



Appeal Decision

Site visit made on 16 August 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/W1525/C/21/3288224

Land at Field North of Mill Hill Farmhouse, East Hanningfield Road, Sandon, Chelmsford, Essex CM2 7TF

- 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 Mr John Lowe against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 9 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a building.
 - The requirements of the notice are to:
 - 1) Demolish the building shown outlined in blue at the approximate location on the attached plan.
 - 2) Remove from the land all material and debris resulting from the action taken at step 1).
 - The period for compliance with the requirements is within three months from the effective date of the notice.
 - The appeal is proceeding on the ground set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Summary of Decision

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

Background

2. Planning permission was granted in 2009 for the retention of a building, the subject of the current appeal, for agricultural purposes, and was subject to a condition restricting the building's use, accordingly. Further, if after ten years the building was no longer required for such, the condition stipulated that it should be removed from the land.
3. The building remained on the land and, in January 2021, an application (ref 21/00068/CUPAQ) was submitted under the Prior Approval regime for the conversion and change of use of the building to a single residential dwelling (Class C3). This application was withdrawn in March 2021 before the Council could reach a decision.
4. Similarly, a s73 application was submitted requesting that the condition imposed on the 2009 permission should be removed to allow for the building to be used for non-agricultural purposes and to secure the building's retention was also withdrawn in January 2022, after the enforcement notice had been issued.

5. Prior to this, in November 2019, a Council official had visited the site and noted that the building was being altered with a more steeply pitched roof under construction. A subsequent site visit, carried out in August 2020, showed that a brick plinth had been incorporated and the building had been clad in black coloured composite boarding. Although no internal conversion works had taken place at that time – a further site visit in February 2021 did though reveal that partition walls had been installed - nor window openings created, the building had been altered to take on a domestic appearance.
6. In the circumstances the Council, in November 2021, saw it expedient to issue an enforcement notice requiring for the building's removal.

The appeal on ground (b)

7. An appeal made on this ground is that the breach or breaches alleged have not occurred as a matter of fact. In other words, the planning position is not as the Council alleges in the enforcement notice and, in this particular instance, '*the construction of a building*' does not represent a contravention of planning control.
8. The onus of proof on such matters of fact is on the appellant, and is on the balance of probabilities.
9. Section 55(1) of the 1990 Act defines development as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." S.55(2) goes on to itemise a number of operations, and uses of land, which shall not be taken to involve development. These include "the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building".
10. Section 336 provides that for the purposes of the 1990 Act, the term "building" includes any structure or erection, and any part of a building as so defined.
11. The dividing line between works which can be considered as alteration or repair, and works which constitute rebuilding, is not always readily apparent. The former may be extensive but effecting a change to the appearance of the building is not in itself sufficient to take such works outside the scope of the exemption from development.
12. In interpreting s55(2) the purpose of the section must be borne in mind. Attempting to limit its scope by arguing that it can only relate to small scale works, "routine" matters, etc. goes directly opposite to that purpose. The limiting factor is not the scale or nature of the works but the requirement that they should not be to such an extent as to materially affect the external appearance of the building.
13. The appellant, in his Statement of Case, says that building works took place following storm damage. As a result the building's external dimensions have increased marginally, although its eaves are significantly lower. In fact, the latter change was one of the reasons which indicated to the Council that the building was taking on the appearance of a dwelling unit. Certainly, from my site visit observations, I must agree that the building, although not fitted out for habitable purposes, has the appearance of a dwelling unit, albeit without full domestic architectural articulation as no such associated features have been incorporated.

14. Although the enforcement notice does not allege the occurrence of a residential use – and clearly, given the circumstances, I have described, that would have been an error - compared to the original building's character and appearance before the works were undertaken, it appears that it has undergone a rebuild.
15. To this extent, therefore, I am satisfied that the breach, in referring only to operational development as per the limit of the allegation, has occurred as a matter of fact as the building works undertaken go beyond those which can reasonably be considered to fall within s55(2)(a) of the 1990 Act.
16. Accordingly, from the evidence adduced, the building and its associated operational development, as it stood on 9 November 2021 - the date the enforcement notice was issued - constituted development requiring the benefit of planning permission, and the Council was entitled to take the action it did.
17. The appeal under ground (b) therefore fails.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

18. This is the effect of the development on the character and appearance of the surrounding area.

Reasons

19. The Council considers that this is a "replacement building" and, given the extent of the works undertaken, its resultant form and appearance has been altered substantially. In issuing the notice it appears that the Council was pre-empting an expected occupation for habitable purposes and the reasoning given as to why it was expedient to take formal action concentrated on the building no longer being characteristic of its permitted agricultural use. To this end the Council considered that the building's changed appearance adversely impacted on, what it saw as the intrinsic beauty of the rural area.
20. The building at issue is accessed between two extensive agricultural barn buildings, of relatively modern construction, which are considerably larger than the appeal building which is located beyond. As such, it is not visible from East Hanningfield Road. Further, positioned between one of the said agricultural barns and the appeal building is a somewhat unprepossessing, late twentieth century brick-built structure of similar width. It has four expansive openings between which are narrow, brick-built divides. Its pitched roof is covered with clay tiles typical of a residential bungalow and its flank wall stands very close to the appeal building's side elevation.
21. I must agree with the Council that the appeal building is not typical of an agricultural setting but that, in itself, does not and should not automatically disqualify the building's retention. As I mentioned, in issuing the enforcement notice it is likely that the Council took a precautionary approach. Indeed, it could be argued that any visual impact from the building and, for that matter any visual merits, were secondary to it facilitating a residential use in this rural location, and the Council sought its removal to guard against the possibility of such.
22. From the various policies cited by the Council I consider that only two are directly relevant to the development that has occurred. Policy S11 'The role of

the countryside' from the adopted Chelmsford local plan (LP) requires, amongst other things, that new development should not adversely impact on the intrinsic character, appearance or beauty of the area. On a similar theme policy DM8 thereto says that planning permission will not be granted where it would result in harm to the intrinsic character, appearance or beauty of the area. In order to assess this policy DM8 indicates that the size, scale, massing and spread of the development will be measured against that existing. Visual impact and also potential increase in activity will be taken into account.

23. In applying the above criteria this is a large site with a scattering of buildings and structures of varying size, throughout that are noticeably of recent age. In its particular location here, with its close relationship to the other buildings I referred to earlier, the development has had little visual effect on either the character of the site nor, importantly, the wider rural landscape. Whilst, therefore, the building's form and design is not typical of an agricultural environment, in its contextual setting the building's impact is not significant.
24. The Council has indicated that, should the building be used as a dwelling, it would not represent a sustainable form of development. However, equally, neither would the existing building's demolition due to the carbon emissions that would result. The appellant has said that the building is required for agricultural purposes and could be used for dry and secure storage compared to that available within the site's portal-framed buildings. Given this, I feel that little would be achieved by requiring for the building's removal.
25. I have had regard to the number and contents of the representations received from various interested parties which, in terms of the small scale development involved here, are surprisingly large, and with all objecting to the building's retention. Several indicate that the land has not been previously used for agriculture purposes, although the appellant disagrees. For its part the Council refers to the site previously being used for the breeding of horses. In this respect I must here refer to the 2009 planning permission which permitted the retention of the building for agricultural purposes.
26. In allowing the appeal and granting planning permission for the building, the condition imposed on the original permission which required for its removal if no longer required for agricultural means will be overridden. That said, I agree with the Council's suggested conditional restriction that the building shall not be used for any other means. An agricultural use of land and associated buildings is not development and, as such, the building will effectively have nil use rights. Accordingly, should the building undergo any material change of use then this would constitute development requiring the benefit of planning permission.
27. I note the reference to the development giving rise to highway safety issues. However, as any residential use is prohibited no such implications would arise. Neither would any incidence of domestic paraphernalia. I acknowledge the points raised by objectors as to 'intentional unauthorised development' and a history of "planning abuse" at the site and, although I have weighed all relevant factors up I have, on balance, justified my decision to allow the appeal, subject to the stated condition.
28. To conclude, therefore, in this instance, I have not found material conflict with the aims and requirements of LP policies S11 and DM8, nor relevant guidance within the National Planning Policy Framework due to the absence of any

significant harm arising from the development. For the above reasons, having had regard to all matters raised, and the development plan as a whole, the appeal succeeds.

Formal Decision

29. 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 construction of a building on land at a field, north of Mill Hill Farmhouse, East Hanningfield Road, Sandon, Chelmsford, Essex CM2 7TF.

30. The planning permission is subject to the following condition:

The building hereby approved shall not be used for any purpose other than for agriculture and associated ancillary uses.

Timothy C King

INSPECTOR