



Appeal Decision

Site visit made on 8 February 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/P1045/C/20/3263159

North Park Farm, Whitworth Road, Darley Dale, Derbyshire DE4 2HJ

- 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 Miss Helen Lowe against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 19 October 2020.
- The breach of planning control as alleged in the notice is the unauthorised erection of a dwellinghouse, deliberately concealed inside an agricultural storage/stable building and the erection of a single storey, lean to extension to the agricultural storage/stable building.
- The requirements of the notice are:
 - a) Permanently cease the residential use of this site.
 - b) In relation to the breach identified under 3.1 permanently remove the concealed dwellinghouse from the agricultural building.
 - c) In relation to the breach identified under 3.2 permanently remove the unauthorised extension.
 - d) Permanently remove all material from this site, relating to the removal/demolition of the concealed dwellinghouse and the unauthorised extension, in order to put the building back to that described on the approved drawings for either planning permission 15/00641/FUL or as detailed in prior notification 12/00033/AGR.
- The period for compliance with the requirements is 6 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matter

1. The appeal on ground (d) has been withdrawn and therefore the arguments relating to deliberate concealment of the dwellinghouse have fallen away.

The Enforcement Notice

2. The appellant argues that on a number of issues the enforcement notice is fundamentally flawed. Section 4c of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (ENAR) requires the notice to specify the precise boundaries of the land by reference to a plan or otherwise. An incorrect plan does not make the notice a nullity. However, it would constitute a defect if the notice does not otherwise specify the precise boundaries of the land to which the notice relates and, indeed, failure to provide a sensible indication of the land to which the notice relates would be likely to constitute a nullity.

3. The enforcement notice clearly identifies the land affected as North Park Farm, Whitworth Road, Darley Dale and a plan is attached which shows two red lines; one either side of the building the subject of the notice. Therefore, it cannot be said that the land is edged red as described in paragraph 2. In addition, the scale of the plan is stated to be 1:500; however, that appears to be incorrect. The appellant argues that the blue hatched area which indicates the location of the unauthorised erection of a dwellinghouse and the green hatched area which indicates the location of the extension, are incorrect. Although I can see that there are some deficiencies in the attached plan, it is adequate for the purposes of identifying where the alleged breaches of planning control have occurred.
4. The courts interpret the power to correct notices very widely. Such powers extend to making significant changes to the notice to provide an accurate description of the alleged breaches of planning control and the powers can extend to the substitution of a correct plan. Indeed, an inaccurate plan can be deleted altogether, leaving the site to be described in words alone, without offending ENAR 4(c). In this case, since the notice enables the person to know what she has done wrong and what she needs to do to correct it, it complies with s173(1)(a) of the Act. That being the case, the Plan can be corrected without causing injustice to the appellant. Such correction should include the clear indication of the land edged red being land at North Park Farm, Whitworth Road, Darley Dale, Derbyshire DE4 2HJ to a correct scale.
5. The appellant also contends that the notice does not define "this site", but she appears to have a clear understanding of what it means by suggesting it means "the land affected". Paragraph 5.1 a) requires the cessation of the residential use of "this site" and this can be changed to "the land affected" without causing injustice to the appellant. Requirement 5.1d) requires the permanent removal of all material from the site, relating to the removal/demolition of the concealed dwellinghouse and the unauthorised extension. The requirement to remove material is quite clear, but it would be clearer to specify the removal from "the land affected" rather than "the site". Although the appellant disputes the clarity of what is defined as "the land affected" as a result of the deficiencies in the plan attached to the notice, an amended plan will clarify the extent of the land affected. Therefore, in this case I consider that, in order to be more precise, reference to "the site" should be deleted and substituted by the words "the land affected". Given her understanding of the alleged breach of planning control and the requirements of the Notice, this can be done without causing injustice to the appellant.
6. Another argument advanced by the appellant is that the building in question is not an "agricultural storage/stable building" because it also has lawful use for dog grooming purposes by virtue of planning permission 15/00641/FUL which was approved by the Council on 16 December 2015. At my site visit I noted that the large building is used for stabling, agricultural storage and other uses. The Council's description used in the enforcement notice is sufficiently clear for the appellant to understand the building in question, the alleged breaches of planning control and what she must do to remedy the breaches. Therefore, I cannot see that the description of the building used by the Council causes vagueness or uncertainty.

7. There are other concerns such as whether or not the development of the dwellinghouse should be described as “new build” or otherwise. I shall deal with this matter below under the appeal on ground (a)

The appeal on ground (b)

8. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the erection of a dwellinghouse, deliberately concealed inside an agricultural storage/stable building and the erection of a single storey lean to extension had not been erected as a matter of fact.
9. The appellant does not dispute that a breach of planning control has occurred but does dispute that the description is incorrect. In particular, it is argued that this is not a new build, open market dwellinghouse, but instead it is the conversion of part of a building. However, there is only reference to “open market” and “new build” in the reasons for issuing the notice rather in the description of the alleged breach of planning control alleged. A dwellinghouse has been erected inside the building and a single storey lean to extension has also been erected on the building. These have occurred as a matter of fact and therefore the appeal on ground (b) must fail.

The appeal on ground (a)

10. The ground of appeal is that planning permission should be granted. The main issue is whether the principle of residential development and an extension to the building are acceptable in this location having regard to the development plan.

Reasons

11. The Council is unable to demonstrate a deliverable 5 year supply of housing sites as required by the National Planning Policy Framework (‘the Framework’). In this regard, it can only demonstrate a 4.61 year supply against the 5 year requirement. In these circumstances Paragraph 11 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I return to this matter in my Overall Balance and Conclusion, below.
12. Policy S1 of the Adopted Derbyshire Dales Local Plan 7 December 2017 (the LP) states that the Council will meet development needs within or adjacent to existing communities having regard to the settlement hierarchy. The appeal site is situated close to, but not immediately adjacent to the settlement boundary of Northwood and as such does not comply with Policy S1. Policy S4 of the LP which relates specifically to Development in the Countryside provides for new residential development in specific circumstances. These include housing to meet the essential requirements of agriculture, forestry or other rural bases enterprise in accordance with Policy HC13, conversion and re-use of buildings in accordance with Policy HC8 or on non-allocated sites on the edge of defined settlement development boundaries of first, second and third tier settlements in circumstances where there is no 5 year supply of housing land subject to consideration against other policies in the Local Plan and the provisions of the Framework.

13. Policy HC13 relates to Agricultural and Rural Workers Dwellings, stating that proposals for these will be supported provided that a range of criteria are met. These include the need to establish a functional need. Although the appellant has stated that she is confident that a case can be established to show functional need and financial viability, no other supporting evidence has been provided. Consequently, the dwellinghouse fails to meet the requirements of Policy HC13.
14. Policy HC8 relates to the conversion and re-use of buildings for residential accommodation and states that in locations such as the appeal site, outside settlement boundaries, the conversion of existing to residential use will be permitted where a range of criteria are met. This includes where the form, bulk and general design of the existing building makes a positive contribution to the character and appearance of the surroundings. In this case the building in question is a substantial utilitarian building which the appellant considers makes a neutral contribution to its rural surroundings but submits that this is not fatal to allowing the conversion of the building. However, the wording of HC8 is quite clear in establishing the need for a building to have a positive contribution. From the evidence before me, there is no dispute between the main parties that the building does not make a positive contribution to its surroundings and consequently, the specific requirements of Policy HC8 are not met.
15. The Council has confirmed that it cannot demonstrate a five year housing land supply and therefore, in accordance with Policy S4 residential development on the edge of settlements may be acceptable in order to meet the shortfall. In my judgement the appeal site cannot reasonably be described as being on the edge of the settlement because it is approximately 100 metres from the outer lying part of Norwood's settlement boundary and is separated from the settlement by agricultural land. Therefore, the development does not meet the requirements of Policy S4.
16. The appellant contends that the extension is intended to be an extension to the lawful dog grooming use of the building. At my site visit I observed that the extension is used for a range of cat, dog and other animal and pet related items and feed. Therefore, I do not accept the argument that it is required to support the dog grooming business, but instead it appears to be used to store items associated with the wider use of the main building.
17. The overall objective of Policy S1 of the LP is to ensure that all developments should make a positive contribution towards the achievement of sustainable development by improving the economic, environmental and social conditions of the area. Among other objectives, this will be achieved by supporting the local economy and business by providing for a range of economic developments that provide employment opportunities suitable for local people in suitable locations. Policy S4 relates specifically to development in the countryside and states that planning permission will be granted for development where it comprises the extension of existing buildings for employment provided it is appropriate in its location and does not have an impact on the character and appearance of the rural area, it comprises rural employment development and is for rural based enterprises. Policy EC1 states that the Council will support and encourage the appropriate expansion of rural businesses requiring additional space to grow.

18. The extension is relatively small in relation to the host building and its overall appearance is satisfactory in relation to its immediate surroundings. However, I am concerned that the appellant is arguing that the space is needed to support her rural enterprise when part of the main building has been taken by the unauthorised residential development. In addition, the building is large and at my site visit I noted that there is a lot of space within the building which seems to be used for general storage purposes and is under-used. Furthermore, there is little evidence that the appellant's business is growing. Therefore, there is insufficient evidence to demonstrate that, in accordance with Policy EC1 the development is actually required to provide additional space to grow.
19. Although Policy S1 is supportive of developments that make a positive contribution to sustainable development objectives, there is insufficient justification for the current extension proposal on the grounds of improving the economic, environmental and social conditions of the area. Furthermore, given the lack of evidence in relation to the extension there is insufficient justification that it is in an appropriate location. It may suit the wishes of the appellant but otherwise I do not see that a positive contribution is made to sustainable development objectives and the wider spatial planning objectives set out in the development plan.
20. I do not find that the appearance of the extension itself is harmful to the character and appearance of the area, but the principle is contrary to the wider sustainable development objectives of the development plan and policies which seek to control development in the countryside. Therefore, with reference to the extension, I conclude that it is not acceptable in this location having regard to the development plan; particularly Policies S1, S4 and EC1.

Overall Balance and Conclusion

21. As set out above, the residential development is contrary to Policies S1, S4 and HC8 and HC18 of the LP, which are in general accordance with the Framework and in step with current government guidance. Therefore, they attract significant weight in the decision-making process.
22. Set against this, the development would make a very small contribution towards the deficient housing land supply position, in a relatively accessible location. It would also have resulted in some small economic benefits during the construction phase. In view of the current shortfall in housing supply, I give these considerations moderate weight.
23. On balance however, and taking all matters into consideration, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. The material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.
24. I have considered whether a temporary consent for two years would be appropriate in this case where the appellant requires time to demonstrate the functional need for the dwelling. However, in accordance with the development plan, the appellant needs to demonstrate the need for the dwellinghouse before any planning permission is granted. Therefore, a temporary consent is not appropriate in this case.

25. For the reasons given above I conclude that with reference to the dwellinghouse, the appeal on ground (a) should be dismissed because the principle is unacceptable.

The appeal on ground (f)

26. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the cessation of the residential use, permanent removal of the concealed dwellinghouse and permanent demolition of the extension, the purpose is clearly to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In this respect, the appeal on ground (f) fails.
27. Nonetheless I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in this appeal, it would be possible to grant planning permission for part of the development. The appellant has suggested that she may need to stay overnight for reasons relating to animal welfare and that basic facilities such as a kitchen, shower and sleeping area is required. However, given the concerns I have stated above with reference to the residential development and the previous unauthorised use of the building for residential purposes, I agree with the Council's requirement to permanently remove the dwellinghouse from the agricultural building. That is the only way of remedying the breach of planning control. Should the appellant wish to include some basic ancillary facilities in the building that may be the subject of a separate planning process.

Formal Decision

28. I direct that the enforcement notice shall be corrected by:
- a) the substitution of the plan originally attached to the notice with one which shows the land edged red being land at North Park Farm, Whitworth Road, Darley Dale, Derbyshire DE4 2HJ to a correct scale. It should also show an area hatched blue showing the unauthorised erection of a dwellinghouse, deliberately concealed inside an agricultural storage /stable building and an area hatched green showing the unauthorised erection of a single storey lean to extension to the agricultural storage / stable building; and
 - b) deletion of the words "this site" from paragraphs 5.1 a) and 5.1 d) and the substitution therefor of the words "the land affected".
29. Subject to these corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the application deemed to have been made under s177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR