
Appeal Decisions

Site visit made on 18 May 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 08 November 2023

Appeal A Ref: APP/R3650/C/22/3301950

Borderfield Farm, Boundary Road, Dockenfield, FARNHAM, GU10 4ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr. David Wright against an enforcement notice issued by Waverley Borough Council.
 - The notice, numbered EN/2022/13, was issued on 23 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding ("the Building") for agricultural and residential purposes. The Building is in the approximate position 'A' on the attached plan.
 - The requirements of the notice are (i) remove the building from the approximate position marked 'A' on the attached plan; (ii) remove all materials from the land resulting in compliance of step 1.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), (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.
 - A similar appeal (B) 3301951 has been made by Mrs Anne Wright without the ground (a).
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 5th June 2023

Decisions

Appeal B - 3301951

1. The appeal is dismissed.

Appeal A - 3301950

2. 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 erection of an outbuilding for agricultural purposes at Borderfield Farm, Boundary Road, Dockenfield, Farnham, GU10 4ES as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The development hereby permitted shall be used solely for agricultural purposes and for no other use.
 - 2) Unless within 3 months of the date of this decision a scheme for the replacement of the first floor windows, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval,

the use of the building shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 8 months of the date of this decision, the use of the building shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the windows specified in the approved scheme, those windows shall thereafter retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

3. The appeal site lies amidst a group of farm buildings, barns, sheds etc, that lie either side of a dead-end track running westwards away from Boundary Road. At the end of the track on its southern side are three closely grouped buildings, a cabin style building then the appeal building and finally a large barn, with a cluster of smaller structures adjacent to it. The track runs uphill and each building is set up higher than the previous one. The appeal building as it stands is a large two storey edifice, which houses tractors and agricultural machinery on the ground floor and a single large room on the upper floor, with windows, a partial glass roof and a small room for a toilet and wash basin.

The Appeal on Ground (b)

4. This ground is that the matters alleged – the erection of an outbuilding for agricultural and residential purposes – has not happened. Firstly the appellant argues the building has merely been extended. His hand drawn plans suggest the original barn was two stories, on ground that had a serious slope. The height above ground level at the western end was 4.4m and at the eastern end 5.6m. This meant storing machinery on the slope was tricky and the roof height of the ground floor at the western end of too low to be easily used. All that has happened is the floor at the western end has been raised to make it level and the whole building has been raised, the same supports for the roof and upper floor have been extended upwards so now the barn is a level 2 stories, the upper floor is still the same size but the lower floor has been raised so the height of the barn at the western end is now 5.6m and at the eastern end is 6.8m. Its length remains the same and it has been re clad and new windows installed upstairs, which is still used for storage purposes, not residential.
5. While this all may be true, it remains the case that it appears that a substantial new building has been erected. The photographic evidence is clear the old barn looked much lower and smaller compared to the new one. It may incorporate many of the internal supports from the old barn, but it nevertheless is a substantial rebuild rather than simply a repair of the old. Therefore there has been a new building.

6. The appellants also argue that no residential use was created. The upstairs room contains a toilet and washbasin which were relocated from a lean-to on the outside of the old barn and are necessary for agricultural workers, plus a small kitchenette in the main building, also useful for workers, the rest of the space is for storage. However, during covid they accept they allowed their son and his bandmates to use it for practice purposes, but this was only temporary, and no-one ever lived there.
7. I accept the band practice use was temporary and there was no intention to create a genuine residential use, nevertheless the allegation is technically correct, the band practice is essentially ancillary to a residential use and even though it has now ceased the matters alleged did happen. The appeal on Ground (b) fails.

The Appeal on Ground (d)

8. This ground is that the matters alleged took place more than 4 years ago and are therefore immune from enforcement. The first issue is to determine when the 4 years begins. This notice was issued on 23 May 2022, so the 4 year period begins 23 May 2018. However, the Council explain they are taking advantage of the second bite provisions. The original notice was issued on 28 March 2022 but was withdrawn due to a technical error and re-issued. S171B(4) of the Act in effect allows a second notice to run from an earlier date as long as on that date the Council "purported to take enforcement action in respect of that breach". The issue of an earlier enforcement notice is purporting to take such action.
9. The appellant argues the earlier notice was a nullity, and so does not exist in law and cannot be relied on. It is a high bar to determine that a notice is a nullity, it has to be essentially so much scrap paper that is simply cannot be relied on at all. In this case it is argued the reference number was incorrect and some of the reasoning for the issue was illogical. However, these do not amount to rendering the notice a nullity. It was still obvious what was being alleged and where the building was alleged to be. The notice was not a nullity and so the Council can rely on second bite and the 4 year period runs from 28 March 2018.
10. An aerial photograph from March 2017 shows the building to be partially collapsed and overgrown, whereas in May 2018 it is clearly being rebuilt. The shadows on the ground suggest either the upper floor is still only a framework, or there is scaffold of some sort around the roof. A later photograph of 23 June 2018 shows the new roof, including the partial glazed element to be in place, although the external staircase to the upper floor appears to be absent. This is clearly shown in the latest photograph, although that is undated it must be later than June 2018.
11. The appellant argues the barn was substantially complete between May and June 2018, which apart from the staircase element, is in accord with the Council's evidence. However, as the completion date needs to be in March 2018 or earlier that is no help. The barn was clearly not substantially complete by 28 March 2018 and so the appeal on ground (d) fails.

The Appeal on Ground (a)

12. The key policy from the Local Plan is now DM15 which replaces RD10, but as far as this appeal is concerned is essentially the same. This requires that agricultural buildings are acceptable as long as they are reasonably necessary for the purposes of agriculture and they do not detract from the character of the rural landscape. The Council's evidence is clear, that they have no objection to the design of the building as long as its use is for agricultural purposes, but they have no justification for the first floor residential use and no alternative use has been proposed.
13. The appellant has explained the residential use and as I saw, it would be almost impossible to live on the upper floor as the glazed roof makes it unbearably hot. The appellant states that they employ a considerable number of people on an occasional basis who all need toilet facilities, hence their upgrade by bringing the toilet inside rather than relying on the original lean-to. I saw the upper floor was being used for storage and growing of a considerable number of greenhouse type plants. They also state they store alpaca fleeces and have stored hay in the upper floor. There are a number of other buildings on site but as the appellant says these are mostly in a poor state of repair and are subject, like the appeal building, to an ongoing process of renewal as and when time and money allow. As they run a reasonable sized small holding with various animals and crops there would seem to be no argument that the upper floor would not be useful for agricultural purposes and could be conditioned as such.
14. The appellant also suggests if the windows are a problem they could be replaced with agricultural 'topper' windows to remove the residential appearance. Although I am not sure what a 'topper' window is, I agree a less domestic window would be of benefit. Therefore a condition requiring the type of windows to be agreed with the Council is necessary, and I shall use the standard condition where the development has already taken place. Subject to this, it would seem, there is no further objection to the grant of planning permission for the building which would conform with RD10.

Conclusion

15. I shall grant planning permission for the building subject to the 2 conditions discussed above and quash the notice. The grounds (f) and (g) do not need to be considered. I shall dismiss the appeal without the ground (a).

Simon Hand

INSPECTOR