



Appeal Decisions

Site visit made on 9 March 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

Appeal A: APP/Y2430/C/21/3284959

Building at field, OS 0900, Waltham Road, Branston, Leicestershire

- 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 Act").
- The appeal is made by Mr P Wells against an enforcement notice issued by the Melton Borough Council.
- The enforcement notice was issued on 29 September 2021.
- The breach of planning control alleged in the notice is without planning permission, the unauthorised erection of a timber framed shed-like structure.
- The requirements of the enforcement notice are:
 - 1) Remove the unauthorised timber frame structure (identified on the plan and in the attached photographs) from the land.
 - 2) Remove all materials associated with the demolished building from the land including and foundations and return the land to its original form.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on grounds set out in section 174(2)(a), (d), (f) and (g) of the Act. 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 of Decision: The appeal is allowed on ground (d) and the enforcement notice is quashed.

Appeal B: APP/Y2340/W/21/3284913

Building at field, OS 0900, Waltham Road, Branston, Leicestershire

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr P Wells against the decision of Melton Borough Council.
- The application Ref 21/00371/FUL, dated 26 March 2021, was refused by notice dated 11 August 2021.
- The development proposed is retention of existing shed structure in connection with use of land as smallholding/allotment and the formation of access track within the site.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails.

Preliminary Matters

1. There are some apparent errors with the enforcement notice in Appeal A. Section 5(1) of the notice refers to attached photographs, however the appellant states these were not attached to the copy served on him. (They were also not attached to the copy of the notice sent to the Inspectorate). Sections 7 and 8 are mis-numbered and should be Nos. 6 and 7. The appellant also points to other matters relating to the Annex.
2. In arguing his appeal case the missing photographs have not prevented the alleged breach of planning control and notice requirements from being properly understood by the appellant. The other errors referred to are minor

and capable of correction without injustice to any party. However, for reasons set out below in ground (d) the notice is to be quashed in any event. Hence, there is no need for me to make any corrections to the notice.

Appeal A, ground (d)

3. The ground of appeal is that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. As such, the onus of proof falls to the appellant to show that the alleged "*timber framed shed like structure*" (hereafter "the appeal building") as indicated on the plan attached to the notice, was substantially completed at least four years before the date on which the notice was issued. The relevant date therefore is 29 September 2017.
4. The judgment in *Gabbitts v SSE & Newham LBC* [1985] JPL 630 makes it clear that if a Council has no evidence itself, nor any from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason to dismiss an appeal on ground (d), provided that the appellant's evidence alone is sufficiently precise and unambiguous. I examine the evidence below.
5. The appellant has submitted a sworn and signed statement with appended annexes of various documents and photographs. In his statement he states that by 27 September 2017 the appeal building was completed and in use, including the toilet and water storage area, and the 'Lantera' element was being used for storage of tools and equipment for the upkeep of the land.
6. Annex 2 is a delivery note, signed by the appellant, listing delivery of the Lantera part of the appeal building on 3 August 2017. Annexes 3 and 4 contain a collection of order notes/receipts and invoices for materials the appellant states he bought for use in the construction of the appeal building. The various dates of purchase marked on these are: 12 and 25 July 2017, 10, 14 and 22 August 2017, and 15 September 2017.
7. During my site inspection I saw that the whole of the Lantera part of the appeal building, as constructed, is consistent with the information contained in Annex 2. I also find there to be no inconsistency between the materials in the rest of the appeal building, as constructed, and the materials listed in Annexes 3 and 4. While the various documents with dates of purchase and delivery are not evidence of when the appeal building was actually constructed and substantially completed, they are nonetheless consistent with the appellant's sworn statement that the building was so substantially completed before 29 September 2017.
8. Photographs 3 and 5 are dated 27 August 2017. They show the covered storage area (open on eastern side), attached to the Lantera part of the appeal building. Photograph 4, dated 13 September 2017, shows the water storage enclosure. Photograph 6 shows the completed main elements of the appeal building, finished in paint, from the roadside. All of these photographs are dated before the 29 September 2017.
9. The Council suggest that the open eastern elevation referred to above is evidence of the building in an uncompleted stage at the date of the photographs. However, the appellant states it was always intended to be open, and has remained so following construction in that open state. The

drawings submitted for approval with the planning application for the building, some considerable time later in 2021, also show that elevation as being open. There is no contradictory evidence before me to indicate otherwise.

10. I find no reason to doubt the veracity of the appellant's evidence which is reasonably precise and unambiguous, and is not weakened by any contradictory evidence from the Council. As such, I conclude on all the evidence before me, on the balance of probabilities, that the appeal building was substantially completed more than four years before the issue date of the enforcement notice. It is therefore immune from enforcement action by the passage of time and is lawful. It should be noted that the notice does not attack any use of the building. Hence, my conclusion relates only to the appeal building itself as operational development.
11. The appeal on ground (d) therefore succeeds and the notice will be quashed. In these circumstances the appeal on ground (a)/deemed application for planning permission, and grounds (f) and (g) do not fall to be considered. Appeal B remains to be determined because it has been submitted under section 78 of the Act.

Appeal B

12. Appeal A succeeded on ground (d) which means that the appeal building is immune from enforcement action, and so can be used for any lawful use (including agriculture). However, Appeal A was determined without reference to the merits of the development and relevant planning policies were not a consideration. As such, my decision on Appeal A does not weigh in favour of success in this appeal against the refusal of planning permission.
13. The Council do not object to the access track constructed from the highway along the inside of the site boundary, and I have no reason to disagree with that view. Since this part of the development is physically separated from the appeal building I can grant planning permission for it regardless of the outcome in relation to the appeal building.

Main Issue

14. The main issue is the effect of the appeal building on the character and appearance of the area.

Reasons

15. Policy EN1 of the Melton Borough Local Plan (2018) (LP) seeks to ensure that all new developments are sensitive to their landscape settings and respect existing landscape character and features. Additionally, LP Policy EN6 states that development proposals will be supported where they do not harm open areas which contribute positively to the individual character of a settlement. LP Policy D1 requires all new developments to be of high quality design, including, amongst other matters, whether their siting and layout is sympathetic to the character of the area.
16. The appellant considers that the appeal site is a "smallholding/allotment" and thereby an agricultural use of the land, and contends that the appeal building is required for purposes in connection with that use. However, during my visit to the appeal site I saw that any agricultural use of the land and building appeared to be quite minimal. Most of the open area was neatly

mown grass, with a few small timber planters and the appeal building was within a largely fenced off area with a surround decking area with barbeque. Overall, the site had more of a leisure plot or domestic garden appearance. That said, I do not dispute that there may be some agricultural use of the appeal site and of the building, including shelter when tending to the land.

17. Notwithstanding the above, the appellant's evidence lacks any significant information as to what, if any, agriculture takes place on the land. Reference is made to the "functional need" for the building, but there is no detailed information for example of any agricultural processes, crop production, or livestock kept on the land since the building was erected, or of any of those proposed in future. Consequently, in the absence of convincing justification, in terms of any agricultural functions the building is intended to serve, I find it to be excessively large for the relatively small plot of land it serves. The proposed alternative to retain part of the building does not overcome my concerns.
18. I note the appellant's comparisons to other buildings at other sites and that there was previously a smaller older building on this site. Nonetheless, due to its size and elevated position I find the appeal building to be overly prominent and visible in the countryside landscape where all *new developments* should be carefully controlled in accordance with the Council's LP Policies referred to previously. Proposed landscaping would not overcome my concerns relating to whether the building is acceptable in principle in terms of its functional justification.
19. For all these reasons I conclude that the appeal building is excessively large and unduly prominent, thereby resulting in harm to the otherwise open rural character of the site and the surrounding area. It thereby conflicts with the requirements of LP Policies EN1, EN6 and D1 and with the development Plan as a whole. Accordingly, planning permission shall be withheld for the appeal building.

FORMAL DECISIONS:

Appeal A

20. The appeal is allowed and the enforcement notice is quashed.

Appeal B

21. The appeal is dismissed insofar as it relates to the existing shed structure in connection with use of land as smallholding/allotment.
22. The appeal is allowed insofar as it relates to the formation of the access track within the site at Field OS 0900, Waltham Road, Branston, Leicestershire, in accordance with the terms of the application Ref: 21/00371/FUL, dated 26 March 2021, so far as relevant to that part of the development hereby permitted.

Thomas Shields

INSPECTOR