



Appeal Decisions

Site visit made on 16 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal A Ref: APP/E3715/C/21/3288208

The land at Barn Meadow Farm, Calcutt Lane, Stockton, Rugby CV23 8HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Beverley Bates against an enforcement notice issued by Rugby Borough Council.
 - The notice, numbered 2021/06, was issued on 21 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use from equestrian use to a mixed use of equestrian and siting of log cabins shown edged blue on the attached plan.
 - The requirements of the notice are to:
 - (i) Demolish the cabins shown edged blue on the attached plan
 - (ii) Remove all material from the land arising with compliance with "i"
 - (iii) Restore the land to its previous condition
 - The period for compliance with the requirements: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) & (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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Appeal B Ref: APP/E3715/C/21/3273997

The land at Barn Meadow Farm, Calcutt Lane, Stockton, Rugby CV23 8HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Beverley Bates against an enforcement notice issued by Rugby Borough Council.
 - The notice, numbered 2021/02, was issued on 17 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission the rebuilding of stables.
 - The requirements of the notice are to:
 - (i) Demolish the stable
 - (ii) Remove from the land all materials and debris arising from compliance with "i" above
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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: Appeal A

1. The enforcement notice is quashed.

Decision: Appeal B

2. The appeal is 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.

Application for costs

3. An application for costs has been made by Mrs Beverley Bates against Rugby Borough Council in respect of Appeal B. This application is the subject of a separate decision.

Appeal A

Matters concerning the notice

4. A notice should be drafted so as to tell the recipient fairly, what they have done wrong and what they must do to remedy it. The notice alleges the material change of use from equestrian use to a mixed use of equestrian and siting of log cabins. However, the siting of a cabin is not a use of land. Moreover, the notice does not require the use to cease. As set out in section 176 of the Town and Country Planning Act 1990 (as amended), I have wide powers of correction, so long as I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
5. Development, as set out in section 55 of the Act, comprises two limbs: the carrying out of building, engineering, mining or other operations in, on, over or under land, and the making of any material change in the use of any buildings or other land. The Council's position is that the log cabins are moveable structures, are not buildings and that a material change of use of the land has occurred. The appellant's position is that the cabins are buildings.
6. The siting of a caravan is generally held to constitute a use of the land rather than operational development. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968 (as amended). A caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)....
7. The appellant has submitted a report by Hexa Consulting, dated November 2021, which states the structural form of the cabins is that of a large number of individual pieces locked into place by their joints in a static position. It is stated that any attempt to lift or move the structure would create out-of-balance forces in the structure and it would likely collapse.
8. Having inspected the cabins, which appear to have been constructed using wooden slats and sectional pieces, I have no reason to doubt the findings of the Hexa Consulting report. I consider it highly likely that the cabins were constructed on site in more than two pieces and consider it very unlikely they are capable of being moved from one place to another. Consequently, I consider that the cabins are not caravans for the purposes of the above Acts.
9. Section 336 of the Act defines a building as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. There are three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive.
10. The cabins are substantial in size and appear as permanent structures. From the evidence provided by the parties, it appears the structures have been *in situ* for a number of years and so have the quality of permanence. As a matter

of fact and degree, I find that the cabins are buildings for the purposes of the Act.

11. I sought the views of the parties as to whether, if I find the cabins are buildings, the notice could be corrected to refer to operational development. The appellant advised they consider it can be corrected since they have appealed under ground (d), which is made on the basis that it was too late to take enforcement action. The Council has simply reiterated its position that the cabins are not buildings and requested 'sufficient time' to take legal advice on the matter of injustice. Further time has been given, however, no response has been received to date.
12. Whether or not the appellant is able to show that the buildings were substantially completed at least four years prior to the service of the enforcement notice, it is not clear how they have been used, whether they have been used independently of the main dwelling and if so, when such use first took place. While the immunity period for operational development is 4 years, by virtue of section 171B(1) of the Act, the immunity period for the use will depend upon how it has been used.
13. Section 171B(2) provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. However, if the buildings were constructed as dwellings, section 171B(2) would not apply, since there has been no change of use of a building. Section 171B(3) states in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
14. I note that a certificate of lawfulness, reference R17/1699, for the erection of two buildings and use as residential annexes was granted on 20 April 2018. While the certificate was revoked on 20 October 2020 under section 193(7) of the Act, it therefore seems likely that the cabins have previously been used as part and parcel of the main use of the main dwelling, although I make no definitive finding in that regard.
15. The appellant confirms that one of the cabins has been vacated and is now used by the livery as changing facilities/toilets. It seems likely, therefore, that there has been a material change of use of this building. The other cabin is used by the appellant's daughter, however, given the facilities provided within the cabin, which would meet the day to day needs of the occupants, it seems likely that the cabin is used as a self-contained dwelling and not as part and parcel of the use of the main house. Indeed, the appellant states that their daughter should not be compelled to live with their parents and have the right to their own independent dwelling.
16. The Council issued the notice on the basis that a material change of use has occurred and has advanced its case on the basis that the immunity period is 10 years, not 4 years. Moreover, it is clear from the Council's evidence that it is concerned with the residential occupation of the cabins, and this is reflected in its reasons for taking enforcement action, namely, that the cabins are an unsustainable form of development. Were I to correct the notice to refer to just operational development, I believe this would cause injustice to the Council.

17. Were I to correct the notice to refer to the residential use, I would also need to introduce a requirement to require the use to cease. This would widen the scope of the enforcement notice and make it more onerous to comply with, which would cause the appellant injustice.

Conclusion : Appeal A

18. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
19. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (d) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Appeal B

Matters concerning the notice

20. The alleged breach is the rebuilding of stables. The appellant disputes the fact that the stables have been 'rebuilt' and suggests a more accurate description of the breach would be: *'Alterations to stables, comprising demolition of sections of external walls on western, eastern and southern elevations, the creation of new openings on western elevation, new pillars on eastern elevation and replacement roof'*.
21. I note the appellant suggests that this is not an argument under ground (b), which is made on the basis that the matters alleged in the notice have not occurred. However, given the allegation and the requirements of the notice, which are to remove the building in its entirety, it is necessary to consider whether the allegation is correct. I raised this matter with the parties prior to my site visit.
22. Section 55 of the Act states that building operations include rebuilding. Whether works amount to maintenance, improvement or alteration and are therefore not development for the purposes of the Act or constitute rebuilding is a matter of fact and degree. It is possible to conclude that what has occurred is development, even where parts of the 'old' building remain.
23. The appellant has provided a plan which is asserted to show the works that have been carried out, including the removal of doors of the 'rear elevation', the construction of pillars and the provision of new openings and doors. However, the plan includes sections of walls which are not evident on a 2016 aerial photograph, but which appear in a 2017 aerial photograph. This undermines the accuracy of the plan provided.
24. The appellant confirms 'some replacement block work on the upper blocks of the western and southern elevation'. However, although the appellant has provided an elevations plan, it does not show the extent of the block work replaced on the upper parts of the building. During my inspection of the site, I saw a difference in colour and condition between the upper layers of breeze block compared with the bottom layers on the eastern elevation, which appeared more weathered.

25. Photographs provided by the appellant, estimated to be from 2006, show the building was constructed of breeze blocks to the lower sections and wood panelling to the upper sections. It is common for agricultural buildings to be constructed using breeze blocks to the lower parts of a building and metal or wood to be used to the upper parts. I therefore consider it unlikely that the breeze blocks extended the full height of the original building. Given the difference in colour and condition between the breeze blocks of the lower and upper parts of the building, I consider it likely that breeze blocks have replaced much, if not all of the wooden cladding which was previously *in situ*.
26. The appellant has provided an email from a retired enforcement officer who is stated to have visited the appeal site in May 2017. The retired enforcement officer states that 'The work being carried out to the buildings [sic] was a refurbishment of existing buildings so the view....was the work did not need planning permission'. However, no plan is provided to show which building/s the retired officer is referring to, nor is there any description of the works which are stated to be being carried out. It is therefore not clear on what basis the officer arrived at this conclusion. Given such ambiguity, this does not therefore weigh in support of the appellant's case.
27. While I don't doubt that part of the fabric of the original building remains, given the extent of the works which have been carried out, including the rebuilding of significant sections of walls, the erection of new sections of walls and pillars and the replacement of the roof, I consider, as a matter of fact and degree, the works comprise the rebuilding of the stables. Consequently, the description of the breach is correct and there is no need for it to be corrected.

Ground (a)

28. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach.

Main Issues

29. The main issues of the appeal are:

- The effect of the appeal scheme on the character and appearance of the area; and
- Whether the appeal site is a suitable location for stables.

Reasons

Character and appearance

30. The appeal building is located within a rural area, and is situated between a substantial stable building and cabins, which are the subject of Appeal A. Due to the position of existing buildings and mature vegetation, there are no significant public views of the building.
31. While I have found the stables have been rebuilt, it is clear from the evidence provided that there was previously a building in this location. Given the site has previously been used for the keeping of horses, I consider the land comprises

previously developed land¹. Policy GB3 of the Rugby Borough Council Local Plan 2011-2031 (adopted June 2019)(the LP) supports the redevelopment of previously developed land, having regard to the visual impact on the surrounding landscape and properties, amongst other things.

32. Policy SD1 of the LP seeks high quality design, which responds to the character of the area. The appeal site generally comprises functional buildings and I saw that breeze block and corrugated metal roofing has been used in the construction of the adjacent stables. Although the use of breeze block and corrugated metal roofing sheets is not out of keeping with the area, the building appears unfinished. The pillars are an odd feature, which, together with exposed beams of different lengths gives the building a makeshift appearance.
33. The appellant suggests painting the east elevation. However, this would not address my concerns regarding the makeshift appearance of the building. The Council has suggested a number of conditions to control further development and ensure a satisfactory external appearance, however, section 177(1) of the Act only allows for a grant of planning permission for the whole or part of the matters and so further development would require planning permission.
34. While there are limited public views of the site, visitors to the site are likely to be able to see the building. The makeshift appearance of the building harms the character and appearance of the area, contrary to policies SD1 and GP3 of the LP, the requirements of which are set out above.

Suitability of location

35. Policy GP1 of the LP supports development which accords with the policies in the LP and policy GP2 of the LP sets out the settlement hierarchy and states that in countryside, new development will be resisted; only where national policy on countryside locations allows will development be permitted.
36. Although the appeal building is located in a rural area, which is defined as countryside for the purposes of applying planning policy, it comprises part of a complex which is used for equestrian use. Although an interested party disputes the lawfulness of the equestrian use, planning permission has been granted for the retention of the equestrian business.
37. My attention has been drawn to policy ED4 of the LP, which I am advised sets out that equestrian activities are acceptable in principle in rural areas, wherever practicable using existing buildings and structures. Although the works comprise the rebuilding of a stables, evidence shows that a building has been in this location since at least 1999.
38. While the appeal building was not being used for the stabling of horses at the time of my visit, this is likely to be due to the unfinished nature of the building. Although the appellant has considered various options for the building, they state they would like to retain it for use as part of the equestrian business run by her daughters.

¹ The National Planning Policy Framework (the Framework)(2021) defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land...and any associated fixed surface infrastructure.

39. The works which have been carried out comprise the rebuilding of a stables building which appears to have been *in situ* since at least 1999. The replacement of a stable building in a site which is used for equestrian use is not, in my view, an unsuitable location and does not conflict with policies GP1 or GP2 of the LP, the requirements of which are set out above.

Ground (a) conclusion

40. While I have found the appeal site is not an unsuitable location for the appeal scheme, I have found there is harm to the character and appearance of the area. I conclude that the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Appeal B Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR