



Appeal Decision

Site visit made on 6 September 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 4 October 2021

Appeal Ref: APP/W3330/C/21/3275167

Land on the south side of Bourne Cottage, Holford, Somerset TA5 1RZ

- 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 Ms Jessica Wyatt against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered ECC/EN/18/00005, was issued on 19 April 2021.
 - The breach of planning control as alleged in the notice is the erection of a building in the approximate position shown edged blue on the plan attached to the notice.
 - The requirements of the notice are 1) demolish the building referred to in the breach; and 2) remove from the land all materials resulting from such demolition.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal site and relevant planning history

2. The site is in an isolated area of open countryside within the Quantock Hills AONB and in an SSSI. The holding is about 6.5 hectares and includes 2 hectares of woodland. Access to the site is via a track through a National Trust woodland.
3. Prior notification for the erection of an agricultural building was determined as not being required in January 2014 ((3/16/13/014).
4. The erection of an agricultural building with twin wall flue pipe and associated earthworks (retention of works already undertaken) has been refused (3/16/18/008).
5. An application for the erection of an agricultural building was submitted in November 2019 and dismissed on appeal in July 2020 (3/16/19/005 and APP/W3330/W/20/3249895).
6. An application for the retention of agricultural building including alterations to existing structure resubmission of 3/16/18/006) was refused in February 2020 (3/16/19/005).

The appeal on ground (e)

7. An appeal on this ground is that the notice was not properly served. The land was purchased jointly by the late John Hughes and Jessica Wyatt (the appellant) in November 2013 but the relationship broke up in 2017. It is the appellant's case that the notice should have been served on John Hughes children and that a Planning Contravention Notice was not served to establish ownership and other matters. Mr Hughes estate is being administered by his daughter, Miss Rosie May Hughes, who lives in New Zealand and has submitted a statutory declaration dated 6 June 2021 and sworn in Hamilton, New Zealand in respect of various photographs of the building the subject of the notice.
8. The Council served the notice on the registered owner shown on the Land Registry records and a further copy of the notice was posted on the site. The appellant's agent advised the Council that Mr Hughes' daughter had 'key responsibility' but not that she had an interest or that she was the registered owner.
9. Although it is good practice for a Council to serve a PCN to establish relevant facts, it is not a requirement prior to serving of an enforcement notice. There are limits to how far a Council needs to go in identifying the owners, occupiers and persons having an interest in the land. It was held in *Newham LBC v Miah* [2016] EWHC 1043 (Admin) that a Land Registry address is proper service if a Council has not been given another.
10. I am satisfied therefore, that on the basis of the Land Registry records, the notice was served correctly. I also note that Miss Hughes, as administrator of her late father's estate, has been fully aware of the notice and in my view, has not been substantially prejudiced by non-service of the notice, even had there been a requirement to do so.
11. The appeal on this ground fails.

The appeal on ground (c)

12. An appeal on this ground is that there has not been a breach of planning control. It is the appellant's case that the building is permitted development.
13. The building as constructed is not in accordance with the size and materials of the building as indicated on the prior approval application form in 2013. As the Council points out this has been effectively acknowledged by the appellant through the submission of retrospective planning applications in 2018 and 2019 for the building as constructed and the plans submitted with application 3/16/19/00. I note however that the agent is unaware of what pressure/guidance was placed on Mr Hughes resulting in the first application and that he remains of the view that the building is permitted development.
14. Paragraph 6 of the Council's appeal statement compares the prior approval dimensions with those 'as built' and I note that the height has increased from 4m to 4.12m; building length from 10m to 10.4 m and building width from 5m to 5.3m, with the height to eaves remaining at 2.4m. The appellant points out that the discrepancy is due to the method of wall construction and had metal cladding been applied to the steel frame, it would not have exceeded the dimensions. It is further added that the ground area is well below PD limits of 465sqm ground area and 12m in height. The appellant's view is that as the slightly larger isolated structure has no discernible increased impact on the

countryside and is not materially different from the brief details in the prior notification application, it should be allowed to remain. Whilst this may be the case, the building was not constructed to the dimensions indicated in the prior approval application.

15. In responding to the prior notification application, the Council confirmed that the development was permitted under the GPDO and that the development did not require prior approval for the siting, design and external appearance, which in view of its location in an AONB is surprising. I note that there was no requirement to submit plans showing the floor plan or elevations of the proposed building in these circumstances and that the application form described the building as a 'modern steel frame box profile clad agricultural barn' and that it was required for 'the secure storage for tractor/machinery/feedstuffs/rainwater collection/hygiene and welfare'.
16. At my site inspection, I observed an incomplete building on a sloping site (contrary to the officer report in the prior approval application referring to the proposed building being on level ground). The lower floor is of blockwork construction having openings for the addition of a window, doors and frames. It contained an old tractor at the time of my visit. Externally the upper/main floor had been felted and battened ready for the installation of an external cladding finish. The main floor appears to have insulated walls with plasterboard in part; plumbing for sanitary facilities; a temporary external access door and glazed domestic windows on three of its four elevations and openings for others. Drawings submitted with applications subsequent to the prior notification application indicate the main floor to have a welfare area as part of an open plan storage and work area, an enclosed shower room (but indicating no toilet) and small store. The roof space appeared to be used as storage space.
17. Development is not permitted by Part 6, Class A of the GPDO if it would involve the provision of a building, structure or works not designed for agricultural purposes. In this case, visually the building appears to have been designed for a dual purpose, with limited storage/agricultural space on the ground floor and for more domestic activities at the upper level, notwithstanding the stated intentions of the appellant that the proposed facilities on this floor would provide a welfare area.
18. The appellant also states that the purpose of the main floor would also be to allow higher quality native timber planks from the woodland to dry/season before being sold for joinery/furniture manufacturing.
19. I struggle to understand how the upper floor of the building with its domestic windows and insulation would provide a suitable environment as indicated by the appellant to dry/season higher quality native timber planks when the process of timber seasoning is one that can take place either out in the open air or within special wood-drying kilns which provide the timber with optimum levels of heat and air flow required for the drying process. The provision of domestic style windows and limited ventilation would not be conducive to this process in my view.
20. I conclude that the appellant has not demonstrated on the balance of probabilities that the development meets the conditions and limitations in respect of permitted development for agricultural buildings and that no planning permission exists for the development.

21. The fact that applications subsequent to the prior notification were recommended for approval by officers is not relevant to a legal ground of appeal.
22. The appeal on this ground fails.

The appeal on ground (d)

23. An appeal on this ground is that it was too late to take enforcement action. The appellant states that work commenced in 2014 and that by 17 April 2017, the building was shown to be watertight which is when the appellant believes that substantial completion of the new building was achieved, thus achieving immunity from enforcement action under s171B(1).
24. It is clear to me from my own observations and from the photographic evidence of the Council of 9 August 2018 that the building was not substantially complete when claimed as external cladding had not been installed, a number of windows and doors had not been installed at the main and lower levels and that scaffolding was in place. The Council cites Sage v SSETR [2003] UKHL 22 in supporting their conclusion that work was still in progress and could not be regarded as substantially complete.
25. Whilst the appellant may have a different interpretation as to what may constitute 'substantial completion' for an agricultural building and that regard should be had of the developers' original intentions as to the totality of the operations, I attach little weight to the application for prior notification being 'reasonably necessary for the purposes of agriculture'. What has been constructed is different to the prior approval details and, in its present form, raises considerable doubt in my mind whether the facilities provided and the design of the building or the intentions of the appellant were for agricultural purposes alone.
26. The appeal on this ground fails.

The appeal on ground (f)

27. An appeal on this ground is that the steps required are excessive.
28. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. In this case, the purpose is to remedy the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. However it is necessary to consider whether there is any 'obvious alternative' or 'lesser step' which would achieve the purposes of the EN with less cost and disruption. The requirements of the EN should be 'proportionate' in that sense.
29. The appellant anticipates a 'foreseeable reasonable need' for an agricultural building and suggests lesser requirements of either
 - i) The building to be completed in accordance with Drawing No 118/2/A (Appendix B of the appellant's statement) which the previous inspector (in appeal APP/W3330/W/20/3249895) concluded caused no visual harm and

- conditions regarding completion of the works and future use of the building could be imposed; or
- ii) Drawing No 2113/3 (Appendix F of the appellant's statement) shows the reduction in the size of the building and retention of the steel frame to meet the dimensions given in the prior notification application.
30. It is noted that there is no ground (a) appeal (which I assume is due to the appeal being dismissed in July 2020 (APP/W3330/W/20/3249895)). Although that inspector concluded that the development subject to that appeal would not harm the character or appearance of the area, including the AONB, he nevertheless had doubts over the ability of the building meeting a functional need of the farming business and concluded that the proposal was not acceptable in principle. Furthermore, no convincing justification of a 'foreseeable reasonable need' has been made in this appeal. Accepting the appellant's first option would circumvent a properly made decision on appeal. Where an appeal is not brought on ground (a), it is not appropriate for appellants to introduce arguments on the merits in the context of an appeal on ground (f).
31. In respect of the appellant's second option relating to the reduction in the size of the building, whilst this would permit a building akin to what the prior notification application related to, as there is no ground (a) appeal and the purpose of the notice is to remedy a breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The second option would not remedy the breach and is therefore unacceptable.
32. The appellant also requests that to reduce the amount of demolition material to be transported from the site could cause potential damage to the SSSI. It is requested that where the ground has been excavated for the lower ground floor some materials such as concrete blocks could be left on site and the ground remodelled using soil previously excavated and grassed over. The appellant points out that the requirements of the notice do not require the reinstatement of the ground.
33. Without detailed proposals and cross sections of the reinstated ground to provide a full understanding of how this would be implemented in practice, I am not convinced that step 2 of the requirements is unreasonable. It will be a matter for the appellant to pursue such matters with the Council and to decide whether to submit any necessary planning application for any such engineering operations.
34. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
35. The appeal on this ground fails.

The appeal on ground (g)

36. An appeal on this ground is that the compliance period is too short. The appellant considers the compliance period to be generally reasonable but requests that the notice be varied to allow the removal of materials in drier weather and more favourable ground conditions, and suggests that the compliance period should be up to the end of June.

37. Bearing in mind the date of this decision, the compliance period will extend into early July 2022. Consequently the compliance period meets the appellant's request.

38. The appeal on this ground therefore fails.

Conclusions

39. For the reasons given above I consider that the appeal should not succeed.

P N Jarratt

Inspector