The Planning Inspectorate

Appeal Decisions

by G Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Refs: APP/R3650/C/21/3275455 & 3275456
Frensham Meadow (Land Centred coordinates 484327 139729), Bacon Lane, Churt, Farnham, GU10 2QB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Terry Shubrook and Ms Julie Hanly against an enforcement notice issued by Waverley Borough Council.
- The enforcement notice was issued on 16 April 2021.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref WA2013/1129 granted on 19 February 2014.
- The development to which the permission relates is: Erection of stables including barn, tack room, rest room, tractor store and feed store for equestrian and land management/agricultural purposes (as amplified by letters and emails dated 23/09/13, 07/10/13 and 21/01/14 and Bat Report dated 13/01/14 and received 21/01/14).
- The condition in question is no 2 which states that: The building hereby permitted shall be used for private equestrian and agricultural purposes and shall not be used for commercial or non-commercial habitable accommodation. It shall not be used for any commercial equestrian purposes.
- The notice alleges that the condition has not been complied with in short because: The building now comprises a mixed use of equestrian and residential use. The parts of the stable which have been converted into habitable accommodation are described on the approved plans as rest Room, Tractor and Implement Store, and Open Loose Box. The rest of the building remains in equestrian use.
- The requirements of the notice are: (i) Cease the use of the building for habitable accommodation; (ii) Remove all kitchen fittings installed for habitable accommodation from the building marked 'A' on the attached plan, including the kitchen sink; (iii) Remove all bath/shower/toilets installed for habitable accommodation from the building marked 'A' on the attached plan; (iv) Remove all beds from the building marked 'A' on the attached plan; (v) Remove all material from the Land resulting from compliance with the above steps.
- The period for compliance with the requirements is: Twelve months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.

Decisions

1. It is directed that the Enforcement Notice (EN) is varied by:

    - deleting requirements (ii) and (iii) from section 5 and replacing them with "(ii) Modify the building to accord with the layout and appearance of the building approved by planning permission WA2013/1129 granted on 19 February 2014".

    - Renumbering requirements (iv) and (v) to become (iii) and (iv) respectively.

2. Subject to these variations, the appeals are dismissed and the EN is upheld.

Preliminary Matters

3. Section 1 of the EN alleges that there has been a breach of planning control under s171A(a) of the 1990 Act pertaining to carrying out development without the required planning permission. However, under section 3 of the EN ('The matters which appear to constitute the breach of planning control'), it is clear that it is directed at a breach of planning control under s171A(b) of the 1990 Act because the Council believes that condition 2 of the planning permission referred to in the banner heading above has not been complied with. This is a minor matter that does affect the validity of the EN. I am therefore, when it comes to the time limits under s171B of the 1990 Act, not dealing with an EN that alleges operational development or a material change of use. Consequently, whether the building is in a mixed use because part of it is still in use for equine purposes is not a matter that I shall examine.

4. Ordinarily, the relevant time limit in breach of condition cases would be that specified under s171B(3) of the 1990 Act which is ten years beginning with the date of the breach. However, it was held in *FSS v Arun DC & Brown [2006] EWCA Civ 1172* that it is the time limit under s171B(2) of the 1990 Act where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use. The condition need not expressly prevent use as a dwellinghouse. In this appeal, condition 2 of the planning permission seeks to prevent the building being used for habitable accommodation. Bearing in mind the rest room/wc/shower facilities that were allowed in the building and its countryside and Green Belt location, on any sensible reading of the condition I consider it seeks to prevent the building being inhabited as a dwellinghouse. Thus, when it comes to the time limit to be considered under the ground (d) appeal, that will be four years beginning with the date of the breach.

5. I am aware that the Council took the view the time limit should be 10 years. However, its case has also been made out that four years have not elapsed since the breach took place anyway. Furthermore, the case made by the appellant is based on the creation of a dwellinghouse under the four years 'rule'. In this context, no injustice has been caused to either party by defining that the time limit should be four years.

6. The burden to make out the case in legal grounds of appeal such as those under s174(2)(b) and (d) of the 1990 Act rests with the appellant, and the relevant test of the evidence is the balance of probability.

The ground (b) appeal

7. The appellant's case is that the alleged breach of planning control has not occurred because although planning permission was granted for the building, the appellants decided not to implement that permission and from the outset it was built to accommodate a self-contained dwelling. Consequently, if this is correct and the building is in effect development carried out without planning permission, then the planning permission granted for a building on the site is not relevant and none of the conditions have any bite. Therefore, what is alleged to have occurred would not have taken place. That outcome would lead to success under this ground of appeal.

8. Despite what the appellants say about deciding not to implement the planning permission for the building, it is confirmed that after permission was granted in February 2014, in January 2015 they had the pre-commencement conditions of

the planning permission discharged. Those conditions would have related to submitting samples of external materials and a detailed landscaping scheme to the local planning authority for its approval. There is no allegation that any of the other conditions have been breached. It is also confirmed that the building is in the same position, the same footprint and the same design/appearance as the approved scheme. Moreover, despite what would appear to be a few non-material variations to the size and position of a few openings to the external walls, these are all also more or less as approved. Overall, externally the development envisaged by the planning permission has been built.

9. The appellants rely on saying that the building was built from the outset to accommodate a self-contained dwelling with ancillary equestrian use. They further say the works were substantially complete by February 2016 and by the end of that month they were able to move into the dwelling. However, they did not move into the 'dwelling' as it is now. The residential move it is stated was into the tack room in one corner of the building to live on site while caring for a sick horse. Whether that is the case or not, and I shall be considering when the residential use may have commenced under the ground (d) appeal below, it appears that this wing of the building that includes a barn was laid out as approved. It is also stated that the barn was being used for storing hay in March 2016 and there is no evidence that the barn has ever been used for anything else other than as approved. The tack room is also shown to be in use as such. There is a WC in the corner of the tack room not shown on the approved layout plan, but, in my view, this is a minor alteration that does not materially put the building outside the scope of the permission.

10. The appellants assert that following moving into the tack room they continued with the internal works modifying the layout to create the dwelling as it exists now. These works they say were substantially completed by September 2016 thus enabling them to move out of the tack room into the self-contained dwelling in this part of the building. Consequently, by carrying out the development in a single operation, the building was completed not in accordance with the planning permission. Bearing in mind what I have set out above about the external appearance being in line with the planning permission, and that the tack room and barn are also in line with the permission, it could only be 'the dwelling' part of the building that could be relied upon to show that the development had not been substantially completed in accordance with the approved plans.

11. Notwithstanding what the appellant's state, other than the plan as existing, there is no other documentary evidence such as builder's specifications/drawings or schedule of works, to show that the works were done in one go thus resulting in what now exists. I have read the declarations made by the appellants under the Statutory Declarations Act 1835 where details are given of what they say occurred. However, in admitting that they never intended to carry out the development that had planning permission from the outset, and it was their intention all along to build a dwellinghouse, I consider they understood fully that this would be a flagrant breach of planning law. The works carried out might not fall into the category of concealment and positive deception due to allowing visits by the Council's building control officers, which I shall come onto below. However, by knowingly and deliberately stepping outside the law, this in my view significantly diminishes the veracity and weight that can be attached to the appellants' evidence. It

also casts substantial doubt over the response given in a Planning Contravention Notice stating that the residential use started in February 2016.

12. Moreover, Building Regulations (BR) approval for the building was granted in June 2014. The approved Building Control (BC) floor plan was based on the layout plan for the planning application. Apart from the addition of technical notes and details, the two plans are the same. The application for BC approval described the work as 'stable block with ancillary accommodation'. That is an accurate description based on the building containing a rest room with shower/WC facilities that were intended to take up a relatively limited part of the building. The final BC inspection occurred on 19 March 2018. The BC completion certificate dated the same day describes the work as 'Stable block incorporating ancillary accommodation' very similar to what was applied for.

13. Bearing in mind that the appellants say they fitted out the inside of the building to match the current layout by September 2016, thus enabling them to move from the tack room into the new dwellinghouse, I find it implausible that a BC Inspector would not have picked up what would have been significant changes to the building. If what the appellants say is true, they would have been living there for about 18 months at that stage, presumably giving the rooms a very domestic appearance far removed from the appearance of a feed store, loose boxes, a tractor and implement store and a rest room. This would have been obvious to a Council official there specifically for inspection purposes.

14. Moreover, in my experience of local authority enforcement casework, although a BC officer inspects a site for different reasons, they are there for regulatory reasons. Because the planning and BC plans are related, any notable deviations from what has been approved under the planning legislation are usually picked up by the BC officer who would then bring the matter to the attention of their colleagues in the planning team, invariably the Council's enforcement officer. Given the deviations relied upon by the appellants to show that they did not build the approved building, I find it very difficult to believe these were not picked up much sooner if they were there.

15. I also cannot see that a BC officer at the site for the purposes of carrying out public duties to ensure that the building met the required regulations would have had anything to gain by, as the appellants put it, turning a blind eye to what is alleged to have been going on and just signing off the works. It is much more likely and believable to me that when the final inspection took place the building was laid out in general accordance with the planning and building regulation plans showing ancillary accommodation and not a dwellinghouse in about half the building.

16. The BC officer therefore had no need to change the description of the completion certificate, because that layout was probably not there. As a matter of public record, the BC sign off was based on the BC plan submitted for BR approval which is the same as the layout shown on the planning drawing. All this points towards the building being substantially completed in March 2018 more or less in accordance with the approved plans. That would lead to the view that the layout was modified into its current arrangement sometime after. My consideration of when the residential use started under the ground (d) appeal adds to the finding that this is likely. I find the BC evidence telling and I give it significant weight.

17. It is not surprising to me that other BC officers did inspect aspects of the development such as wall and floor insulation. The rest room, for example, is shown on the approved BC plan to have a stud wall to the WC/shower room and the other walls lined internally with a skim finish. The ceiling is shown to be finished the same way with the addition of thick quilt insulation. Insulation is also referred to on the drawing notes related to the tack room and there is a cross reference to this relating to rest room as well. However, there is no evidence to show that such features were inspected by BC officers in other parts of the building that is now a dwellinghouse.

18. I acknowledge the statutory declaration submitted by the builder engaged by the appellants. He refers to some of the works I have already covered above, which would have been required legitimately as part of building the approved stables. In the same context, while a self-contained sewage system was installed as well as drains, these works too are not surprising given that the WC/shower would have needed to discharge somewhere, and the approved BC plan shows drains from the approved sink, WC and shower to a septic tank. Carrying out of such works does not, therefore, demonstrate that they were done to create a dwellinghouse. There is nothing of substance to back up that internal corridors were introduced when this builder was engaged to work at the site. I also have serious misgivings about attaching this declaration much weight given that the builder was working for the appellants who openly set out to disregard the planning permission.

19. Regarding the statutory declaration from the appellants' equine barefoot trimmer, based on a visit in April 2016 it is stated that the appellants were living in the tack room. However, there is no other evidence from this person to show that habitation was probably occurring. On another visit later that year it is stated that where the kitchen and living room are had been finished internally and the appellants had moved into the main dwelling. However, there is again nothing to show what that layout might have been or that these rooms were being lived in. This declaration adds little to the case for the appellants. Therefore, I attach it limited weight.

20. The appellant's version of events is not sufficiently precise and unambiguous when compared against the other evidence that paints a very different picture. Therefore, in weighing up all the evidence considered so far, I find that the balance comes clearly down on the side that the appellants have not shown, as a matter of fact and degree, that they probably substantially completed the building as it now is in one single operation such that it was an unauthorised building standing outside the planning permission granted for a building on this site in 2014. It is more likely that the building was substantially finished in accordance with the planning permission.

21. The alleged breach of planning control has occurred because there is a breach of condition 2 of planning permission ref: WA/2013/1129. The ground (b) appeal fails.

The ground (d) appeal

22. For the case to be made out successfully under this ground of appeal, the appellants need to show that the breach of the planning condition started at least four years prior to the EN being issued. The material date is therefore 16 April 2017.

23. The Council has supplied a copy of a form 'Notice of Occupation/Change of Address' related to when the appellants declared to the Council that they had moved into a property they were renting elsewhere in Surrey. It shows that they moved into that other property on 19 April 2011. On 13 November 2018 the appellants emailed the Council with a subject heading "*Leaving property*". The email confirms that on that date the appellants were "*currently tenants*" at the address they moved into in 2011. The email goes onto state "*We will be leaving this address on the 18th of December 2018. We would be grateful if you could send us a final account or whatever the process is for this event.* "

24. Clearly, this evidence directly contradicts by some way the appellants' version of events that they moved into the stable tack room in February 2016 and then into the dwellinghouse part in September 2016. In my view, the Council's evidence goes beyond the appellants assertions that it only shows they had a tenancy agreement which started in April 2011 which was their registered address until they gave up their tenancy in December 2018. The email specifically says, "*We are currently tenants at….*", which is different to my mind than confirming they just had a tenancy agreement. The email further states "*We will be leaving this address on the 18th December 2018*" which strongly indicates the tenants were still living at the previous address then.

25. Moreover, it does not seem likely that the appellants kept the tenancy going from February 2016 until December 2018, which is just under three years, merely so that they had a postal address, so they could maintain their presence on the electoral register and as a fallback just in case their residential use at the stables was detected. If that was the case, they would have been paying Council Tax, and rent on the other property which the Council says was £900 per month. That would mean, in rent alone, paying out in the region of £30,000 for a time they say they were not living there. This seems very unlikely to just maintain a postal address etc. There is no evidence to show that the previous property was in a poor state of repair. To continue to pay rent and Council Tax if that was the case also does not seem very likely.

26. Furthermore, whilst there is no first-hand evidence from the owners of the former rental property, the Council states that in a visit to the owners of the accommodation, which is an annex to the owners' main house, they confirmed that the appellants occupied the annex until December 2018. They knew the appellants were at home due to the presence of their vehicles and because they were able to see house lights on through the windows in the evening.

27. It may be the case that the owners of the annex did not fully realise why the Council officer visited them and that they were primarily concerned that there was no unpaid Council tax. They may also not have been concerned about whether the appellants were in residence. Nevertheless, the versions of events do not tally, which casts further doubt on the case for the appellants. On this basis, there was probably also no need to adapt the layout of the stable building in 2016 or 2017 because it was probably not being lived in until December 2018 at the earliest.

28. A permanent electricity supply was provided to the appeal building in January 2017 costing over £6000 which the appellants say would not have been necessary if the building was just used to stable horses. However, given that the approved building shows a rest room and shower facilities, and the loose boxes, barn, tack room and tractor store all of which it is reasonable to assume

needed lighting, it is likely that the temporary electricity supply arrangement with a near neighbour would have had to end at some stage, thus making it necessary to put in a permanent independent supply. It also does not surprise me that because the power connection meant visits by the electricity supply company to link the stables to the powerlines, the cost was in the order of £6000. The 2017 power supply link does not show that it was probably related to a residential use it is claimed started the year before.

29. I note the various aerial photographs, but they are snapshots in time that in this case do not in my view help the case of either side one way or the other. When the 'courtyard' area to the building was paved also does not show when the building was, or was not, occupied residentially. It is not clear why following a visit by the Council's enforcement officer to the site in 2019 it then took so long before either the PCN was served, or formal enforcement action was taken. Nevertheless, based on what I have set out above, this makes no difference to the ability of the Council to take enforcement action because, as a matter of fact and degree, the case that the breach of planning control is now immune from enforcement action has not been successfully made out. The Council could have submitted more evidence in the form of detailed BC inspection notes and visits. However, what was submitted tells a credibly different version of the events from the appellants for the reasons given.

30. I have read the views expressed by interested persons who also cast doubt on the appellants' evidence. However, the evidence I have considered already makes the appellant's case less than probable. Thus, I do not need to consider the objectors evidence in any further detail.

31. The appellants have failed to discharge the burden on them to show that, as a matter of fact and degree, the breach of condition 2 of the planning permission occurred for the required four years. As such, the ground (d) appeal fails.

The ground (f) appeal

32. The EN is directed at a breach of planning control comprising non-compliance with a condition that seeks to prevent the use of the building for habitable accommodation. The requirements of the EN seek to cease this use and for the adaptations to the building that enable the use to be removed. The purpose of the EN therefore is to remedy the breach of planning control under s173(4)(a) of the 1990 Act. It would therefore not be excessive to make the development comply with the terms (including conditions and limitations) of the planning permission that was granted. In this case, that should be to ensure the use of the building for habitable accommodation is ceased and for it to be put back to the approved layout and appearance.

33. I shall therefore delete requirements (ii) and (iii) and replace them with "Modify the building to accord with the layout and appearance of the building approved by planning permission WA2013/1129 granted on 19 February 2014".

34. To this extent there is partial success under this ground of appeal.

The ground (g) appeal

35. There is no evidence that the appellants would have any difficulties in finding alternative accommodation close enough to still attend to the welfare of their horses at the stables. In my view 12 months is an appropriate time in which to end the habitable use of the building and alter it back to its planning

permission state, particularly as most of those alterations would be just remodelling the internal layout. The ground (g) appeal fails.

Conclusions

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations.

Gareth Symons

INSPECTOR