not attract any weight in my determination of the ground (a) appeal or the DPA.

30. The appellant refers to Appeal ref. APP/W1145/W/17/3190326 (the Higher Way appeal decision) in support of his case. There are limited details of the Higher Way development before me, however it is clear that in that case the building was in close proximity to the host dwelling. The Inspector, in that case, observes that a narrow gap has been left for services such as drainage. Whilst I accept that this decision shows that in some cases a self-contained annex is acceptable, the physical relationship between the building and the host dwelling are not comparable to the development which is the subject of this appeal.
31. Furthermore, the Higher Way appeal decision related to development comprising a separate unit within the garden for a dependent relative which is not the same as the allegation in this case of a self-contained dwelling. Drawing all these strands together I attach no weight to the Higher Way appeal decision.

Green Belt Balance

32. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 144 to indicate that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
33. I have found harm to the Green Belt by way of inappropriateness. I have also found harm in terms of the living conditions provided for the residents. Although I have not found harm in terms of the impact of the development on the provision of education infrastructure, this has a neutral effect on the balance. There are no arguments before me in support of the proposal, which clearly outweigh the harm that I have identified in relation to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposed development conflicts with the Green Belt protection aims of the Framework.

Conclusion in respect of ground (a) and the DPA

34. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

35. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
36. The appellants argue that because the use of the barn does not require planning permission there is no requirement for the internal and external alterations to the building or the removal of cooking and bathroom facilities. This argument is made on the basis that the appellants consider that the Council are content for the building to be used for additional or ancillary accommodation and that the Council could simply clarify that the building

cannot be used as a separate independent dwelling disassociated from the main dwellinghouse.

37. However, the breach is not the conversion of the barn to additional or ancillary accommodation but is the change of use to a self-contained dwelling. The appellants have not provided any argument to suggest that the requirements of the notice are excessive to remedy that breach of planning control. Therefore, it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary.
38. For the reasons set out above both appeals fail on ground (f).

Conclusion

39. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended (Appeal A).

Sarah Dyer

Inspector