



Appeal Decisions

Inquiry held on 27 – 29 April 2021,

Site visit made on 29 April 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal A Ref: APP/J1535/X/18/3206694

Billingsbourne Barn (Land Beyond), Millers Lane, Chigwell, Essex IG7 6FG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Nasim Akhtar Hussain against the decision of Epping Forest District Council.
 - The application Ref EPF/0527/18 CLD, dated 19 February 2018, was refused by notice dated 18 May 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as: "Existing works of conversion carried out (a) fall within the provisions of Schedule 2, Part 3, Paragraph Q.2(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of the agricultural building to a dwellinghouse (class C3); and (b) are in accordance with the prior approval granted on 16 February 2016 under appeal reference number APP/J1535/W/15/3137417."
-

Appeal B Ref: APP/J1535/C/18/3209166

Land and premises known as Billingsbourne Barn, west of Millers Lane, Chigwell, Essex

- 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 Mrs Nasim Akhtar Hussain against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 12 July 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised excavation to create a basement and the unauthorised erection of a structure, shown in the approximate position edged and hatched black on the attached plan on the Land.
 - The requirements of the notice are:
 - i) Demolish the unauthorised structure and basement area on the Land.
 - ii) Remove all materials resulting from compliance with step i) above
 - iii) Infill the unauthorised basement area with spoil arising from the unauthorised development and which has been deposited in the approximate position marked "A" on the attached plan
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) 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.
-

Decisions

1. Appeal A is dismissed.
2. For Appeal B, it is directed that the enforcement notice is varied by the deletion of 2 months as the period for compliance and its substitution with 6 months. 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.

Preliminary Matters

3. The name of the appellant does not match on the appeal forms. At the Inquiry it was confirmed that the appellant is the same person for each appeal and that their name is as I have stated in the headings above.
4. The address stated on the LDC application does not match that stated on the enforcement notice. At the Inquiry the appellant confirmed that the correct spelling is as I have stated in the headings above and I note this spelling is consistent with signage displayed around the appeal site and on plans provided.
5. The description of development for the LDC application (as presented in the application's supporting statement) includes wording which is not a description of development. So with the appellant's agreement at the Inquiry, I have omitted unnecessary wording from the description of development which is set out in the heading above.
6. All evidence at the Inquiry was given under oath.
7. Some planning policies referred to in the enforcement notice were not adopted at the date the notice was issued. At the Inquiry it was confirmed that the status of these policies has not changed.
8. From my site visit, it is clear that significant changes have occurred on the appeal site from when the site was photographed by the Council on 23 April 2018¹. But this makes no difference to the allegation which before me, as set out in the enforcement notice and I have determined the enforcement notice appeal on this basis.

The Notice

9. The appellant has asserted that the notice is a nullity² and should be quashed as its requirement that the unauthorised structure is demolished purports to take away what the appellant describes as their pre-existing right to enjoy a sound agricultural building. But I am satisfied the notice contains all the vital elements needed to satisfy section 173 of the 1990 Act and The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.
10. In addition, it is clear what the notice is directed at and what recipients of the notice are required to do. Therefore, the notice is not a nullity and the issue of lawful rights is a matter for the section 174 ground (f) appeal, which I address below.

¹ As reflected by the photographs in the Proof of Evidence of Ian Ansell, Exhibit EF7.

² Updated statement of case on behalf of the appellant, 7 May 2020, paragraph 5.18

11. The main parties agree that at the time the notice was issued the structure identified by the notice could not be described as a dwellinghouse. Nevertheless, it is clear from the cases pleaded, particularly from the conditions and obligations submitted and the Council's report³ which states the unauthorised structure is "designed as a house", that both main parties regard the structure as a dwellinghouse and I have determined the section 174 appeal on this basis.
12. Pursuant to section 176(1) of the 1990 Act, I explored with the main parties at the Inquiry whether the allegation should be corrected to make clear the purpose of the structure. Both main parties are of the view this is not necessary because of the provisions of section 75(3) and I have no reason to disagree, particularly in light of what is said in the Council's report, noted above.

Main Issues

13. Based on the appeal types and grounds pleaded, the main issues are:
 - whether the Council's decision to refuse the LDC application was well-founded or not, ie the section 195 appeal; and
 - whether the matters stated in the notice (if they occurred) constitute a breach of planning control, ie the section 174 ground (c) appeal; and
 - if the above ground of appeal is not successful, whether planning permission ought to be granted for the breach of planning control alleged in the notice, ie the section 174 ground (a) appeal; and
 - if the above ground of appeal is not successful, whether 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 the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach, ie the section 174 ground (f) appeal; and
 - whether the period for compliance with the notice falls short of what should reasonably be allowed, ie the section 174 ground (g) appeal.

Reasons

The section 195 appeal

14. The appellant's supporting statement confirms that the LDC application has been made pursuant to section 191(1)(b) of the 1990 Act, referred to above. This states that if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful; they may make an application for the purpose to the local planning authority specifying the land and describing the operations.
15. Section 191(2) provides that, for the purposes of this Act operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any

³ Proof of Evidence of Ian Ansell, Exhibit EF11, paragraph 4.2.5

- other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
16. Section 191(4) states that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the operations described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
 17. As set out in the Planning Practice Guidance (PPG)⁴, the applicant is responsible for providing sufficient information to support an LDC application. So the onus is on the appellant to make out their case and the standard of proof is the balance of probabilities. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
 18. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) grants planning permission for specified forms of development, subject to conditions and limitations. On 29 February 2016, approval was granted on appeal⁵ for the change of use of an agricultural building on the appeal site to a dwellinghouse, pursuant to Schedule 2, Part 3, Class Q of the above Order. This approval was subject to conditions which were imposed in addition to those already set out in the Order⁶ for a development of this Class.
 19. Class Q of the version of the Order in force at the time granted planning permission for development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order⁷; and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
 20. It is the appellant's position that on the date the LDC application was made, existing works carried out on the appeal site fell within Class Q of the above Order and were in accordance with the above approval. But the Council considers the development undertaken constitutes a fresh build that is materially different to the works for which approval was given. Specific reference is made by the Council in its decision to new structural works and an increase in the external dimensions of the building.
 21. The appeal site previously contained a large portal-framed timber-clad barn. This is shown in photographs EF1 and EF2 submitted by the Council. The Council first became aware of development on the site in June 2017 after receiving complaints alleging that development had commenced to form a basement. Photographs in EF5, taken by the Council during an inspection of the site on 23 June 2017, particularly EF5(2), show that a partially constructed basement had been formed and that an end wall of the barn, with large double doors and a personnel door to one side, remained in situ.

⁴ 'Lawful development certificates' Paragraph: 006 Reference ID: 17c-006-20140306

⁵ APP/J1535/W/15/3137417

⁶ Including paragraphs Q.2 and W of the Order in force at the time.

⁷ The Town and Country Planning (Use Classes) Order 1987

22. Sworn testimony given for the appellant is that the above end wall shown in photograph EF5(2) is the exterior of the western elevation of the barn, ie the elevation furthest from Millers Lane. But this is contradicted by photographs EF1, EF2 and drawing LY01A which, when read together, show that the barn's large double doors and personnel door were on its front/east elevation, facing Millers Lane and not in its rear/west elevation, where thick vegetation was growing close-up to the west elevation of the barn. Nothing I have seen on site or heard at the Inquiry, including the testimony of Mr Ansell, has led me to a different conclusion in respect of which elevation of the barn is seen in photograph EF5(2).
23. It therefore seems that, on or before 23 June 2017, when the photographs in EF5 were taken, the former barn had been almost entirely demolished, its front/east elevation had survived and a basement was being constructed behind it, away from the road. I find this irrefutable given what is seen in photograph EF5(2). It shows the ledges and braces on the interior of the barn's large double doors with the personnel door to the right side, as reflected by what is seen on drawing LY01A. Moreover, the location of the octagonal building in the neighbour's garden, that I saw on my site visit and which is seen in the background of photograph EF5(2), assists in clarifying from where photograph EF5(2) was taken. From all of the evidence provided and given the timescales and proximity of the works described above, I am not satisfied the basement was a separate act of development. As such, the build is materially different to that approved on appeal in February 2016.
24. The appellant's version of events, according to Mr Hussain, is that the partially constructed basement shown in photograph EF5(2) is an entirely different basement structure to the basement structure alleged in the enforcement notice, sited further west, away from Millers Lane, and, that between 23 June 2017 and 20 October 2017 when the site was next photographed by the Council, this different basement structure was removed and backfilled. This surprising account was introduced for the first time by Mr Hussain via a 'summary' proof, submitted and read out at the Inquiry.
25. Photographs in EF6 show that by 20 October 2017, a two storey brick structure had been erected, over a basement, part of which is shown in photograph EF6(4). The digging out and backfilling of the different basement, noted above, together with the construction of the substantial brick structure and its basement, is a considerable amount of operational development to have been carried out between the above dates. In my judgement, this makes the appellant's version of events less than probable in this regard. So I am not satisfied the basement shown in photograph EF5(2) is a different basement to that created under the brick structure, shown in photograph EF7(4), notwithstanding the appellant's comments about the length of window apertures. These could have been changed between the dates above.
26. It is the appellant's case that parts of the original steel frame of the barn remain in situ, particularly steel columns at each of the four corners, which are now said to be encased within the brick structure on site. By the time of my site visit, parts of the internal blockwork of the structure had been removed to expose a section of steel column at each of the four corners, for me to view. These were also pointed out by Mr Hussain from above the brick structure⁸.

⁸ With the aid of mobile telephone videocall technology, provided on behalf of the appellant.

- I was also invited to view a pad in the ground at the front of the site, that was said to form part of the foundations for one of the original steel columns of the barn.
27. But my attention was drawn at the site visit to a substantial steel joist running along the bottom of the rear of the brick structure. This appears to be the same joist as seen in photograph EF7(4). Due to the location of this joist, the corner steel column above it (encased within the brickwork) could not be embedded in a pad/foundations in the ground. In other words, that column was not part of the original frame of the barn and left in situ, or, it had been removed and reused in a newly built structure. I place significant weight on this observation from my site visit.
 28. In the absence of any plans or drawings showing precisely what, if any, of the original barn has remained in situ and been incorporated into the build, the appellant's evidence is imprecise and ambiguous in this regard. This is exacerbated by differences in the dimensions⁹ of the former barn indicated by drawing LY01A and the dimensions¹⁰ agreed by the main parties at my site visit. These differences are unexplained if the building is a conversion rather than a fresh build and so I am not satisfied steel seen encased in the brick structure on site is the frame of the original barn left in situ.
 29. Even if I am wrong in respect of the above, as a matter of planning judgement, I am not satisfied the steel parts of the original barn, described by the appellant's witnesses, are sufficient for the resultant structure to constitute a conversion rather than a fresh build in *Hibbitt*¹¹ terms. This is because, from all of the evidence available, the resultant structure is in all practical terms a fresh build, with only a modest amount of help, if any, from the original agricultural building. Moreover, in any event, an original build need not be demolished for it to become a new building¹² and so, even if parts of the original steel frame of the barn are retained in the build, this does not preclude me from reaching my conclusion that the works carried out amount to a new building.
 30. The appellant considers that Class Q is generous. As is set out in the PPG¹³, it allows for the installation or replacement of windows, doors, roofs, exterior walls and partial demolition to the extent reasonably necessary to carry out these building operations, amongst other things. In addition, the Council approved the bricks used and roof tiles proposed. But these points make no difference to my finding above in respect of the works constituting a fresh build, based on the evidence available. Moreover, as has been established in case law, it was not the role of the Council (or the previous Inspector) to determine whether the development was permitted development when considering whether prior approval was required.
 31. The appellant is of the view that the basement can be severed or extricated from the build. But in light of my findings above regarding whether the works constitute separate acts of development, I am not satisfied that it can.

⁹ Approximately 9m width, 15m length and 5.5m height to eaves level, as scaled during Al-Rasheed Dauda's cross examination at the Inquiry.

¹⁰ 8.74m width, 15.57m length and approximately 5.36m height to eaves level from the damp proof course, measured by the main parties on site.

¹¹ *Hibbitt v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

¹² *Oates v SSCLG & Canterbury CC* [2018] EWCA Civ 2229

¹³ 'When is permission required?' Paragraph: 105 Reference ID: 13-105-20150305 in force at the relevant time and the subsequent amendment, Reference ID: 13-105-20180615

32. Whilst the basement structure has been filled-in, the evidence nevertheless indicates it still exists and from my observations at the site visit, it is obvious that the build sits significantly higher up than the former barn. This is because the basement structure it sits on acts as a podium and land levels around it have been raised. This is readily apparent when approaching the build from Millers Lane and comparing the land levels to each side with what is shown in the photographs in EF6 and EF7 (and EF7(4) in particular). No site level survey drawings have been provided to lead me to a different conclusion in this regard and, under cross examination, Mr Murphy admitted his comments about the height of the barn and the structure matching were an assumption.
33. Considering all of the above points, on the balance of probabilities I am not satisfied that on the date the LDC application was made, the existing works carried out on the appeal site fell within Class Q of the Order or that they were in accordance with the approval granted in February 2016. So for the section 195 appeal I conclude that the Council's decision to refuse the LDC application was well-founded.

The section 174 ground (c) appeal

34. An appeal on ground (c) is whether the matters stated in the notice (if they occurred) constitute a breach of planning control. The appellant states that, in essence, the same case is made in respect of ground (c) and the refusal of the LDC application. But the description of the alleged breach of planning control does not match the description of the LDC application.
35. At the time the enforcement notice was issued, Schedule 2, Part 3, Class Q of the Order¹⁴ granted planning permission for development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
36. Crucially, the version of Class Q in force when the notice was issued, did not grant planning permission for the 'excavation of a basement' or 'the erection of a structure'. These are the unauthorised works alleged by the notice. So Class Q does not help the appellant's case on the ground (c) appeal and the ground (c) appeal fails.
37. For this reason, and in light of the ground (c) case that had been pleaded by the appellant, at the Inquiry I sought clarification from the parties on whether there is a hidden ground (b) appeal, ie whether what has occurred is not the excavation of a basement and the erection of a structure but a change of use of a building from an agricultural building to a dwellinghouse together with building operations reasonably necessary to convert the building. However, having since heard all the evidence and seen the site, and in light of my findings above on the LDC application, it is clear that the matters alleged in the enforcement notice have occurred as a matter of fact, such that an appeal on ground (b) would fail in any event.

¹⁴ Class Q was amended on 6 April 2018, ie after the LDC was made and before the notice was issued.

The section 174 ground (a) appeal and the deemed planning application

38. The appeal site is in the Green Belt and section 4 of the notice identifies harm to 'amenity' by way of 'visual detriment' and refers to policies relating to character and appearance. Therefore, the main issues in the ground (a) appeal are:
- whether the appeal development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the appeal development on the character and appearance of the area; and
 - if the development is inappropriate development in the Green Belt, whether 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 necessary to justify the development.
39. The Council's evidence refers to other issues not identified in the reasons for issuing the notice¹⁵. But at the Inquiry the Council confirmed it is not raising any new issues and that other issues, including effects on the Epping Forest Special Area of Conservation (SAC), may be the subject of planning conditions or obligations. Having heard all the evidence and received conditions and obligations proposed by both main parties, I have no reason to disagree, except where set out below.
40. The Council's evidence also draws my attention to a vehicle access and parking areas. But these are not part of the breach identified in the notice, nor is there any evidence they have ever existed and so they are not before me for consideration. Were they to be constructed it would be open to the Council to consider the expediency of enforcement action in the usual way.

Whether Inappropriate Development

41. The notice refers to Green Belt Policies GB2A, GB7A and GB8A of The Epping Forest District Local Plan Alterations adopted July 2006 (the Local Plan). These significantly pre-date the Framework.
42. Policy GB2A states that planning permission will not be granted for the use of land or the construction of new buildings or the change of use or extension of existing buildings in the Green Belt unless it is 'appropriate'. Both main parties have agreed this policy is not consistent with the Framework as it sets out a fairly closed list of circumstances under which it would apply. I have no reason to disagree with this position and so I ascribe Policy GB2A limited weight in my decision.
43. Policy GB7A of the Local Plan states that the Council will refuse planning permission for development conspicuous from within or beyond the Green Belt which would have an excessive adverse impact upon the openness, rural character or visual amenities of the Green Belt. In my judgement, this is not consistent with the Framework either and so I ascribe Policy GB7A limited weight in my decision also.

¹⁵ Including those referred to in paragraph 5.16 of Ian Ansell's Proof of Evidence

44. The appellant considers the appeal development is 'appropriate' because it accords with paragraph 146(d) of the Framework. In effect, this states that the re-use of buildings is not inappropriate in the Green Belt, provided that the buildings are of permanent and substantial construction.
45. But the deemed planning application is not for the re-use of a building; rather this ground of appeal is that planning permission ought to be granted for 'excavation to create a basement and the erection of a structure' as alleged. I have found above in the LDC appeal, that the structure which has been built is in all practical terms the erection of a building rather than the re-use of a building. So paragraph 146(d) of the Framework does not apply, whether the former barn was of a permanent and substantial construction or not.
46. For broadly the same reason, Policy GB8A of the Local Plan does not apply to the development alleged either as it concerns the change of use and adaptation of a building in the Green Belt rather than a fresh build, as I have found is the case here.
47. The wording of Policy DM 4 of the Epping Forest District Local Plan Submission Version 2017 (the Submission Version Local Plan) is almost identical to the wording of the Framework in respect of Green Belts. So I consider it consistent with the Framework and whilst this policy is not yet adopted, I give it significant weight. No other forms of development set out in paragraph 146 of the Framework, or the exceptions for new buildings set out in paragraph 145, are relevant in this case, meaning the appeal development is inappropriate development in the Green Belt.
48. As set out in the Framework, the essential characteristics of Green Belts are their openness and permanence. As I found above in the LDC appeal, the appeal development sits significantly higher up than the former barn (whether converted or not), because of the basement structure it sits on. This makes the build prominent which has a significant visual effect on openness. Even without a roof, as it exists now, the appeal development may be clearly seen from the road and from either direction when approached along Millers Lane. Severing or extricating the basement, in the manner proposed by the appellant, with a planning obligation, would make no difference to this effect.
49. When standing on the top floor of the appeal building on my site visit, it was clear that the appeal development is also visible in long views from other homes in the surrounding area. I therefore consider that, compared with the former agricultural barn, the appeal development has a spatial effect on openness also and results in encroachment into the countryside. This is contrary to purpose (c) of the Green Belt, set out in paragraph 134 of the Framework.
50. I conclude on this main issue, that the appeal development is inappropriate development in the Green Belt and has a harmful effect on openness. This does not comply with the Framework or Policy DM 4 of the Submission Version Local Plan. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and Appearance

51. The appeal site sits in open countryside, close to a couple of immediately neighbouring homes which appear to be barn conversions. In the main, these

are modest, timber clad or rendered, single storey structures, with some additional accommodation in the roof.

52. The structure on the appeal site sits prominently on a hill. As constructed, it has clearly been intended to provide 3 storeys of accommodation. Even without a roof, as it exists now, it is a large and dominant structure because of its height, which is a consequence of the basement podium it sits on, notwithstanding that the basement has been filled in. As such it has a harmful and intrusive effect on the rural character and appearance of the area. Severing or extricating the basement, in the manner proposed by the appellant, would make no difference to this effect.
53. External materials for the structure are consistent with those agreed for the previously approved Class Q development on the site. But they are at odds with the traditional character and appearance of barn buildings and traditional barn conversions. Given the appeal development sits significantly higher up than the former barn, the materials used add to its prominence and intrusive character. However, there is no evidence to indicate that the details of external facing materials cannot be controlled by the imposition of planning conditions, if the effect of the appeal development on the character and appearance of the area were otherwise acceptable. In my view, a condition to this effect would be necessary were planning permission to be granted.
54. So notwithstanding my findings on materials, I conclude the appeal development harms the character and appearance of the area because of its height. This does not comply with Policies DBE1, DBE2 or DBE4 of the Local Plan or Policies DM 9 or DM 12 of the Submission Version Local Plan. These draft policies are broadly consistent with the adopted policies and the Framework in respect of this main issue and so I afford them significant weight.
55. The notice also refers to Policy DM 10 of the Submission Version Local Plan. But there is no evidence the appeal development is contrary to this draft policy.

Other Considerations

56. I have taken into account that there was a barn on the site originally and prior approval was granted for it to be converted to a dwellinghouse. Above damp proof course level, the dimensions of the structure which has been built are in broad terms similar (but not the same) as the former barn. But this is a consequence of land levels all around the structure having been raised and this has concealed the basement storey of the structure.
57. So whilst the basement structure itself may now no longer be visible, its overall effect on the increased height of the structure, and consequently its effects on the openness of the Green Belt and the character and appearance of the area, are readily apparent. So I give limited weight to the former barn and the structure's dimensions as other considerations.
58. Once completed, the structure is intended to provide a new home. This is a benefit of the appeal development, in that it will contribute to the supply of housing, albeit limited, being only a single house and only once it has been completed. Whilst the Framework lends support for the re-use of buildings, neither the Framework or development plan policies support the erection of a

dwelling in a countryside location such as this. So I give this consideration limited weight.

59. My attention has been drawn to personal circumstances of the appellant. But the appellant accepts they sought no professional advice before creating a basement. Any hardship caused has therefore arisen from the appellant's own actions and so I give this consideration limited weight.
60. As is set out in the Framework, the Government attaches great importance to Green Belts and substantial weight should be given to any harm to the Green Belt when considering any planning application. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the appeal development do not exist.

Other Matters

61. I acknowledge a planning obligation has been submitted to mitigate effects of the appeal development on the SAC. However, this is not a benefit and because I am dismissing the ground (a) appeal for other reasons there is no need for me to consider this particular issue any further.

Conclusion on the section 174 ground (a) appeal and deemed planning application

62. I conclude overall that the appeal development is inappropriate development in the Green Belt and leads to a loss of openness. Furthermore, it results in harm to the character and appearance of the area. The resultant harm is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the appeal development.
63. Paragraph 11(d) of the Framework is clear that where the policies which are most important for determining an application are out-of-date¹⁶, permission should be granted unless the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development.
64. I have found that the Green Belt Local Plan policies which are most important for determining the deemed planning application are not consistent with the Framework. Moreover, the evidence indicates the Council cannot demonstrate a 5 year supply of land for housing. So the policies which are most important for determining the deemed planning application are out-of-date.
65. But the designation of the land as Green Belt provides a clear reason for refusing the appeal development. So taking into account all of the above points, I conclude the ground (a) appeal fails and planning permission should not be granted.

The section 174 ground (f) appeal

66. In essence, the notice requires that the unauthorised structure and basement area are demolished, that the resultant materials are removed and that the basement is filled in. As such, it is clear the purpose of the notice is to remedy the breach of planning control alleged in the notice, pursuant to section 173(4)(a) of the 1990 Act.

¹⁶ As defined by footnote 7 of the Framework

67. The appellant considers that the requirement for the unauthorised structure to be demolished purports to take away the appellant's pre-existing use right to enjoy a sound agricultural building and that the requirements should be limited to those needed to reinstate the existing agricultural building. Such an argument is reliant on a finding that the development carried out was the re-use of a building rather than works so extensive as to amount to the erection of a building. But as I have found above in the LDC appeal, the resultant structure is in all practical terms a fresh build and nothing short of its removal would remedy the breach. There is no right to reinstate an agricultural building that no longer exists, without the benefit of planning permission.
68. The appellant states the requirements appear to seek a return to a cleared site and that this is neither fair nor appropriate. I sympathise with this view but my consideration of ground (f) is limited to whether the requirements are excessive to remedy the breach. I conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control. As such the appeal on ground (f) fails.

The section 174 ground (g) appeal

69. Since the notice was issued the Council has agreed that 6 months instead of 2 months is a reasonable period of time for the notice to be complied with. I have no reason to disagree with the Council's new position in this regard and so I shall vary the notice accordingly and the appeal on ground (g) succeeds.

Conclusions

70. In respect of Appeal A, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the development described, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
71. In respect of Appeal B, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Hardy	Barrister, Squire Patton Boggs
He called	
Steve Parren	Surveyor, Hook Survey Partnership
John Murphy AMIStructE	Senior Structural Engineer, Structural Engineering Services
Charles Biss BA (Hons), Dip Arch, RIBA	Architect, previously of BB Partnership
Al-Rasheed Dauda BA (Hons), Dip Arch (Hons), RIBA, MFPWS	Principal Architect, ARDA
Wahab Hussain BSc (Hons)	Business Property Development Manager and appellant's son
Ian Coward BA (Hons), MA, MRTPI	Director, Collins & Coward

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Barrister, Six Pump Court
He called	
Ian Ansell Dip TP	Senior Planning Officer

DOCUMENTS

- 1 Drawing LY 01 Rev. A
- 2 Summary Proof of Wahab Hussain
- 3 *Oates v SSCLG & Canterbury CC* [2018] EWCA Civ 2229