



Appeal Decisions

Hearing held on 4 October 2022

Site visit made on 5 October 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal A Ref: APP/Z4718/C/22/3295290

Appeal B Ref: APP/Z4718/C/22/3295291

Land and property at Egypt Farm, Cliffe Lane, Gomersal, BD19 4EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Knight Key Limited and Appeal B is made by Jane Ratcliffe (Knight Key Limited) against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 8 February 2022.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a building.
 - The requirements of the notice are:
 - a. Demolish and permanently remove the building including base and foundations.
 - b. Following the demolition remove all resulting materials from the site.
 - The period for compliance with the requirement is 60 days
 - Appeal A is proceeding on the grounds set out in section 174(2)(a),(e),(f) and (g) of the Town and Country Planning Act 1990 (the Act) 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.
 - Appeal B is proceeding on the grounds set out in 174(2)(e),(f) and (g) only. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended in relation to that appeal have lapsed.
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Decisions

1. It is directed that the notice be varied by :
 - i) Deleting "60 days" as the period for compliance in Paragraph 6 of the enforcement notice and substituting it with "5 months."
 - ii) Deleting requirement (a) from paragraph 5 of the notice in full and replacing it with
 - a. Demolish and remove the building
2. Subject to the variations, Appeal A and Appeal B are dismissed, 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.

Procedural Matters

3. An appeal was submitted by Andrew Ratcliffe as a director of Knight Key Limited and a second appeal was submitted by Jane Ratcliffe who is also a director of the company. The service upon both appellants individually by the Council led to them both making an appeal. However, as one fee has been paid under ground (a) for Appeal A and the evidence of the appellants for all other grounds is the same, I have addressed both appeals together in my decision.
4. The appeal form refer to grounds (a),(f) and (g). However, the appellants raised issues which relate to ground (b). The appellants subsequently confirmed that they wished to pursue ground (b) and as both parties were given an opportunity to address this ground in their evidence, I have dealt with this in my decision.

Background Matters

5. The appeal site is located within a complex of buildings known as Egypt Farm. The character of the original farmholding has changed over the years following grants of planning permission for conversion of a number of farm buildings to residential use and, in some cases, subsequent sale.
6. A grant of planning permission in 2017¹ (the 2017 permission) provided for “change of use of barn to 2 dwellings, erection of rear extension to existing cottage, demolition of existing cattle shed, erection of tractor and hay store and alterations to layout” for land at Egypt Farm. The appellants’ company, Knight Key Limited, bought the appeal site which includes land which benefits from the 2017 permission in May 2020 from Jillian Smith, the residual owner of Egypt Farm.
7. However, on 21 February 2022, retrospective planning permission² for “partial demolition of cattle shed and erection of tractor/implement store” (the approved building) was granted to Jillian Smith on adjacent land to the appeal site which was also included in the 2017 permission. The appellants had been involved in carrying out works at Egypt Farm including for the approved building. It is against that background that the Council served the enforcement notice for the structure erected on the appeal site.

The Notice

8. The allegation is “the erection of a building” and a pre- hearing note asked the Council, in particular, to consider that wording. The Council’s evidence repeatedly referred to a garage not a building but the appellants strongly dispute that the appeal building is a garage. In any event, the Council confirmed at the hearing that it wished to proceed with the wording of the allegation in the notice. The allegation therefore relates to operational development only, namely the erection of a building. As the wording of the allegation forms the deemed planning application (the DPA) under ground (a), the use of the building is not a matter before me.

¹ Planning Reference 2017/62/91596/E

² Planning Reference 2020/91771/E

Appeal A and B under ground (e)

9. The appeals under ground (e) are that the enforcement notice was not served upon everyone with an interest in the land. Section 172(2) of the Act states that a copy of the enforcement notice shall be served on the owner and on the 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 authority is materially affected by the notice.
10. Further, if there has been a failure to comply with Section 172(2) of the Act, Section 176(5) of the Act provides that failure to serve may be disregarded if the appellants have not been substantially prejudiced by the failure to serve.
11. The appellants' consider that the Council failed to serve Knight Key Limited at the correct address and that led to delays in receiving the notice. Andrew and Jane Ratcliffe are the directors of Knight Key Limited who own the appeal site. There are no "occupiers" as such. The Council sent two notices in envelopes addressed to Jane Radcliffe and Andrew Radcliffe as individual directors of Knight Key Limited at the address listed at Companies House, which is also the company's accountant's address. The appellants did receive the notices sent to that address. However, there was a typographical error in the spelling of the appellants' surname using Radcliffe rather than Ratcliffe on the envelopes. The appellants state that this error caused delays in forwarding letters to them, as the accountants did not wish to open the envelopes due to potential data protection issues. In addition, the Council also sent notices by way of service, addressed to Knight Key Limited, to the Land Registry address which no longer exists.
12. The Council also served Jillian Smith and "the occupier" of No 58 with the notice, even though they are not owners or occupiers of the appeal site nor does Jillian Smith have any other interest in the appeal site. However, serving additional people is not the same as a failure to serve pursuant to Section 172. Documents sent to a company are usually addressed to the Company Secretary at the company's registered address³. Nevertheless, the appellants who are the only directors of Knight Key Limited were served with notices. Any delay in the appellants receiving the letter did not result in the appellants being unable to submit appeals.
13. However even if I had found that there was a failure to serve under Section 172, the provisions of Section 176(5) of the Act would then apply. The appellants consider that they have been substantially prejudiced as the delays in receiving the notice meant that they did not obtain professional or legal advice on the grounds of appeal. They decided to continue to represent themselves in lodging statements and following the appeals through to the hearing due to the amount of work they had already carried out in lodging the appeals. However, as with any appeal, it was open to the appellants at any stage of the appeal process to seek professional advice. The email exchange provided by the Council at the hearing does not show that the appellants did obtain professional advice about the notice.
14. The appellants were able to lodge appeals under grounds (a) (f) and (g) in addition to ground (e) and attended the hearing. They were also given the opportunity to proceed with a hidden ground (b) due to the nature of their

³ Section 329 of the Town and Country Planning Act 1990

evidence. The appellants have therefore not been substantially prejudiced by the way in which the Council served the notice. The appeals under ground (e) therefore fail.

Appeals A and B under ground (b)

15. The appeals under ground (b) are that the breach of planning control alleged, namely the erection of a building, has not occurred as a matter of fact. The burden of proof is upon the appellants and the relevant test of the evidence is the balance of probabilities. Whether or not a building has been erected will turn upon the circumstances and facts of each particular case and is a matter of planning judgement.
16. Section 336 of the Act states that a "building" includes any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building. The development is an oblong stand-alone structure which is largely complete externally with windows and roller shutter doors to the front and a roller shutter door to one side, but with an opening remaining on the rear elevation. The structure has brick walls and a red interlocking pantile roof.
17. The appellants in their evidence state that they had remodelled an existing building using a different design and materials and that the structure had been split into two elements, the appeal structure and the approved building which represented remodelling and not the erection of a building or buildings. However, above ground, there is no evidence of the previous cattle shed and the extent of the works carried out goes beyond remodelling. Photographs supplied show only the pitched roof and a lean to elements of the cattle shed remaining at one stage and those elements were subsequently removed to create the new structure. The structure has new walls, a new roof and is a completely different design to the cattle shed. Moreover, the appellants accepted at the hearing that what exists above ground is new.
18. The appellants maintain that both the approved building and the appeal structure sit on the original concrete base. The appellants were responsible for the construction of both the appeal structure and the approved building. There is no clear evidence before me to contradict this view that the base did remain and in terms of cost and time, it does appear likely that the base would be retained rather than complete removal and re- instatement.
19. However, even allowing for the retention of the original base, the whole of the structure above ground is new in terms of size, materials and design and in my judgement amounts to the construction of a new building. I therefore find on the evidence before me, that the erection of a building, has as a matter of fact, occurred. The appeals under ground (b) therefore fail.

Appeal A under ground (a) and the DPA

20. The terms of the DPA directly derive from the allegation. Planning permission is therefore sought for the erection of a building only.

The Main Issues

21. The main issues are therefore

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework);
- the effect of the development on the openness of the Green Belt and its purposes, and
- whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

22. The Framework states that the construction of new buildings in the Green Belt is inappropriate unless the development falls within any of the category of exceptions, which are set out in paragraph 149 of the Framework. The Council confirmed at the hearing that there are no relevant Green Belt policies within its development plan.

23. The appellant's statement was limited to the recital of three different exceptions contained within Paragraph 149, but I gave him the opportunity to explain why he considered those exceptions applied at the hearing.

a) buildings for agriculture and forestry

24. Whilst historically, the whole of the Egypt Farm complex was a farm with a number of agricultural buildings, that is no longer the case following the conversion of a number of farm buildings to residential use. The appeal site is made up of the appeal building and a modest part of a field to the rear. The appellant does not have a farming enterprise or any animals. The appellant stated that he would have been allowed to retain the previous cattle shed but that is not a justification for a new building. The only use referred to by the appellant is for the ad hoc storage of building materials for the appeal building when the appellant stopped work on it. The appeal building does not have any agricultural use and does not fall within this exception.

c) the extension of a building provided that it does not result in disproportionate additions over and above the original building

25. The appellant stated that the appeal building could be considered to be an extension to the approved building. An extension can be defined as "a part that is added to something to enlarge or prolong it"⁴. The appeal building is a distinctly separate building to the approved building and is not an extension to it. This exception does not therefore apply.

d) the replacement of a building provided that the new building is in the same use and not materially larger than the one that it replaces

26. The appellant maintains that the appeal building is smaller than the cattle shed that it replaced. Case law⁵ indicates that it is not possible to replace a building that no longer exists. Even if I accepted that this exception applied to a building that has already been demolished, the appeal building is not in the same use as the previous building which was a cattle shed. The appeal building

⁴ Oxford Dictionary

⁵ Athlone House Limited v SSCLG & Camden LBC{2015}

either has no use or is being used temporarily for the storage of building materials. The appeal building does not therefore fall within this exception.

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on openness of the Green Belt than the existing development

27. The appellant made reference in his evidence to the appeal site being previously developed land which is included in the list of stated exceptions at Paragraph 149 g) of the Framework subject to an openness test. However, the definition of previously developed land in the Framework specifically excludes land that is or was last occupied by agricultural buildings which would include the cattle shed.

28. The cattle shed may have been used at various periods for general storage including for materials and a car and a trailer as shown on the photograph provided by the appellant during the hearing. However, any photographic evidence is a snapshot in time and there is no substantiated evidence before me that the last occupation of the land was not as an agricultural building. The development does not therefore fall within this exception.

Conclusion on inappropriateness

29. I have found that the appeal building does not fall within any of the exceptions relied upon by the appellant. I therefore conclude that the appeal building is inappropriate development contrary to Paragraph 149 of the Framework.

Openness and Purposes

30. Paragraph 137 of the Framework states that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open: the essential characteristics of Green Belts are their openness and permanence. Openness has a visual and spatial aspect. The appeal building sits within a wider complex of buildings of various designs and sizes in a location that previously contained the cattle shed that was demolished.
31. In views from the fields beyond the appeal site, the appeal building sits between the approved building, which is larger than the appeal building, and existing residential buildings beyond an access to the fields. The appeal building itself fronts onto an area of hardstanding that was an agricultural yard.
32. The appeal building is smaller than the cattle shed that previously existed, but that building no longer exists. The appeal building is also smaller than the tractor and hay store approved as part the 2017 planning permission. However, in terms of openness, the cattle shed has been demolished and the tractor and haystore has not been constructed, and the appeal building as it exists now does have a harmful effect on openness albeit a limited one.
33. The location of the appeal building within a complex of other buildings of largely residential use does not in my view cause encroachment and conflict with Green Belt purposes. Nevertheless, I do find harm albeit limited harm to openness particularly with regard to views from the fields.

Other Considerations

34. The appellant sees similarities between the appeal building and the approved building and is clearly of the view that the Council has treated the development

unfairly in comparison. From the appellant's point of view, his neighbour has an approved building and he received an enforcement notice for his building. The Council's report for the approved building has been provided by the appellants. The Council assessed the approved building as an agricultural building for the use primarily for the keeping of tractor and farming implements required for the operation of the farm. The report also refers to the current use of the wider site at that time as being mostly residential with some agricultural and equestrian use. Whilst the report refers to a fall-back position with regard to the 2017 permission, it is not clear on what basis that fallback was assessed or what weight it was given other than that the 2017 permission had begun within three years.

35. Nevertheless, I can attach only limited weight to the decision to grant planning permission for the approved building as the appeal building is a different building in a different location and I am considering the erection of a building whereas the Council was assessing a tractor/implement store
36. Further, in assessing the appeal before me, the presence of the approved building on part of the land that was included in the 2017 permission means that the tractor and hay store as approved cannot now be physically built. Whilst the Council was prepared to grant planning permission in 2017 for a tractor and hay store as part of the wider site that is not what is before me for this appeal. I can therefore only attach limited weight to the 2017 permission.
37. There was a grant of planning permission for the wider site in 2006 with part of the appeal site proposed as amenity space for residential dwellings. However, there is no evidence that the appeal site was ever used for that purpose and that use is not in any event consistent with the erection of a building. This is a matter of neutral weight.
38. The Council referred to Policy LP54 of the Kirklees Local Plan in the reasons for issuing the notice which refers to design and materials not detracting from Green Belt setting. However, it confirmed at the hearing that it is not alleging that the design or materials used do harm the character or appearance of the area and no harm alleged to the listed buildings within the wider site. I concur with the Council's view particularly when the wider site is now largely residential following the conversions of a number of agricultural buildings to residential use. However, these are also matters of neutral weight.

Other Matters

39. The appellant consider that there are breaches of planning control taking place on Egypt Farm the wider site. He has provided photographs of a car parked in a building and states that the description of the building for the planning permission was altered to avoid using the word "garage". However, any alleged breaches of planning control are matters for the appellant to raise with the Council so that they can investigate as appropriate.
40. The appellant has provided photographs of other garages which he considers show that the Council has no issue with the principle of garages in the locality. He has also provided details of a garage conversion and new garages on Lands Farm at Cliffe Lane. Whilst it remains the case that each development has to be considered on its own merits, the appellant has always maintained that the appeal building is not a garage and the allegation is not the erection of a garage.

41. I note that there are supporters for the development as well as objectors. I have taken those views into consideration where they relate to planning matters but they do not alter my finding of Green Belt harm.

Green Belt Balance and conclusion on ground (a)

42. The appeal building is inappropriate development in the Green Belt. I have not found that there is encroachment in terms of Green Belt purposes. The loss in openness is limited. Nevertheless, there is harm to openness and any identified Green Belt harm carries substantial weight.
43. On the other side of the scales, the lack of harm to the character and appearance of the area and listed buildings are matters of neutral weight. The historic 2006 permission is also a matter of neutral weight. The presence of the 2017 permission and the approved building are matters of limited weight.
44. The substantial weight to be given to harm that I have identified within the Green Belt is not clearly outweighed by the other considerations either individually or collectively to justify very special circumstances. The development is therefore contrary to Paragraph 149 of the Framework and the appeal under ground (a) should be dismissed.

Appeals A and B under ground (f)

45. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
46. As a requirement of the notice is to demolish and permanently remove the building including base and foundations, the purpose of the notice as stated by the Council is to remedy the breach of planning control. The use of the word "permanently" is superfluous when the notice runs with the land. The appellants wish to be allowed to retain and use of the building for an agricultural use or equestrian use. However, allowing any use of the appeal building would not by itself remedy the breach when the breach is the erection of a building and that building would remain in its current form.
47. The appellants consider that it is excessive to require the removal of the base and foundations. I have found that the foundations and base are likely to be the original foundations and base as such they pre-existed the development attacked by the notice i.e. the building. There is no requirement to re-instate the land to its previous condition.
48. I therefore find that the requirement to remove the foundations and base are excessive. A requirement to remove the building would remedy the breach of planning control. The appeals under ground (f) therefore succeed in part and I will amend the notice accordingly.

Appeal A and B under ground (g)

49. An appeal under ground (g) is that the time to comply with the notice is too short. The period for compliance with the notice is 60 days and the appellants considers that 6 months is a more appropriate timescale. The appellants had referred to Covid restrictions and delays in serving the enforcement notice as

being reasons for a longer period. However, Covid restrictions are no longer in force and any delay in serving the notice does not impact upon the period of compliance as an appeal puts the period for compliance on hold until the issue of the Decision Letter. The appellants however refer to a general shortage of labour and business commitments as reasons for needing more time.

50. I accept that it will take time to arrange for the building to be demolished and to remove the resultant materials from the appeal site which is within a largely residential site with limited access. On balance, I do consider that a period of 5 months is an appropriate compliance period. The appeals under ground (g) therefore succeed to that extent and I will amend the notice accordingly.

Conclusion

51. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed planning application.

E Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Ratcliffe
Jane Ratcliffe

Director Knight Key Limited
Director Knight Key Limited

FOR THE LOCAL PLANNING AUTHORITY:

Kirklees Metropolitan Council

Lee Stoney
Charlotte Dixon
Harry Garland
Callum Harrison

Development Management and Team Leader
Planning Enforcement Officer
Legal Officer
Planning Officer

INTERESTED PARTIES:

Jillian Smith
Kate Ward

Neighbour
Neighbour

Documents Submitted during the hearing

1. Email exchange from the Council dated February 2022.
2. Photograph of the cattle shed showing storage including a vehicle