



Appeal Decision

Site visit made on 1 February 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/N2739/C/21/3280334

Land at High Common Farm, Market Weighton Road, Barlby, YO8 5DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Alison Allen against an enforcement notice issued by Selby District Council.
 - The notice, numbered 2020/0207/MWCU, was issued on 9 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a garage/workshop building with a first floor gym by the conversion into a new dwellinghouse, together with the alteration to an agricultural field access, the creation of a new access road, parking and turning area and domestic curtilage to land east of the new dwellinghouse.
 - The requirements of the notice and periods for compliance are set out in the Schedule to this decision.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of a garage/workshop building with a first floor gym by the conversion into a new dwellinghouse, together with the alteration of an agricultural field access, the creation of a new access road, parking and turning area and domestic curtilage at land at High Common Farm as shown on the plan attached to the notice and subject to the following conditions:
 1. Notwithstanding the provisions of class A and Class E to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) no extensions, garages, outbuildings or other structures shall be erected, without the prior written consent of the Local Planning Authority.
 2. Unless otherwise approved in writing by the Local Planning Authority, the altered access to Market Weighton Road will not be used until it has been set out and constructed in accordance with the published Specification of the Highway Authority and the following requirements:
 - a. The crossing of the highway verge shall be constructed in accordance with the approved details and/or Standard Detail number E6D.

- b. Any gates or barriers shall be erected a minimum distance of 6 metres back from the carriageway of the existing highway and shall not be able to swing over the existing or proposed highway.
- c. Provision should be made to prevent surface water from the site/plot discharging onto the existing or proposed highway in accordance with specification of the Local Highway Authority.

All works shall accord with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Ground (c) and hidden ground (d)

- 2. An appeal on ground (c) is on the basis that the matters stated in the notice do not constitute a breach of planning control. The appellant says that the operational development described in the notice, i.e. the conversion of the building to a new dwellinghouse and the alteration to the field access, creation of the new access road, parking and turning area, and domestic curtilage took place in 2015 and that the building has been occupied as residential dwelling since that time.
- 3. It is clear that the appellant's case is not that the matters stated on the notice do not constitute a breach of control, but rather that some benefitted from permitted development rights or did not constitute development, and that they all took place more than 4 years ago and are therefore immune from enforcement action because of the passage of time. This is properly considered as an appeal under both ground (c) and ground (d) (that at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control) and I will deal with it on this basis. I am satisfied that the Council have had the opportunity to comment on the appellant's case and that no injustice will be caused in dealing with the appeal in this way.
- 4. When seeking to prove a ground (c) or (d) appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

Ground (c)

- 5. In order to succeed on the ground (c) elements as argued the appellant will need to show that the hardstanding did not require express permission as it benefited from permitted development rights, and that the alterations to the vehicular access was not a breach of planning control as this was in fact an existing lawful access. However, the appellant firstly needs to show that these works were not done to enable the unauthorised use.
- 6. It is the Council's case that the works to the vehicular access and hardstanding were only required as part of the use of the garage building as a separate dwellinghouse. They rely on an email from the appellant dated 13 November 2019 which states: *"we now have someone living in the annex property and therefore need access from the road without coming into our side of the property"*. The Council says that the works were therefore part and parcel of that change of use and do not benefit from permitted development rights and can be enforced against as an element of the breach of planning control alleged in the notice.
- 7. Caselaw holds that where an enforcement notice is issued in respect of a material change of use, here the use of the garage as a separate

dwellinghouse, and works were carried out to facilitate the material change of use the notice may require that the works are removed in order that the site is restored to its previous condition. In this case, based on the explanation provided by the appellant regarding the need for the alterations to the access and the hardstanding, I am satisfied that these physical works were undertaken to enable the unauthorised use irrespective of whether they could have been done with permitted development rights or whether they do not in fact constitute development.

Ground (d)

8. In order to succeed on ground (d) the appellant will therefore need to prove on the balance of probabilities that each element of the operational development took place more than 4 years prior to the issue of the notice (i.e. before 9 July 2017), and that there has been a continuous use of the building as a dwellinghouse for the same time period.
9. The evidence provided by the appellant shows that the physical works to convert the property were completed by November 2015 and this is accepted by the Council (although they say that no evidence has been submitted to show when the kitchen was installed). However, in order to rely on the time limit under section 171B(2) of the 1990 Act, the appellant must also prove that the building has been used as a single dwellinghouse for a substantially uninterrupted period of 4 years. The appellant has not provided evidence of such a use although she had previously said that she lets friends and family stay in the building. The email sent on 13 November 2019 (as referred to above) seems to suggest that there had been a relatively recent change at that time to having someone actually living in it. In any event, the appellant has not provided sufficient evidence of the actual use of the property as a separate dwellinghouse in order to show that on balance it has been used as such for a substantially uninterrupted (i.e. continuous) period of 4 years prior to the issue of the notice.

Conclusion on grounds (c) and (d)

10. For the reasons as set out above, the appeal does not succeed on grounds (c) or (d).

Ground (a) and the deemed application for permission

11. The main issue is the effect of the development on the character and appearance of the countryside.
12. The appeal site is located in the open countryside. The brick-built single storey building with pitched roof was previously used as a garage and workshop with gym in the roof space. The deemed application is for the use as a dwellinghouse and associated works to that building, and the alteration to the field access, the creation of a new access road, parking and turning area and domestic curtilage as had been built on site at the time the notice was issued.
13. The appearance of the building has been altered through the installation of 6 roof lights, removal of 2 garage doors and replacement with windows on the west elevation and replacement of window on the east elevation with a door, and provision of garden area to rear. Internally the building has an open plan living area on the ground floor with kitchen, and an open plan bedroom and office area upstairs with ensuite bathroom. The existing access to the field has

been widened and an access road with turning area and parking created which is surfaced with light coloured stones.

14. Views from the adjacent Market Weighton Road are limited due to the high hedgerows. The building itself looks only marginally different to the building as it was previously seen when used as a garage. It is set back from the road within the wider curtilage of the main dwellinghouse and small cluster of buildings associated with it, and the physical changes are barely seen from the public domain. The widened access provides fleeting views of the new access road but little else can be seen of the works which constitute the development. As there is no footway on the public road these views will be reduced still further by the fact that passers-by will generally be inside vehicles and moving more quickly. The limited views of the development do not cause visual harm to the area or site, or harm to their character.
15. The policy position is that isolated development in rural areas should be avoided. However, the development plan for the area provides for exceptions. Policy H12 in the Selby District Local Plan, which forms part of the development plan, states that proposals for the conversion of rural buildings to residential use in the countryside will only be permitted where it can be demonstrated that the building or its location is unsuited to business use. In this case the building was in fact already in residential use as it was a building used ancillary to the main dwellinghouse. In any event, it would not be suitable for a business use due to its location within the wider curtilage of High Common Farm which is in residential use. The development is therefore not in conflict with this requirement, and it also accords with the other requirements of Policy H12. Policy SP2 in the Selby District Core Strategy October 2013 requires that development in the countryside will be limited to the re-use of buildings. This is the case here, and as explained above, the building cannot be reused for employment purposes which is the preferred option under SP2.
16. The National Planning Policy Framework 2021, which is a material consideration, also advises that isolated development in rural areas should be avoided. The parties accept that this development is within open countryside and therefore considered isolated for these purposes. However, this development falls within the exception set out in paragraph 80 c) as the reuse of a redundant building. The previous use as a garage and gym ceased in 2015 when the conversion works were undertaken, and it has therefore not been used for that purpose for quite some time.
17. For the reasons set out above, the development is not contrary to the development plan and there are not material considerations which mean that the development should not be granted.

Conditions

18. The Council has suggested three conditions and the appellant has not provided any comments about them. The conditions appear to be the Council's standard conditions and the wording has not been altered to take account of the fact that the development has already taken place.
19. The first suggested condition, relating to permitted development rights, is necessary to ensure that any further development, considered in addition to the works already undertaken, does not harm the character and appearance of

the site and area within the open countryside. The wording does not need to be changed.

20. The second suggested condition relates to the construction requirements for the crossing of the highway verge and is required to ensure that a satisfactory means of access is provided in the interests of vehicle and pedestrian safety. However, it is drafted with a timing requirement that the access to be constructed before there are any other works on site which is clearly not appropriate here when the works have already taken place. I have therefore redrafted the condition so that the requirements will need to be met if the access is used.
21. The third condition, relating to the access, turning and parking areas is not required as these have already been constructed and form part of the deemed application for permission, and the site is not constrained in terms of size.

Conclusion

22. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for a material change of use of a garage/workshop building with a first floor gym by the conversion into a new dwellinghouse, together with the alteration of an agricultural field access, the creation of a new access road, parking and turning area and domestic curtilage as described in the notice and subject to the conditions relating to permitted development rights and the access road.
23. The appeals on grounds (f) and (g) do not fall to be considered.

Zoë Franks

INSPECTOR

The Schedule

The requirements of the notice are:

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| Step 1 | Cease using the garage/workshop building for residential use. |
| Step 2 | Permanently cease the use of Land as residential curtilage outlined red on the attached Plan A, and remove all domestic paraphernalia associated with the unauthorised residential use. (This includes but is not limited to garden furniture and rotary washing line). |
| Step 3 | Return the building to its former use as a garage/workshop and to its former appearance by removing the two new windows on the West elevation and the new door on the East elevation and replace with the two garage doors on the East elevation and a window on the West elevation, as approved under Planning Permission CO/2002/05060, and shown on the attached Plan B. |
| Step 4 | Remove the vehicular access and restore the hedge boundary to its previous condition, by planting hawthorn plants to match the existing hedge leaving the gap in accordance with the previous vehicular access as per the attached photo Annex C. |
| Step 5 | Remove the turning and parking area, and all associated hardstanding, then return the Land striped in blue on Plan A to its previous condition of a grassed open field by preparing the land for reseeding and laying grass seed. |

The time periods for compliance are:

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| Step 1 | 3 months |
| Step 2 | 4 months |
| Step 3 | 4 months |
| Step 4 | Within the next planting season |
| Step 5 | 4 months |