The Planning Inspectorate

Appeal Decision

Site visit made on 3 April 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2023

Appeal Ref: APP/V1260/C/22/3300393
The land and premises at Brake Hill, adjacent to Le Beau, Arrowsmith Road, Wimborne BH21 3BE

- 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 Mark Matthews against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
- The enforcement notice was issued on 12 May 2022.
- The breach of planning control as alleged in the notice is: Unauthorised development consisting of the erection of a building and its subsequent conversion into 5 dwellings, 3 of which are actively occupied as residential dwellings, 1 which is currently used as an office, and 1 which is currently used for the storage of furniture.
- The requirements of the notice are: a) Cease the use of the building as separate self-contained dwellings. b) Cease the use of the building as a store for furniture. c) Cease the use of the building for office purposes. d) Remove all domestic paraphernalia associated with the residential dwellings from the land. e) Following compliance with a)-d), demolish the building in its entirety. f) Following compliance with e), remove all resultant materials from the land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

2. The appellant contends that he has only replaced the upper structure of the building, which is in contrast to the alleged breach of planning control. This therefore amounts to a hidden ground (b) appeal, namely that the breach of planning control alleged in the notice has not occurred as a matter of fact. I will therefore consider this ground of appeal based on the evidence before me, including my site visit, which would not lead to injustice to the parties.

The ground (b) appeal

3. Accordingly, for an appeal on ground (b) to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact.

4. The appellant contends that he replaced the upper parts of the building. It is then later suggested that the existing building was reconstructed.

5. However, these vague and ambiguous assertions are not corroborated by any photographic or such evidence to demonstrate on the balance of probabilities that this was the case. Conversely, the Council has provided a series of aerial photographs which show a rectangular building, in 2001, the site of an almost entirely demolished building, in 2017, and then the appeal building, being 'u' shaped, in 2021, which the appellant also states is smaller.

6. I could then see during my site visit that whilst there might be some parts of very low-level original walling in the appeal building, as a matter of fact and degree it is a new building for planning purposes with new walls and roofing of a different design and with a different footprint. Accordingly, the building works are so extensive that it is not merely the repair, extension, alteration or re-use of an existing building.

7. The notice then simply starts by alleging the erection of a building. It thus does not specify that it is a replacement building, but this is not fatal to the notice for the purpose of alleging the breach of planning control.

8. The appellant also contends that when the notice was issued the building was set out as five holiday units plus an office. The Council says it identified 5 dwellings, 3 of which were being actively occupied, 1 used for storage and 1 used as an office. There is however very little evidence from the appellant to demonstrate his assertion.

9. Whilst the appellant then uses the building predominantly as holiday lets, this still falls within the definition of a dwellinghouse given they afford the facilities for day-to-day private domestic existence.

10. As a matter of fact and degree, the appellant has therefore not demonstrated on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact.

11. The appeal on ground (b) therefore fails.

The ground (a) appeal

Main Issues

12. The main issues are:

- whether or not the development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- whether the site is in a suitable location for residential uses, having regard to local and national planning policy;
- whether the development is harmful to the character and appearance of the area; and,
- If the development is inappropriate, whether the 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

Whether inappropriate development in the Green Belt

13. The site is located within the Green Belt. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 137 of the Framework states that the Government attaches great importance to Green Belts.

14. The purpose of the Green Belt, amongst other things, is to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. The essential characteristics of Green Belts are then their openness and their permanence. Openness is the absence of development.

15. Paragraph 149 of the Framework is concerned with buildings and lists exceptions to inappropriate development. Even considering the development as a replacement building, the appellant acknowledges the original was in an agricultural use. Accordingly, the building, the subject of the notice, is not in the same use, given its predominantly residential uses. Furthermore, the site is not previously developed land[1] as it was last occupied by an agricultural building. There is also little evidence that the scheme recycled derelict land given the original building was said to have been in a beneficial agricultural use.

16. The development is therefore not an exception to inappropriate development within the Green Belt as listed within paragraph 149 of the Framework, or indeed elsewhere.

17. Whilst the impact on openness is tempered by it being a replacement building, it is nevertheless a substantial unauthorised building that affects openness in this location, and which is contrary to the purpose of the Green Belt.

18. I therefore conclude the development is inappropriate development that is, by definition, harmful and therefore contrary to national policy to protect the Green Belt. This is a planning harm to which I attach substantial weight.

Location

19. The site is located in rural surroundings. For the purposes of the Poole Local Plan, adopted November 2018 (the LP), it is not within Poole town centre, the district and local centres or the sustainable transport corridors. Policy PP2(2) of the LP identifies that outside of these areas, development will be permitted provided that the scheme is capable of delivering sustainable patterns of development. The Council's approach to residential development is therefore broadly consistent with the housing approach and objectives set out in the Framework.

20. The Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, even if I were to accept the development is to be and remain as holiday lets, noting the appellant suggests a restriction by means of a unilateral undertaking, which is then not before me, there is very limited

[1] Framework, Annex 2: Glossary

evidence to enable me to conclude other than this would only bring moderate benefits to the economy and limited benefits to the social well-being of the local community.

21. The appellant contends that the LP only deals with the town centre and that there has been the loss of and so considerable need for additional tourist accommodation for those who prefer to stay in the surrounding countryside. However, there is again very limited evidence to support this latter assertion or that the development relates to the diversification of a land-based rural business or otherwise meets a local business need as envisaged by the supporting a prosperous rural economy objectives of the Framework.

22. The site is then accessed by means of a narrow winding lane which is unlit and without footways. Even though the appellant highlights the existence of a cycleway along the A341 with bus route and that there is a SANG approximately 1 mile away, I am not persuaded, including from my site visit, that this means the site is in a sustainable, connected or accessible location given its rural situation and access road places significant reliance on the private car. The site is therefore not capable of meeting a range of needs or to reduce the need to travel, in contravention of Policies PP34 and PP35 of the LP.

23. It is therefore not a location where new residential uses would normally be considered acceptable. It is accordingly not well related to existing settlements and is not a sustainable form of rural tourism development. The scheme is thus not capable of delivering sustainable patterns of development.

24. I conclude the site is not in a suitable location for residential uses having regard to local and national planning policy. The use of the site for residential purposes therefore conflicts with Policies PP2(2), PP34 and PP35 of the LP and the housing objectives of the Framework. This is a planning harm to which I attach significant weight.

Character and appearance

25. The site itself is accessed via a long gravel track between fields with the building set a considerable distance from the road, albeit visible from the public realm. The area is characterised by a pattern of large houses set in large gardens within an undulating and varied landscape of marginal farmland.

26. The appellant contends the building is smaller, and the Council that it appears larger in-built form in terms of height, scale and massing. There are no measurements before me. Based on the photographic evidence, the building appears to be of a similar scale and similarly fenestrated, from the road. The building therefore reflects the local as well as historic patterns of development.

27. Whilst the cluster of residential units is at-odds with the pattern of large houses, there remains sufficient land to enable parking and usable amenity space which would preserve the area's character. Given the development relates to a site formerly in agricultural use, there has accordingly been no plot severance.

28. I conclude the development is not harmful to the character and appearance of the area and so accords with Policies PP27 and PP28 of the LP. These policies, amongst other things, require development to reflect or enhance local patterns of development and for sufficient land to enable parking and usable amenity

space which would preserve or enhance the area's character. The absence of this planning harm attracts neutral weight.

Other considerations

29. The appellant contends that he could have secured the residential use of the original building by means of exercising permitted development rights. He however did not seek prior approval in which to do so. Indeed, he has erected a replacement building with a different use to that which went before, as opposed it merely being a conversion. Whilst I have some sympathy for the appellant and note he has sought to resolve matters with the Council, there is no realistic fallback position as there is no permitted development right that has been brought to my attention for the erection of a replacement building, and now no original building in which to re-use. I then do not accept the reason for the new building was to make it energy efficient in order to comply with Policy PP37 of the LP. Given any past prior approval or planning application route is now a hypothetical one, I afford this consideration only limited weight.

30. The site is also within or within the buffer zones of SSSI, SPA, SAC and Ramsar sites, which are afforded protection under the Conservation of Habitats and Species Regulations 2017. I then have little evidence to demonstrate that the development would not be likely to have a significant effect either alone or in combination with other developments. The appellant has indicated a willingness to make financial contributions as mitigation, but limited evidence of payment or a unilateral undertaking is before me. The development is accordingly contrary to Policies PP32 and PP39 of the LP. This is a consideration to which I attach considerable weight.

The Green Belt balance

31. There are no other considerations in favour of the development that clearly outweigh the presumption against inappropriate development in the Green Belt and the substantial weight that the Framework requires to be attached to such harm. Moreover, the site is not in a suitable location for residential uses and there is harm to protected sites. The very special circumstances necessary to justify the development do not, therefore, exist.

Conclusion

32. For these reasons and having regard to all other relevant matters raised, I conclude that the ground (a) appeal should fail.

The ground (f) appeal

33. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

34. I have already considered the breach of planning control and the planning merits of retaining the building in its predominantly residential uses, and this has failed.

35. The appellant would then in the alternative like to retain the building for other speculative uses within the next few years, such as for equestrian purposes,

amongst other things. Such uses however amount to a different scheme to the deemed planning application and there are no appeals for other uses before me. I am therefore unable to consider speculative proposals under a ground (f) appeal.

36. The requirements of the notice therefore only go as far as remedying the breach of planning control, which would see the unauthorised building demolished. Whilst the appellant might consider this to be wasteful of resources, this is not a compelling defence which demonstrates why demolition is excessive to remedy the breach of planning control.

37. The appeal on ground (f) therefore fails.

Overall Conclusion

38. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

39. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR