

Appeal Decisions

Site visit made on 13 July 2022

by Sandra Prail MBE, M.B.A., LLB (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 August 2022

Appeal A Ref: APP/Z3825/C/21/3276563

Appeal B Ref: APP/Z3825/C/21/3276564

Priory Fields Barn, land south of Kithurst Lane, Storrington, West Sussex RH20 4LN

- Appeal A and Appeal B are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Horsham Borough Council.
- Appeal A is made by Mr Philip Orpwood of Norbertine Order and Appeal B is made by Mrs Christine Orpwood against an enforcement notice issued by Horsham District Council.
- The notice was issued on 11 May 2021.
- The breach of planning control as alleged in the notice is failure to comply with Condition 1 of planning permission reference DC/18/1695 (Planning Permission 1695) and Condition 1 of planning permission reference DC/19/2119 (Planning Permission 2119). Planning Permission 1695 is for construction of a storage barn and retention of access. Planning Permission 2119 is for variation of condition 5 of Planning Permission 1695 in relation to the use of the barn for volunteers. Condition 1 of both planning permissions states 'the development permitted shall be carried out in accordance with the approved plans.' The conditions are not being complied with because there has been a material departure from the approved plans, namely the insertion of 2 no. casement windows in either end of the barn at first floor level and the insertion of 3 no. rooflights in the south facing roof-slope of the barn.
- The requirements of the notice are (1) comply with Condition 1 of the Planning Permission 1695 by (i) removing the diamond leaded light casement windows in the gable end of the barn and infilling the apertures with solid timber cladding to match that existing on either side of the openings and (ii) by removing the 3 no. rooflights in the south facing roof-slope of the barn and infill the openings with solid panels clad in second hand clay tiles to match that existing on the roof of the building, as shown on the approved plans labelled dwg No2; (2) comply with Condition 1 of Planning Permission 2119 dated 10 August 2020 by (i) removing the diamond leaded light casement windows in the gable ends of the barn and infilling the apertures with solid timber cladding to match that existing on either side of the openings, and (ii) by removing the 3 no. rooflights in the south facing roof-slope of the barn and infill the openings with solid panels clad in second hand clay tiles to match the existing on the roof of the building as shown on the approved plans labelled dwg No.2
- The period for compliance with the requirements is twelve calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a)(e) and (f) 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 1990 Act as amended.
- Appeal B is proceeding on the grounds set out in section 174(e) and (f) of the Act.

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld as corrected.

Appeals A and B

Preliminary Matters

1. The Notice the subject of these appeals at paragraph 3 refers to condition 1 of planning permission reference DC/18/1695 (Permission 1695) and planning permission reference DC/19/2119 (Permission 2119). It says that condition 1 of both permissions provides that the development permitted shall be carried out in accordance with the approved plans listed in the Schedule. Paragraph 5 of the Notice refers at 5(1) to condition 1 of Permission 1695 and at 5(2) to condition 2 of Permission 2119. It is clear from the description of the alleged breach that the reference to condition 2 of Permission 2119 is an error and that it should refer to condition 1.
2. I am satisfied that this is a typographic error. The Appellants have addressed the alleged breach in their submissions and there is nothing before me to suggest that there has been any misunderstanding. In the event that these appeals are dismissed I shall use my power to correct the notice as this will not cause any injustice to either party. In these decisions I shall refer to Condition 1 as meaning condition 1 of Permission 1695 and condition 1 of Permission 2119.

Appeals A and B

The appeals on ground (e)

3. This ground of appeal is that the notice has not been served as required by section 172 of the 1990 Act. Section 172 provides that a copy of an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land being an interest which in the opinion of the Council is materially affected by the notice.
4. The Appellants claim that the notice was served to an address that is no longer used and not referenced on any of the relevant application or appeal forms – namely The Studio, Mant Close, Storrington. This is not denied. The Council say that this address was taken from Land Registry documentation for the site. They acknowledge that this was not the correct address for the Appellant. But they point to correct service upon the owner/occupier of the land and that notices were affixed to the gate post.
5. The Council is entitled to rely on information from the Land Registry. They took reasonable steps to ascertain those with an interest in the land. Service at an additional address does not invalid correct service.
6. But even if the notice has not been correctly served, section 176(5) provides that failure to serve may be disregarded if the Appellant has not been substantially prejudiced by the failure to serve him/her. In this case the Appellants have been able to submit appeals against the notice and argue it fully in the course of these appeal proceedings. They cannot therefore reasonably be said to have been substantially prejudiced as a result of any failure to comply with rules concerning service. There is no suggestion that any other person may have been prejudiced. I conclude therefore that in the

circumstances of this case any failure by the Council in terms of service of the notice may be disregarded.

7. Consequently, the appeals on ground (e) fail.

Appeal A

The appeal on ground (a) and deemed planning application

Main Issue

8. The main issue in the determination of this appeal is the effect of a grant of planning permission without compliance with Condition 1 on the character and appearance of the area.
9. Since the issue of the notice the National Planning Policy Framework (the Framework) has been updated. In determining this appeal I shall consider the latest version.

Character and appearance

10. The appeal site is part of a field, laid to grass with some trees. It is located outside the built up area boundary accessed off a private track leading from Kithurst Lane. To the east of the site is Matts Wood which is within the Storrington Conservation Area. Matts Wood is private land to which public access is permitted. There is residential development to the west and north and a cemetery to the south. The boundary of the South Downs National Park lies some distance from the appeal site.
11. Planning permission (ref DC/18/1695) (Permission 1695) has been granted for construction of a storage barn and retention of access, subject to conditions. Condition 5 of the Planning Permission has been varied to permit use of the barn by volunteers (Permission 2119).
12. Condition 1 states that the development permitted shall be carried out in accordance with approved plans. The Notice the subject of these appeals alleges that Condition 1 has not been complied with as there is a material departure from the approved plans namely, insertion of 2 casement windows in either end of the barn at first floor level and the insertion of 3 rooflights in the south facing roof-slope of the barn.
13. The development plan (including the Horsham District Planning Framework (the HDPF)) mirrors the Framework in seeking to ensure that development respects its setting. Policy 10 allows for development in the countryside where, amongst other things, it maintains the quality and character of an area. I have also taken into account the Storrington, Sullington and Washington Neighbourhood Plan 2019. The emerging Horsham District Local Plan is at an early stage of preparation and therefore attracts only limited weight.
14. The appeal site is set in the countryside outside the built up area boundary. Whilst I recognise that residential development is visible from the site it is some distance away. The site relates more closely to the surrounding countryside than the residential development nearby and I am not satisfied

that any approved development would result in a change to the character of the surrounding countryside.

15. The approved barn is rural in design. But the windows and rooflights do not accord with approved plans. They are the same as those shown in plans for a Sussex style barn for the storage of agricultural equipment and use by volunteers (application Ref DC/20/2250) which has been refused and dismissed on appeal.
16. I am not bound by the findings of previous Inspectors. But in this case I agree with the previous Inspector that the windows are typically domestic in their character and appearance. They send mixed signals as to the function of the building and result in an urban appearance that erodes the countryside character of the land and has a negative effect on the wider countryside.
17. I have considered carefully the Appellant's arguments concerning visibility and landscape screening. I agree that there is no harm to heritage assets or the National Park. But the windows and rooflights are prominent when on site and some highly visible when accessing Matts Wood and the cemetery. I recognise that Matts Wood is private land (and signed accordingly) but public access is permitted.
18. I have considered the benefits of the development, including natural lighting and the admirable environmental objectives of the Appellant in relation to the site and wider area. But I am not persuaded that these could not be achieved without the identified harm.
19. I conclude that the development causes undue localised harm to the character and appearance of the area. It does not maintain the quality and character of the local area. It is contrary to relevant policies in the development plan (including Policy 10 of the HDPF) and the Framework.
20. I have considered whether the identified harm could be mitigated by conditions. I have considered the conditions proposed by the Council in the event that the appeal is allowed and Planning Policy Guidance. But I do not consider that the harm could be mitigated by conditions.
21. The Appellant raises a number of criticisms of the Council, councillors and previous Inspectors but these matters are not within my remit to comment upon.
22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application to allow development without compliance with approved plans.

Appeal A and B

Ground (f) appeal

23. This ground of appeal is that the steps required exceed what is necessary to satisfy the purpose of the notice.

24. There are two purposes that an enforcement notice can seek to achieve – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach. In this case the notice required compliance with approved plans and therefore its purpose is to remedy the breach of planning control. I accept that no lesser steps would satisfy the purpose of the notice.
25. But an enforcement notice is not punitive and I have therefore considered whether there is an obvious alternative that causes less disruption and would remedy the injury to amenity.
26. The Appellants argue that that they should be permitted to board over the gable windows to match the cladding on the remainder of the building and to fit external blinds to the rooflights to reduce their visibility. But there are no detailed drawings or detailed description before me and I do not have sufficient certainty as to the proposed plans to be satisfied that they would remedy the injury to amenity and it is not my role to speculate as to an alternative scheme.
27. The steps satisfy the purpose of the notice and no lesser steps are before me that would remedy the injury to amenity.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeal A: APP/Z3825/C/21/3276563

29. It is directed that the enforcement notice be corrected by deletion of the words 'Condition 2' in paragraph 5.2 of the notice and substitution with the words 'Condition 1.' Subject to this correction the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/Z3825/C/21/3276564

30. It is directed that the enforcement notice be corrected by deletion of the words 'Condition 2' in paragraph 5.2 of the notice and substitution with the words 'Condition 1.' Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Sandra Prail

INSPECTOR