



Appeal Decision

Site visit made on 7 December 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/U3935/C/21/3280902

Land at Farm Buildings at Eastrop Farm, Highworth, Swindon, SN6 7QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nigel King of Eastrop Barns Ltd against an enforcement notice issued by Swindon Borough Council.
- The notice was issued on 15 July 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of three buildings as residential dwellings ("the dwellings") on the Site, shown numbered 1 – 3 and hatched in red on the attached plan (Appendix 2)¹.
- The requirements of the notice are to:
 - (a) Demolish the three dwellings and remove any footings, foundations and ground floor slabs associated with the unauthorised development;
 - (b) Clear all resultant debris, rubbish and materials from the Site arising from compliance with the above requirements; and
 - (c) Level the ground and seed with grass.
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.

Summary Decision: The enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr Nigel King of Eastrop Barns Ltd against Swindon Borough Council. This application is the subject of a separate decision.

Preliminary Matters

2. The appeal was originally made on grounds (a), (f) and (g). However, the appellant's evidence deals with matters that are relevant to a ground (b) appeal. The parties' views were sought in this regard.

Reasons

3. Prior to consideration of the grounds of appeal, I have a duty to ensure that the notice does not contain any errors. If errors are found, the powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b),

¹ Reference in the header to a plan is to a plan appended to the enforcement notice.

to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.

4. My concerns with regard to the notice are in respect of the allegation, which is of the erection of three buildings as residential dwellings, defined in the notice as "the dwellings". On site I noted a two storey building and a single storey building that, internally, had been divided into two separate parts. For this reason I understand why the single storey building has been described as two buildings, but these appear as a single building at present.
5. Whilst I have identified matters in the appellant's evidence that relate to a ground (b) appeal, they are also relevant to my consideration of whether or not the allegation of the erection of buildings is correct. I have, therefore, considered these matters here, as follows.
6. My attention has been drawn to the two original farm buildings on site. These were the subject of an application² made under Class Q of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. The Council determined that prior approval was required and granted this on 17 November 2017 for the change of use of two agricultural buildings on the appeal site to three dwelling houses. Following this, works were undertaken at the site and the result is the buildings that I observed on my site visit.
7. The appellant acknowledges that much of the original buildings have been removed, although he suggests that the details submitted with the prior approval application demonstrated this; that only the slabs and steel frames of the original buildings would be retained. The appellant has compared the built development on site to the agricultural buildings that were the subject of the prior approval in terms of their scale, form and footprint. However, he acknowledges that the fabric of the agricultural buildings has been removed and that reliance cannot now be placed on the prior approval granted by the Council.
8. The appellant has referred to the retention of the steel frame and slabs, however his evidence is that the steel frames of both buildings were removed and treated before being repositioned. Although materials may have been reused, the evidence points to the recent works involving the complete removal of all elevations, the roof and the structural frame of both original buildings. Whilst the slabs may have been retained in some form, either as existing or under new internal floors, substantial operational development has been undertaken to construct what are principal components of the buildings on site, including the elevations and the roofs. For these reasons I find that, as a matter of fact and degree, the works undertaken on site have resulted in the erection of new buildings.
9. Notwithstanding my conclusion above, it is common ground that the buildings are not complete. The buildings are in the latter stages of construction, but they lack certain elements and external finishes that would complete them. For example, there is no dispute that the first floor of the two storey building requires finishing materials. The single story building also lacks the doors and windows necessary to make it weatherproof. Indeed, even if I were able to

² Council reference S/PRIOR/17/1004.

consider the ground (a) appeal in this case and grant the deemed planning application, the works necessary to complete the buildings in the manner intended are likely to require the further grant of planning permission; these works would materially alter the external appearance of the buildings. Accordingly, whilst I find that the allegation of the erection of buildings is correct, it is important that the allegation reflects that the buildings are not complete and that they are partly constructed.

10. The above is relevant to the matter I now turn to, which is whether the buildings on site can be described as residential dwellings, as alleged in the notice. The distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence. In this regard, I note that the buildings on site have the appearance of dwelling houses that are under construction, and I see that there is no dispute that their intended use is as such. However, they each lack any kitchen facilities, a w.c., or any bathrooms. Indeed, as noted above, the single storey building does not have any windows or doors to make the openings in the building weather tight. This alone renders it unlikely to be capable of being used for any domestic existence. The two storey building has been fitted with windows and is, therefore, secure in this regard. However, internally it does not provide facilities sufficient for day to day private domestic existence. Accordingly, I conclude that, as a matter of fact and degree, the buildings on site are not residential dwellings. Reference to this in the allegation is not, therefore, correct.
11. For it to correctly identify the breach of planning control in this case, corrections to the notice are necessary. However, I must be satisfied that such corrections would not cause injustice to any party. In this regard, I am mindful that the ground (a) appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The matters stated in the notice (i.e. the allegation) must be corrected to refer to the buildings as being partly constructed and to remove reference to the buildings as residential dwellings. In view of this, I am unable to consider the deemed planning application on the basis of the erection of buildings as residential dwellings, as originally put in the notice. On the determination of an appeal under section 174 of the 1990 Act, section 177 allows the grant of planning permission for the whole or any part of the matters stated in an enforcement notice, but not for any more than those matters stated. To be clear, once the notice has been corrected, the deemed planning application is limited to the matters stated, and would not comprise the completion of the buildings and their use as residential dwellings.
12. Having regard to the above, I note that both parties have made their case under ground (a) on the basis that the deemed planning application is for the erection of three residential dwellings. For example, their respective cases refer specifically to policies that relate to the provision of housing, and each party has made representations on access to everyday services and facilities by occupiers of the dwellings. Plainly, the parties' representations on the ground (a) appeal do not respond to a deemed planning application for the matters stated in the notice, once the necessary corrections are made to it, as set out above. For this reason, I am unable to correct the notice without causing injustice to either party.

Conclusion

13. For the reasons given above, I conclude that the breach of planning control stated in the notice is not correct. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. In these circumstances, the appeal on grounds (a), (b), (f) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

15. The enforcement notice is quashed.

J Moss

INSPECTOR