



Appeal Decision

Site visit made on 25 November 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal Ref: APP/P1045/C/20/3258784

Land at Ameycroft Farm, Farley Hill, Matlock, Derbyshire DE4 5LR

- 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 made by Mr M Slack against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 21 August 2020.
- The breach of planning control as alleged in the notice is works comprising the siting of an office building on "the Land".
- The requirements of the notice are: -
 - a) Permanently remove the Office building hatched in blue, from the land edged red on the enclosed plan.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

The ground (c) appeal

1. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant. For example, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute '*permitted*' development.
2. The appellant considers that the unit is a demountable structure of modest scale which was delivered to the site in the form of a '*kit of parts*' for assembly; it is not permanent and has recently moved from one position to another; it has no foundations but is merely placed on the pre-existing yard. In addition he considers that the unit is in use as an office and planning permission¹ was granted in 2015 (the 2015 permission) for business use therefore there has been no material change in the use of the land.
3. There is a dispute between the parties as to whether the 2015 permission is extant. I also note that the alleged breach cites the '*siting of*' an office building. However, it is reasonable to consider that as the requirements of the notice only require the '*office building*' to be removed from the site and the

¹ Ref No: 15/00717/FUL

- reasons for issuing the notice cite the 4 year time limit (section 173 B of the 1990 Act) that the enforcement notice relates to a building operation rather than a material change in use.
4. The 2015 permission does not relate to the '*office building*' that is affected by the enforcement notice and I have no evidence before me to indicate that planning permission is in place for it.
 5. Section 336(1) of the 1990 Act sets out a wide definition for what constitutes a building and it includes '*any erection or structure*'. The courts have identified three primary factors as being relevant to the question of what constitutes a '*building*'. These are permanence, size and physical attachment.
 6. In terms of permanence, whilst accepting that the '*office building*' has been moved within the appeal site, it has been within that site for approximately 3 years. I acknowledge that the appellant would wish to replace it at some stage for a more permanent structure. Nevertheless, he has stated within his grounds of appeal that a temporary planning permission for a further 3 years would be acceptable. In addition, in its planning context it has an impact that is significantly noticeable (in terms of its physical presence) from the nearby public right of way (PROW).
 7. The '*office building*' does not appear to be physically affixed to the part of the hardstanding that it sits on, but it appears to be connected to some services as it is currently in use as an office. Moreover, it appears to be of considerable weight, and it is clearly held down by its own weight irrespective of what might be inside it. Even though it is smaller than the adjacent building it is relatively large. It would clearly have been necessary to have used specialist equipment to move it within the overall site. Further building operations would then have been required to level the '*office building*' and connect it to services. As a matter of fact and degree I consider that the '*office building*' can be classified as a '*building*' and that building operations were required to place it in position. Overall, therefore I consider that a building operation has occurred within the meaning of development under section 55 (1) of the 1990 Act.
 8. My conclusion is that there has been development for which no planning permission was granted by the local planning authority. There is no evidence before me to indicate that the building operation is permitted development under any of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). A breach of planning control has occurred and the appeal on ground (c) must therefore fail.

The ground (a) appeal and deemed planning application

Main Issue

9. Based on the evidence before me the main issue is the effect of the development on the character and appearance of the area.

Reasons

10. This part of Farley Hill is characterised by sporadic clusters of residential development, farmsteads and associated buildings. The open fields and pastureland which surround existing built development and abut Farley Hill provide for a generally open character which reinforces the rural qualities of this area.

11. The office building is largely screened from view when travelling/standing on Farley Hill. Nevertheless, it is clearly seen in views from the nearby PROW. The office building has a relatively simple form and it's viewed within the context of adjacent buildings which are taller and larger in size. However, its prefabricated and commercial appearance is stark and not in keeping with adjacent buildings. In addition, its external colour accentuates its stark appearance and draws the eye in views from the PROW. As such, it appreciably harms the character and appearance of this part of the countryside.
12. As stated above, there is dispute between the parties as to whether the 2015 permission is extant. Even if, I agreed with the appellant that this permission is extant and the additional building proposed within that application could be constructed, the design and appearance of that building would be in keeping with nearby buildings. Whereas, even though the office building is significantly smaller than that proposed additional building, I have found that it appreciably harms the character and appearance of the area. As such, even if the 2015 permission is extant it has little weight as a fallback position in this respect.
13. There is also dispute between the parties as to what the lawful use of the appeal site is. It is not for me, as part of the ground (a) appeal and deemed planning application, to determine the lawful use of the site. To that end it is open to the appellant to apply for a determination under sections 191/192 of the 1990 Act.
14. The appellant has stated that a temporary permission for a period of 3 years would be acceptable to him as this would enable the office building to be retained whilst a buyer for it is found. I acknowledge that in certain circumstances a condition can be used to grant planning permission for a temporary period only. However, the rationale behind the length of time suggested for the temporary planning permission is not clear as the appellant has also stated, in relation to the ground (g) appeal, that 3 months is a realistic time period to make arrangements for relocating the office building.
15. The appreciable harm identified would be mitigated to a degree by the fact that the harm would only be temporary but, even for a temporary period, the development would remain contrary to the relevant policies of the development plan. As a result, based on the evidence before me, a temporary planning permission would not be justified in this case.
16. I acknowledge that the principle of a 'business' use on the appeal site has and is supported by the Council. Nevertheless, the office building appreciably harms the character and appearance of the area. Consequently, in this respect it conflicts with Policies S1, S4, PD1 and PD5 of Derbyshire Dales Local Plan (LP). These policies seek, amongst other things, that; all development should make a positive contribution towards the achievement of sustainable development including conserving the distinct Peak District character; the intrinsic character and distinctiveness of the landscape should be protected whilst also facilitating sustainable economic development; new development to be of high quality design that respects the character of the landscape and development which would harm or be detrimental to the character of the local and wider landscape should be resisted.
17. These policies are consistent with paragraphs 83 and 127 of National Planning Policy Framework (the Framework) which, amongst other things, state that

planning policies and decisions should; enable the sustainable growth and expansion of all types of business in rural areas, through well-designed new buildings; and ensure that developments are sympathetic to local character. As such, with regard to paragraph 213 of the Framework the conflict arising in these respects is given full weight. In this case, there are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion – ground (a) and the deemed planning application

18. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (g) appeal

19. That any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed. As stated above, the appellant has stated that 30 days is not enough as it may be difficult to find a site to which the unit can be relocated and then arrange for its transportation if a buyer has not been found for it. He considers that a period of 3 months is a reasonable time to ensure compliance.
20. In my view 30 days is a reasonable period of time to comply with the requirements of the notice under normal circumstances. However, the current Covid-19 pandemic continues to place restrictions on the ability of people, services and businesses to move about freely and to carry out works. Consequently, 30 days may not now give sufficient time for the appellant to find a buyer and/or an alternative site for the office building and to arrange its relocation with the required equipment and transportation.
21. As such, I consider that 3 months is, under these circumstances, a reasonable period of time for compliance with the requirements of the notice and I intend to vary the notice in this respect. The appeal under ground (g) succeeds to that extent.

Formal Decision

22. The appeal is allowed in part, on ground g, and it is directed that the enforcement notice be varied by: -
- Deleting, in paragraph 5, '30 days' and substitution of '3 months' as the time for compliance.
23. Subject to these variations the enforcement notice is upheld.

D. Boffin

INSPECTOR