



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: 18 January 2023

Appeal Ref: APP/W1525/C/21/3287651

**Land at Little Claydons Farm, Old Southend Road, Howe Green,
Chelmsford, Essex CM2 7TB**

- 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 Paul Kelly against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 21 October 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 and its foundations.
 - 2) Remove from the land all debris and other waste material resulting from the works carried out 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), (b), (c), (f) and (g) 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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Formal Decision

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

Background

2. The appeal concerns an old agricultural barn building with a barrel-vaulted type roof. The building recently underwent works and alterations.
3. The appellant says that the building is, and has been previously used, for both storage purposes and also for the brooding of turkey chicks. The farm serves to facilitate 'Kelly Turkeys' whose business involves the breeding and rearing of free range turkeys.
4. The Council, in referring to the barn in situ as a "replacement building", indicates that some two thirds of the original brickwork was removed, and at a site visit in July 2021, it was noted that a steel framework had been erected internally, with scaffolding also erected. Given other material alterations were also made, including the roof being raised and certain changes to the building's physical appearance, the Council considered the works as having constituted demolition, with the subsequent rebuild requiring planning permission. This had not been sought.

5. In the circumstances the Council, in November 2021, saw it expedient to issue an enforcement notice requiring for the building's removal.
6. It appears to me, though, that the site's recent planning history may have had a bearing on the Council's decision to take such action, in that an application requesting prior approval for a change of use of the barn for residential purposes with associated works, although approved in 2018, expired in July 2021, unimplemented. However, an application had been made in March 2021 for planning permission to convert the said building to a dwellinghouse. This was subsequently refused.

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 appellant is claiming that the works carried out did not represent a contravention of planning control.
8. The appellant says that a new building has not been constructed, whereas the Council says that it has taken on a domestic form. Regarding the latter point, from my site visit observations and inspection of the building's interior I would disagree, and this is confirmed by the photographs of the original building and that now in evidence, supplied by the appellant.
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. This will be a matter of fact and degree.
12. In interpreting s55(2) the purpose of this 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 Council has set out a comparison between the original building and, as it refers to, the building following 'reconstruction'. Apart from the steel framework, which has allowed for a mezzanine floor, the other material alterations identified by the Council appear to be a large opening in the north elevation having replaced a previous timber-framed window. Also, the east and west elevations appear to have been raised.

14. Most importantly, the appellant says that although some small sections of brickwork had been replaced the vast majority was actually washed and re-pointed. He also acknowledges that an additional doorway had been installed, but says that this was to help the building's function, whilst a window had been enlarged to allow for increased natural light entry. He says that the building's overall height has not changed, although an increase in the number of brick courses has allowed for the creation of a necessary valley gutter. The original asbestos roof was also removed and replaced with a suitable non-hazardous material.
15. It is telling that the enforcement notice does not allege the occurrence of a residential use – and clearly, given the circumstances I have described and also my site visit findings, that would have been an error – but it would seem to me that the purpose of the notice was to guard against the possibility of such a use commencing.
16. I must therefore compare and contrast the form and dimensions of the original building with that which now stands at the site, following the works undertaken. The footprint does not appear to have been enlarged and, in the circumstances, it seems clear that the building underwent no more than necessary repair and renovation. The majority of the old brickwork has been made good and reinstated, and whilst there may have been some changes made to the building's external appearance the materiality of such is not such that the modifications require the benefit of planning permission.
17. In other words, the old barn has been physically improved and restored, with no real changes of significant materiality involved. I am therefore satisfied that the alleged breach, which would have involved unauthorised operational development did not occur as a matter of fact. Instead, the building works undertaken are consistent with those that can be reasonably considered as falling within s55(2)(a) of the 1990 Act.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the various appeals lodged under the other grounds set out in section 174(2) of the 1990 Act, as amended do not need to be considered.

Timothy C King

INSPECTOR