



Appeal Decision

Hearing Held on 9 November 2021

Site visit made on 10 November 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/P3420/C/21/3273979

Moss House Farm, Eardley End Road, Bignall End, Stoke on Trent, Staffordshire ST7 8NB

- 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 Aleksandra Tosova against an enforcement notice issued by Newcastle-Under-Lyme Borough Council.
- The enforcement notice was issued on 1 April 2021.
- The breach of planning control as alleged in the notice is :Without planning permission, the rebuilding of a barn known as Barn 2 to provide 2 dwellings (the buildings) shown edged red on the attached plan marked " Plan 2 ".
- The requirements of the notice are to:
 - (i) Demolish that part of the building in its entirety as shown hatched on the attached Plan marked "Plan 2".
 - (ii) Reinstate the newly exposed elevations in facing brick to match as closely as possible the appearance, colour, and texture that of the existing building.
 - (iii) Remove all the materials arising from the demolition of the building from the Land and take all such material to an authorised landfill site.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) b) and (f) of the Town and Country Planning Act 1990 as amended. As an appeal has been made under ground (a), the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal is allowed on ground (a), the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Background information

1. The appeal building forms part of a building that was originally an L -shaped agricultural barn. Planning permission (the 2014 approval) was granted on appeal for the longer arm of the barn which is the appeal building on the 27 August 2014 for "conversion and change of use of former barn to residential market housing." Planning permission had already been granted by the Council in 2013 for the shorter arm of the barn for conversion to holiday lets but no work has taken place and that part of the original barn is not part of the appeal. The appellant completed the purchase of the appeal building from the Hignett family in October 2016 and the family retain ownership of the undeveloped part of the original barn.

2. A second planning application which was also for the barn conversion to form two dwellings but was described as a regularisation application with changes to the roof height and window heights and an additional window was made in October 2017. The application was refused by the Council and subsequently dismissed on appeal (the 2018 appeal decision). The development was found to be inappropriate development in the Green Belt as due to the nature of the works that had taken place, the proposal no longer fell within the exception relating to re-use that applied at the time of the 2014 approval.
3. A further planning application was made in 2019 to retain the appeal building for commercial use but that was refused by the Council and the enforcement notice, the subject of this appeal, was issued on 1 April 2021.
4. The parties have referred to the two previous appeal decisions relating to the appeal site in their evidence. Whilst the findings and conclusions of the previous Inspectors are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach.

The issued enforcement notice

5. The wording of the allegation stated on the notice needs to be clearly understood by the recipient in terms of what is alleged and the requirements, which should flow from the allegation. The allegation is “the rebuilding of a barn known as Barn 2 to provide 2 dwellings” but this description is imprecise and potentially confusing. A pre-hearing note asked the parties to consider the described allegation and in particular whether it addressed operational development only. The appellant is adamant that no change of use had occurred as the building is not occupied and limited building work has taken place to the interior of the building. The Council confirmed at the hearing that the intention had not been to allege a change of use and the allegation relates solely to operational development.
6. The case advanced by the Council is that a new building had been created due to the extent of the works that had taken place. Given the notice attacks carrying out operational development, the appellant clearly understands the intent behind the notice and was not misguided by the alleged breach as stated on the issued notice. Indeed, the case for the appellant on ground (b) challenges the Council’s proposition that a new building has in fact been constructed. I am therefore satisfied that the following alternative form of words best describes the alleged breach of planning control: “*Without planning permission, the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building*”. For the above reasons, I find that this correction does not cause injustice to either party and I will correct the alleged breach of planning control.

The appeal under ground (b)

7. The appellant argues that the breach of planning control alleged, as corrected, has not occurred as a matter of fact. In this ground of appeal, the burden of proof is upon the appellant and the relevant test of the evidence is the balance of probabilities. As the corrected allegation relates to carrying out operational development comprising the reconstruction of a building following partial

demolition to create a new building, any arguments concerning a change in the use of the building fall away.

8. The appellant's argument is that the nature of the building work carried out constituted alterations and additions rather than the reconstruction of a building following partial demolition to create a new building. The appellant refers specifically to the alterations as "the rebuilding of external walls, an increase in roof height, the additions of windows and alterations to existing windows". However, the Council considers that the extent of the works undertaken go beyond what can reasonably be described as alterations and additions, which has resulted in a new building and refers to the 2018 appeal decision as supporting that view.
9. The appellant, who is professionally represented, is not pursuing a ground (c) appeal and is not alleging that the development is in accordance with the 2014 approval. However, the appellant does make comparisons with the 2014 approval which was for conversion works to indicate that the nature of those works falls short of being a new build and are more akin to alterations.
10. The appeal building is roughly a rectangular shape with a small square cut out to the north west corner as that square is part of the original barn retained by the Hignett family. A plan attached to the enforcement notice has a colour code key and indicates which walls have been retained and what work was previously permitted. Due to the absence of part of the north exterior side of the square, two internal walls are now exterior walls. One of those exterior walls is a continuation of the internal spine wall that runs from north to south within the appeal building and the other is a breeze block wall. There are gable end walls to the north and south and longer walls to the east and west. The parties agree that the gable end walls to the north and south were rebuilt and that work did not form part of the 2014 approval. Modest sections of the west and east walls which adjoin the south gable end were however identified as sections to be rebuilt under the terms of the 2014 approval. Nevertheless, the whole of the west and east walls had been rebuilt as opposed to just the identified sections.
11. Whilst the 2014 approval provided for roof tiles to be replaced, the whole of the roof has been replaced including new trusses. The front of the appeal building which is two storey is now 3 brick courses higher than the original wall which it replaced as compared with the unaltered shorter arm of the barn which retains the original height of the barn.
12. At the hearing, the appellant explained the collapse of the west wall was due to adverse weather conditions which had consequences for the section of roof above it. The appellant's statutory declaration also addresses the extent of the roof works and states that all the old roof rafters and trusses which were in very poor condition were replaced, a new roof membrane was put on and removed tiles replaced. Roof windows were added which did form of the 2014 planning permission but to my mind the substantial replacement of the whole roof goes beyond "an increase in roof height".
13. Whilst the 2014 approval permitted repair works to the two sections of wall adjoining the southern gable end and repairs to the roof, very little of the original building remains with both gable ends being rebuilt as well as the eastern and western walls. No original external walls remain as the section of spine wall that is now exposed was previously an internal wall.

14. The parties rely upon different percentage figures to indicate what parts of the original building still exist depending upon whether the internal walls are included as the original spine wall remains. However, irrespective of which percentage calculation is preferred, apart from the repair works permitted to part of the east and west walls and the roof as part of the 2014 approval, the original exterior walls and roof have been replaced.
15. The Inspector who determined the 2018 appeal decision reached a similar conclusion. She stated *"it is clear from the evidence and my site visit that a significant proportion of the barn that is the subject of this appeal has been reconstructed with all of the external walls and the roof having been re-built."* The appellant argues that the findings reached by the two previous Inspectors are inconsistent and that the views of the Inspector who granted planning permission for the 2014 approval should be preferred.
16. However, the 2014 approval did not address the same issues as this appeal or consider the same development. In 2014, the Inspector was considering the refusal of a planning application for the conversion and change of use of former barn to residential market housing. There was no dispute at that time that the barn was of permanent sound construction as the structural survey to support that position had been commissioned in 2013 as the submission of the planning application. The Council accepted that the proposal to convert part of the barn to two dwellings was re-use and the issues for the Inspector related to other matters such as the suitability of the location for residential use.
17. The 2018 appeal arose from an application by the appellant in order to regularise the work that had been carried out at the appeal site. The Council's position with regard to the appeal building had changed since 2014 as the Council was of the view that the works actually carried out had gone beyond conversion and re-use. The Inspector did therefore consider the extent of the works carried out and whether the "re-use of a building of a permanent and substantial construction" exemption still applied. She found that the barn was not of permanent and substantial construction prior to the re-building. The previous appeal decisions are therefore not necessarily inconsistent as different circumstances were being assessed. They were issued four years apart and as indicated in the appellant's statutory declaration, the condition of the barn had deteriorated significantly in those intervening years.
18. There is no dispute between the parties that in re-building the walls the appellant has used the old bricks where possible and has done the same with the roof tiles. Nevertheless, Section 55 (1) of the Town and Country Planning 1990 Act as amended (the Act) defines development as including building operations. Section 55(1)1A(b) then defines building operations as including rebuilding. Alterations and additions would suggest work which falls short of re-building but irrespective of the use of the same or similar materials, the walls and the roof have been re-built.
19. The appellant states that the appeal building in its current form is not a new building and that was established in the 2018 decision. However, the decision did not address whether or not the appeal building fell within the Green Belt exception relating to replacement buildings. She assessed the proposal under the re- use of a building exception that had previously applied and found that it did not apply. She was not then obliged to move on to assess whether or not any other exceptions within the Green Belt applied unless she was asked to do

so. The decision does not indicate that any alternative exceptions were advanced by the parties.

20. The previous Inspector was referred to case law including the Amber Valley¹ which the appellant considers to be more akin to the facts of this case than the Oates² decision. In Oates, the Court found that *"the retention of some of the fabric of an original building does not preclude a finding by the decision maker as a matter of fact and degree that the resulting building is a new building and that the original building has ceased to exist"*. In Amber Valley, on the facts of the case, the Inspector found that a substantial part of the original barn walls remained and dismissed appeals under ground (b) and (c) but subsequently allowed the appeal on ground (a). The principle that each case has to be assessed on its own merits applies as each case will turn upon its own facts and circumstances.
21. Having regard to the nature, scale and extent of the building operations that have taken place, I am satisfied that the work go beyond alterations and additions. All the evidence points in the likelihood the building operations carried out have resulted in the reconstruction of a building following partial demolition to create a new building. I find that the matters alleged as corrected have in fact occurred and ground (b) therefore fails.

The appeal on ground (a) and the deemed planning application (the DPA)

22. The terms of the DPA directly derive from the allegation as corrected. Planning permission is sought for carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building. At the hearing, the parties indicated that the exterior of the building is complete. However, from my site visit observations, there is a section of roof missing where the other part of the original barn and the appeal building meet. There is also a gap to the section of breeze block wall that forms a boundary wall between the two parts of the barn. The building is not in use and I shall only consider the merits of granting planning permission for the development described in the corrected allegation. If planning permission is granted for the matters alleged as corrected, another grant of planning permission would be required to complete the building.

Main issues

23. These are:

- Whether the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building amounts to inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies and
- the effect of the development on the openness of the Green Belt and purposes of including land within it
- Whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other consideration. If so, would this amount to the very special circumstances required to justify the development.

¹ Amber Valley BC and SSCLG [2009]EWHC 3466 (Admin)

² Oates and SSCLG [2018]EWCA Civ 2229

Reasons

Inappropriate Development

24. The construction of new buildings in the Green Belt is inappropriate unless the proposal falls within category of exceptions, which are set out in paragraph 149 to the Framework. Policy S3 of the Newcastle under Lyme Local Plan which was adopted in 2003 sets out the Council's Green Belt policy. However, at the hearing the parties agree that Policy S3 is not consistent with the Framework and is therefore not relevant and I shall therefore rely solely on the Framework in this respect.
25. The Council considers paragraph 149 d) of the Framework to be the most relevant exception as it refers to the replacement of a building provided that the new building is in the same use and not materially larger than the one that it replaces. Even if the building could be considered to be a replacement when the replacement building no longer exists, the building would have to be in the same use to fall within the exception. The Council is of the view that the development does not fall within that exception as the building is not in the same use.
26. The appellant applied for planning permission for commercial use in 2019 as she believed that commercial use had occurred between 1994 and 2012. However, that application was refused by the Council on the basis that this exception did not apply to the appeal building as a new building had been constructed and any previous use was effectively lost as that original building no longer existed.
27. In my view, the same principle still applies here, the appeal building cannot be in the same use as the previous building as that building no longer exists. Even if that were not the case, the interior of the appeal building is a shell and has never been occupied as a dwelling and the appeal building does not therefore have a current use for comparison purposes. The parties agreed at the hearing that there has been no use of the appeal building since 2012 when the Hignett family purchased the barn. I do not share the appellant's view expressed at the hearing that no use is in the same use for the purpose of this exception as same use implies an actual use rather than no use at all. I do not therefore consider that the appeal building falls within Paragraph 149 d) of the Framework as it is not a replacement building and it has no current use, and any previous use was lost by way of comparison as the original part of the barn no longer exists.
28. The appellant considers that the development falls within the exception contained in paragraph 149 c) namely the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. However, I have already found that the extent of the works go beyond extensions or alterations of a building and have resulted in a new building. The exception that the appellant seeks to rely upon does not apply, and nor do any exception stated in the Framework. The development for which planning permission is sought constitutes inappropriate development in the Green Belt.

Effect on openness and purposes

29. The 2018 appeal decision is relied upon by the appellant as an indication that the Council has no issue with openness. However, in that decision, the Inspector considered that the development did not fall within the previously relied upon re-use exception and did not make an assessment of openness. As the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building does not fall under any category of development acceptable in the Green Belt, I need to assess the development's effect on openness.
30. The development replaces the longer arm of the original barn that formed a single L- shaped building of the same footprint and a similar height. There is a difference in the height of the development but this is slight, which, in my assessment, has a very limited impact on openness both spatially and visually. Overall, I find the development to have limited harmful effect upon openness and the purposes of designating land inside the Green Belt given the site's location.

Other considerations

31. Substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
32. Other considerations were put forward within the 2018 appeal decision, but they were not found to be sufficient to outweigh the harm to the Green Belt given the nature and scale of that scheme. The other considerations previously considered included the similarity of the appearance of the appeal building, contribution to the housing supply, personal circumstances and visual harm.
33. Regarding visual harm, the appellant's previous argument was that a completed building, would be a significant improvement in visual terms when compared to the alternative of a partially constructed building should elements of rebuilding be required to be removed by way of enforcement action. That assessment is now very different when the consequences of enforcement action are known as in this case where the demolition of the appeal building would result in leaving half a barn. The existence of the notice and its consequences represents a significant change in the planning circumstances. The extensive use of original brickwork and tiles results in a building that is, in terms of its external appearance, alike the undeveloped part of the barn. Demolition would require the undoing of this work. Compliance with the notice is likely to result in significant change to the sites layout.
34. I acknowledge there is a difference in height, but I concur with the Council this additional height is insignificant. The steps required by the notice would, potentially, leave half of a barn standing, which does not achieve a useful purpose. Whilst some original features have been lost, the development, albeit incomplete, carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building is acceptable on planning terms. In addition, its footprint is exactly the same in comparison to part of the barn it replaces.

35. Additionally, the requirements illustrate the practical problems of demolition currently joined and the demolition imposes a requirement upon the appellant to re-instate brickwork. However, it became apparent during the hearing that there is no agreement as to whether the appellant or the Hignett family own those walls and who is able to carry out any remedial work. Whilst Mr Hignett offered to carry out work to exposed walls, he is not a party to the notice. The remaining barn is already exposed to the elements and is missing a number of doors and windows and no work appears to have been done to date to convert it to holiday lets. The holiday let situation is complicated by the appellant having paid a deposit for that part of the building. Demolishing part of a barn is, in my view, likely to create significant visual harm to the landscape and permanently remove the longer arm of a historic barn. Contrary to the previous Inspector's consideration of these matters, I attach substantial weight to these considerations.
36. The details of the history of events and personal circumstances as existed up until June 2018 were before the previous Inspector. Since that time, the appellant and her family continue to rent elsewhere and the appeal building has seen limited changes in the intervening period. Since the last appeal, the appellant prepared a statutory declaration which sets out in detail her involvement with the appeal building. Significant events in terms of the history include the collapse of the western wall due to adverse weather conditions which had a knock effect in terms of other work such as the issues with the roof and the misinterpretation with regard to the gable end walls.
37. It was only when a further planning application to regularise matters was submitted in September 2017, it became clear to the parties that the remainder of the east and west walls had been rebuilt in addition to the southern portion of the east and west walls that could be re-built under the terms of the 2014 permission. Works have effectively been on hold since those issues were identified in the absence of any later grant of planning permission.
38. There is no suggestion that the appellant deliberately set out to flout the planning laws or to erect a new building. The appellant has not in any way gained by her actions and instead has invested both time and money in trying to resolve the predicament she finds herself in. At the time of the completion of her purchase, the structural survey that had supported the planning approval was three years old. The structural survey stated, "the barns are in remarkable condition considering their age" and "80% of the existing wall structure was considered to be sound". However, the state of the barn was very different by the time that works commenced. The appellant perhaps naively only saw the potential to create a family home for her family. In the absence of any evidence to the contrary, I attach very substantial weight to these arguments.
39. Whilst the appellant has never been able to live in the development, for the past 7 years she and her family have persisted in their hope that they would still be able to occupy at least one part of it as their family home. They were also sufficiently invested in the barn as a whole to pay a deposit for the holiday lets. The loss of the appeal building will leave the appellant without their future home and no means to repay all the family and friends who have loaned them money over the years. Whilst the appellant has not been able to occupy any part of the barn as a family home, she has continued to rent elsewhere at additional long term expense. I do attach significant weight to the personal

circumstances of the appellant and the history of unfortunate events which have led to this appeal.

40. The previous considerations included a contribution to the housing supply by the provision of two dwellings. The Council had no objection to residential use for the conversion. However, the use of the new building is clearly not a matter before me, because I am only tasked with assessing the carrying out of operational development comprising the reconstruction of a building following partial demolition. Nevertheless, given the holiday let permission, residential use would appear to be the most likely option should the building remain, but this is a matter for the appeal parties to resolve in future. However, as the Council has indicated that there is now a 5-year housing supply and I therefore attach limited weight to this matter.

Green Belt Balance

41. Paragraph 147 to the Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building constitutes inappropriate development in the Green Belt. Although the loss in openness is limited there is harm to openness. The identified Green Belt harms carry substantial weight.
42. On the other side of the scales, I attach very substantial weight to the reasons given to justify the partial demolition of the existing building and explanation justifying the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building. The arguments about the design, overall size and scale of the building attract substantial weight in favour.
43. There is no evidence to cast doubt on the appellant's personal circumstances and I attach significant weight to the potential consequences should the enforcement notice be upheld. However, limited weight is given to the housing land supply arguments. Nevertheless, I find that the other considerations in this case, individually or cumulatively, clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development. Next, I turn to conditions.

Conditions

44. One condition concerning landscaping was suggested during the hearing. However, as a further planning application is required to address the future use of the building and to complete external works, I do not consider that it is appropriate or necessary to impose a landscaping condition as part of this appeal.

Other Matters

45. Mr Hignett has concerns about an increase in the height of the roof of the appeal building as compared to the height of the remaining barn. He also considers that excavations have lowered the ground floor of the appeal building which will have consequences for his remaining part of the building due to issues about the level of digging out required for a damp proof course if and when he undertakes works to convert his part of the barn to holiday lets.

46. There is a difference in height levels to the front of the appeal building. There is also a difference in ground land levels as assessed along the northern boundary but neither is significant. Whilst Mr Hignett considers these matters to result in disproportionate additions, that is not what the Council is alleging. Whilst the division of the ownership of the original barn has caused issues, the consequences for Mr Hignett in terms of his retained part of the barn from the development or the need for damp proof works are not matters that can be resolved through this appeal.

Overall conclusion

47. For the reasons given above, I conclude that the appeal on ground (b) shall not succeed, however the appeal on ground (a) shall succeed. I shall grant planning permission for the development as described in the notice. The appeal on ground (f) does not fall to be considered.

Formal Decision

48. It is directed that the enforcement notice is corrected by deleting the allegation in full and replacing it with "Without planning permission, the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building."
49. Subject to this correction, the appeal on ground (a) is allowed, the enforcement notice is quashed and planning permission is granted on the amended application deemed to have been made under Section 177(5) of the Act for the development already carried out namely " the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building at Moss House Farm, Eardley End Road, Bignell End, Stoke-on- Trent."

E. Griffin

INSPECTOR

APPEARANCES

Appellant
Appellant's husband

Aleksandra Toseva
Ravinda Singh Mandaira

FOR THE APPELLANT:

John Hunter
Carl Copestake
Rob Pattinson
Moz Mahmood
Michael Askew

Barrister Kings Chambers
Knights PLC
Knights PLC
Knights PLC
Knights PLC

FROM THE LOCAL PLANNING AUTHORITY:

Rachel Killeen

Senior Planning Officer
Newcastle under Lyme Council

INTERESTED PERSONS:

Christopher Hignett

Neighbour

Documents submitted during the hearing

Extracts of the Structural Survey dated August 2013

Agreed Statement of Common Ground.

Extract of the Design and Access Statement dated August 2013

.