
Appeal Decision

Site visit made on 24 January 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/W2845/C/21/3283832

Land at The Old Dairy Farm, Main Street, Upper Stowe, Northampton NN7 4SH

- 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 Ian Brodie against an enforcement notice issued by West Northamptonshire Council.
 - The enforcement notice was issued on 1 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of steel portal framed building in use class B8 (storage and distribution).
 - The requirements of the notice are:
 - a) Cease the current use and demolish the unauthorised building in the entirety ensuring that all materials are removed from the land and disposed of lawfully.
 - b) Remove the unauthorised concrete access track and parking/turning area. Return the land to the former condition ensuring that all materials are removed from the land and disposed of lawfully.
 - The period for compliance with the requirements is twelve months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of all the words in paragraph 5 b) and substitution of the words "Return the land to its former condition."
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

3. The alleged breach of planning control is: Without planning permission the erection of steel portal framed building in use class B8 (storage and distribution). An appeal has not been brought on ground (b), but the appellant suggests in their statement of case that the alleged breach of planning control is incorrect, and that instead a material change of use should have been alleged. However, from the evidence before me the appellant does not dispute that they have erected a building. As a matter of fact, a steel portal framed building has been constructed without planning permission on the Land and it is in use for storage (Class B8). I have determined the appeal on that basis.

Appeal on ground (f)

4. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
5. Section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second is to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.

The Building

6. In relation to the building, the appellant considers that a prior approval granted in 2019 for two agricultural buildings on the Land is a genuine fallback position, and in the absence of any identified visual harm arising from the building that has been constructed, it would be unreasonable to require complete demolition of the building. It is argued that the prior approval represents the 'baseline' against which one judges the adverse impact and informs the basis of a proper consideration of the ground (f) appeal. In the absence of any identified visual harm arising from the building itself, the appellant believes it would be unreasonable to require complete demolition of the building.
7. I have had regard to the 2019 prior approval decision¹. However, that was for two smaller agricultural buildings on the Land. The building which has been constructed has a footprint greater than the sum of the agricultural buildings considered for prior approval in 2019. Furthermore, the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended (GPDO) does not grant retrospective planning permission.
8. In the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f), and the notice cannot therefore be varied to attack its substance. It is not therefore open to me to substitute lesser steps that would allow any element of the unauthorised operations to remain when the purpose of the notice is to remedy the breach of planning control.
9. Retention of the building as suggested by the appellant would not remedy the breach of planning control and there are no lesser steps available which would achieve the statutory purpose behind the notice.

Access track

10. In relation to the access track, the appellant submits that it is excessive to require the removal of the concrete access track and parking/turning area, as those operations are not alleged in the enforcement notice as a breach of planning control.
11. Section 173(3) of the Act makes it clear that an enforcement notice shall specify the steps required to be taken or activities required to cease in order to achieve, wholly or partly, the purpose of the notice, which in this case is to remedy the breach of planning control.

¹ LPA Ref: PD/2019/0060, dated 27 September 2019.

12. The breach of planning control alleged in the enforcement notice the subject of this appeal is: 'Without planning permission the erection of steel portal framed building in use class B8 (storage and distribution)'. I appreciate that the concrete access track and parking/turning area may not be lawful. However, considering the notice the subject of this appeal does not identify those operations as an alleged breach of planning control, it is excessive to require their removal. Removal of the concrete access track and parking/turning area would not remedy the alleged breach of control set out in the notice and the appeal on ground (f) succeeds to that extent.

Other Matters

13. The appellant considers that the building should remain on the land and be used for agriculture, and I understand that he has made an application for planning permission to retain the building for such use. The outcome of that application/appeal is currently unknown. However, I note that the time for compliance with the notice is twelve months after it takes effect. For the avoidance of doubt S180 (1) of the Act provides that where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with the permission. Thus, the outcome of the appellant's application to retain the building for agricultural use will ultimately determine its future.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Elizabeth Pleasant

INSPECTOR