



Appeal Decisions

Site visit made on 13 October 2020

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2020

Land adjoining 14A The Cotes, Soham, Cambridgeshire CB7 5EP

Appeals made by Mr B Edwards

- 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 against 2 enforcement notices issued by East Cambridgeshire District Council, both were issued on 11 February 2020.
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Appeal A Ref: APP/V0510/C/20/3248987

- The breach of planning control as alleged in the notice is the construction of an extension to a converted garage annex building.
- The requirements of the notice are:
 - (i) Demolish the extension to the annex.
 - (ii) Remove the walls which create separate parking and/or garden areas for the annex.
 - (iii) Remove all debris from the land resulting from compliance with the previous step.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/V0510/C/20/3249079

- The breach of planning control as alleged in the notice is the construction of a separate dwelling.
- The requirements of the notice are:
 - (i) Cease the use of the building as a dwelling.
 - (ii) Demolish the building in its entirety.
 - (iii) Remove all material and debris from the land resulting from compliance with step (ii).
- The period for compliance with the requirements is 6 months.
- The appeal 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

1. In the appellant's statement of case concerning Appeal A, it is pointed out that while the enforcement notice is dated 11 February 2020, it was served by a third party by letter dated 19 February 2020. It is submitted that this created an unnecessary delay to the detriment of the appellant in that it reduced the time he had to respond. In addition, the reference to 'walls' [in the notice that is the subject of Appeal A] is confusing, and further confusion had arisen as the alleged breach indicated on the Council's third party notification letters was wrong. All this, together with the irrelevant reasons for issuing the notice, and the lack of clarity, meant that the appellant could not be satisfied that the alleged breaches are correct. Coupled with the Council's lack of engagement prior to taking enforcement action, and the refusal to provide a further explanation, the appellant had been placed at a disadvantage.
2. Given that enforcement proceedings could ultimately lead to criminal action, the apparent delay in serving the enforcement is potentially serious. However, while this is not a matter I set aside lightly, it has not prevented the appellant from exercising his right of appeal and from putting forward a full case in support of both appeals. Accordingly, therefore, questionable though the Council's actions may have been, I am not satisfied the appellant has been unacceptably prejudiced. The 'walls' referred to by the appellant are the subject of requirement (ii) of the notice that is the subject of Appeal A and the appropriateness or otherwise of their inclusion in it is a matter that falls within the ambit of the appeal on ground (f).
3. The appellant also claims to have been 'victimised' by officers of the Council and the actions taken. While the appellant clearly feels aggrieved by this and has highlighted a number of specific events in this respect, it is not within my remit to pronounce on the manner in which the Council's business is conducted. I shall therefore refrain from commenting on this matter. My decisions will focus on the merits of the appeals before me.

The Appeals Site and Background

4. The appeals sites lie within an enclave of scattered development in the countryside to the north-west of Soham. They are adjoining parcels of land located immediately to the north-east of No.14A, a detached bungalow, and are separated from each other by a low wall. The Appeal A site contains a timber clad residential annex building [see second bullet point in paragraph 5 below] to which the extension has been added, together with an enclosed area of open space on its north-east side. The appeal B site contains a single storey brick building with a pitched tiled roof, together with an area of hardstanding and a small orchard on its north-east side.
5. As the schedule produced by the Council indicates, No.14A and its immediate surrounds have an extensive planning history, including a number of appeals, that goes back to 1992. Of especial relevance to the current appeals are:
 - The erection of an agricultural dwelling pursuant to planning application ref E/93/0070/F. Planning permission granted on appeal on 12 November 1993 ref. T/APP/V0510/A/93/223435/P6.
 - Conversion of outbuilding/garage to residential annex. Planning permission granted on 5 December 2011 ref. 11/00743/FUL.

- Additions and alterations to existing annex to form separate dwelling and erection of garage. Planning permission refused on 12 November 2013 ref.13/00670/FUL. A subsequent appeal was dismissed on 12 August 2014 ref. APP/V0510/A/14/2218569.
 - Conversion of an existing building to a dwelling. Planning permission refused on 14 June 2019 ref.13/00670/FUL. A subsequent appeal was dismissed on 7 April 2020 ref. APP/V0510/W/19/3236247.
6. At the site inspection, the parties confirmed that the “separate dwelling” referred to in the enforcement notice that is the subject of Appeal B is the same building as the one that was the subject of the appeal determined on 7 April 2020.

Appeal B – Ground (b)

7. Grounds (b) and (c) are separate grounds of appeal, distinct from each other. However, as the matters raised in this instance appear to be closely interlinked, I will consider them jointly. Both grounds are legal grounds of appeal, distinct from any planning merits, and the Courts have held that the onus on proving them lies with the appellant.
8. In order for the appeal to succeed on ground (b) it has to be shown that the matters alleged in the notice have not occurred as a matter of fact. And in order for the appeal to succeed on ground (c), it has to be shown that the matters alleged in the notice do not constitute a breach of planning control.
9. The appellant contends that the building in question was built as permitted development under Class E Part 1 of Schedule 2 of The Town and Country (General Permitted Development) (England) Order 2015 (GPDO) as a domestic storage building, ancillary to the main house. No dwelling has been created; the building has not been occupied as a dwelling as this was not the purpose for which it was constructed.
10. I am unable to concur with the claim that the erection of the building was permitted development as condition 4 of the planning permission granted on appeal in 1993 expressly removed the right to construct ancillary buildings in the curtilage of the approved dwelling. This leads me to conclude that, in the apparent absence of any relevant planning permission, the erection of the building constitutes a breach of planning control irrespective of the question of its use.
11. As regards just what the building is, as noted above, the appellant is adamant that the structure was erected as a storage building. In particular, my attention has been drawn to a Completion Certificate under The Building Regulations 2010 dated 12 March 2019 which refers to a “*single storey detached unheated storage building*” at 14A The Cotes¹. On the face of it, this appears to lend strong support to the appellant’s claim. However, as no plans or anything else that may indicate just what was being considered in this respect have been put forward, I am reluctant to attach great weight to this point.
12. Moreover, from what I saw, there is nothing that suggests that the disputed structure is a storage building, or shed, as the appellant puts it. Nor is there anything that shows that it has actually been used as such to any great extent.

¹ Ref. 18/00100/DGFAP.

The structure is much larger than a typical domestic outbuilding and, externally, it looks just like a bungalow. Its walls are punctuated at intervals by windows of a domestic nature (double glazed according to the Council), together with a patio window, and there are rear and front doors, with the latter incorporating a letter box. These features are not something that I would normally associate with a building designed, intended, or used primarily for storage, domestic or otherwise.

13. I formed the same impression when I viewed the interior of the building. It is partitioned so that it provides a series of individual rooms. The degree of sub-division is such that it does not look like a building intended for storage – it looks far more suited to a dwelling. This impression was fuelled further as I saw that kitchen units and bathroom and toilet facilities have been installed, together with a heating boiler – there is a fuel tank outside. In addition, carpets have been fitted in most of the rooms. While no domestic appliances or curtains were in evidence, everything else I saw was wholly consistent with what one would customarily associate with a dwelling.
14. I accept that the building did not appear to be being lived in, but it seemed to me that the provision of living accommodation had reached a very advanced stage of readiness. Indeed, the submissions made on behalf of the appellant refer to the building being “*easily usable as a dwelling*”. And, although the appellant’s letter of 20 September 2020 indicates that mains water and sewerage had not been connected to the building then, it also states that works to facilitate the former were imminent.
15. Judging by what is said in paragraph 4 of his decision letter, what the Inspector who visited the site in February 2020 saw more or less coincided with what I observed. The Council’s statement of case refers to “*the building being converted*”² – a point somewhat at odds with the nature of the allegation – and the appellant mentions the storage of his daughter’s furniture and belongings. Despite this, however, no other evidence that shows that the building was actually used primarily for storage, either generally, or associated with the residential occupancy of No.14A, has been put forward.
16. Notwithstanding what is stated on the Completion Certificate referred to in paragraph 11 above, the overriding impression conveyed to me from viewing the structure externally and internally is that what has been erected is not a storage building. Instead, as a matter of fact and degree, I consider that the building in question is physically a dwelling, albeit one that does not appear to have been occupied as yet, and has been designed and built as such.
17. In the light of the foregoing, I am not satisfied that the burden of proof that rests with the appellant has been discharged. I therefore find that the matters alleged in the notice have occurred as a matter of fact and, in the apparent absence of any relevant planning permission, there has been a breach of planning control. As a consequence of this, the appeal on grounds (b) and (c) fails.

² Council statement of case, paragraph 7.2.

Both Appeals – Ground (a) and the Deemed Applications

Appeal A

18. The development in question is a single storey addition to the residential annex approved in 2011 for which it provides additional bedroom accommodation. While a condition attached to the planning permission limits the use of the annex to use ancillary to No.14A, I have read that the building had been let out previously. But, both parties refer to it now being occupied by the appellant's daughter.
19. The first part of the main reason for issuing the notice concerns the claimed locational unsustainability of the development in question. However, as the case involves an existing building with an authorised residential use, albeit somewhat limited in its scope, this is not a matter to which I am inclined to attribute a great deal of weight. I consider the main issue is whether the scale and massing of the extension adversely affects the character of No.14A.
20. The Council contend that the work would reinforce the separation of the annex from No.14A. Having regard to the site's history, in particular the proposal dismissed on appeal in 2014, this concern is not without basis, perhaps all the more so given that it appears that the building has not always been occupied in association with No.14A. However, as the extent of the use of the building is limited by condition, I do not regard this as a particularly weighty consideration.
21. The extension, which like the annex is clad in timber, extends across the full width of the annex, but it only projects outwards by about 2m or so, and its roof profile is much lower than that of the main body of the annex. As I perceived it, it appears very much as a subsidiary feature. Furthermore, contrary to the Council's view, it does not detract from, or significantly change, the character of the building as a feature ancillary to No.14A. Nor, to my mind, does it appear as a serious incursion into, or detract from, the generally rural character of the locality, or that of No.14A. I see no conflict therefore with Policy HOU 8 of the Council's Local Plan.
22. As the proposal concerns what effectively is a relatively modest addition to an existing building, I am not satisfied that any conditions are needed, including ones on the lines of those suggested by the Council.
23. For the reasons given above, I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. Grounds (f) and (g) do not therefore need to be considered as far as this appeal is concerned. I appreciate that this conclusion differs from the 2014 appeal decision, but it seems to me that the current circumstances are somewhat different, and, unlike the earlier proposal, no proposed double garage is involved.

Appeal B

24. The planning merits of the use of the building in question as a dwelling were considered as recently as April this year when the appeal referred to in the fourth bullet point in paragraph 5 was dismissed. Although the development in that instance was labelled as a 'conversion', whereas the deemed application is for the construction of a dwelling, the current appeal concerns the same building. As a result, I consider the main issue is whether there have been any significant changes in the circumstances since the earlier appeal decision.

25. There is one change of significance in that the April 2020 appeal decision recorded that the supply of deliverable housing sites was down to 3.70 years and the Council accepted that a 5 year supply could not be demonstrated. The appellant understandably has reiterated this point, which would have required a particular approach to be taken in accordance with paragraph 11 (d) of the National Planning Policy Framework (The Framework).
26. However, on 21 April 2020, the day after the previous appeal was determined, a new Five Year Land Supply report was published by the Council³. This had the effect of increasing the demonstrable supply to 6.61 years. Although the magnitude of the increase is quite considerable, the appellant has not questioned this. It means that what is referred to as the 'tilted balance' does not need to be engaged. While this represents a marked change since the previous appeal was determined, it does not provide a basis for viewing the development in question in a different light. On the contrary, if anything, it adds additional weight to the Council's stance.
27. Despite the appellant's displeasure at the April 2020 decision, it is not claimed that there have been any other significant changes in the circumstances since then, nor am I able to identify any. The planning policy context, both locally and nationally, remains the same, and there is nothing to indicate that the site and its surrounds have altered appreciably in the meantime either. As a result, I regard the previous appeal decision as a very weighty factor, and I see no reason to take issue with the previous Inspector's findings.
28. The appeal site lies well beyond the main built confines of Soham and the town's main facilities. There are a number of other dwellings and buildings in the area, but the general pattern of development in the vicinity of the appeals site appeared to me to be somewhat loose-knit and discordant. A public right of way runs alongside the site's western boundary which joins 2 footpaths to the north both of which lead to the outer edges of the main built-up area of Soham. But, having seen that one appears to traverse a cultivated field, and the other runs along the edge of a field, I do not consider they are likely to encourage people to use them as a means of accessing the town by foot. And, as noted by the previous Inspector, the stretch of road from The Cotes towards Soham lacks both a footpath and street lighting.
29. While the appeal site is no more than 2km or so away from the centre of Soham, for the reasons given above, I do not consider this is a sustainable location for additional housing development. I therefore find the development in question contrary to Local Plan Policy GROWTH 2 which indicates that outside defined development envelopes, development will be strictly controlled. As the site does not constitute a small gap in an otherwise built-up frontage, I am unable to concur with the appellant's view that it is an infill plot. Instead, the building has tended to add to the rather uncoordinated scatter of development in the locality. Furthermore, it does not fall within any of the categories of development deemed acceptable under Policy GROWTH 2.
30. I accept that, referring to The Framework, the previous Inspector recognised that there would be certain social and economic benefits arising from the scheme. But, as he also concluded that any such benefits would be outweighed by the adverse impacts, I am not inclined to attach a great deal of weight to this point.

³ East Cambridgeshire District Council Five Year Land Supply Report 1 April 2019 to 31 March 2024.

31. My attention has been drawn to a number of instances elsewhere in the District where planning permission for residential development has been granted, including a proposal at 27 The Cotes, not far away from the appeal site. In addition, I have been referred to 2 appeal decisions elsewhere. On the face of it, all appear somewhat similar to this case, so I can fully appreciate why they have been highlighted. However, as, in my experience, much tends to depend on factors specific to the particular scheme and site involved, I am not inclined to attach great weight to these other approvals. My decision focuses on the merits of the case before me for determination.
32. For the reasons given above, I am not satisfied that there have been any significant changes in the circumstances since the earlier appeal decision sufficient to warrant a different outcome. I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Ground (f)

33. Case law suggests that a change of use may well have occurred even though the appeal property is not being lived in. Nevertheless, in this instance, the requirement to cease the use seems somewhat out of kilter with the allegation which is directed at an act of operational development. As a result, it seems to me that requiring the use to cease exceeds what is reasonably necessary in order to remedy the breach and should be deleted. To this extent therefore, the appeal on ground (f) succeeds and the notice will be varied accordingly.

Other Matters

34. I have taken into account all the other matters raised. None however are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decisions

Appeal A Ref: APP/V0510/C/20/3248987

35. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an extension to a converted garage annex building on land adjoining 14A, The Cotes, Soham, Cambridgeshire CB7 5EP referred to in the notice.

Appeal B Ref: APP/V0510/C/20/3249079

36. It is directed that the enforcement notice be varied in by section 5 by the deletion of requirement (i). Subject to this variation, the appeal is 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.

D H Brier

Inspector