



Appeal Decision

Site visit made on 10 October 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal Ref: APP/A1720/C/22/3303746

Land adjacent to 83 Swanwick Lane, Swanwick, Southampton

- 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 Navid Assar against an enforcement notice issued by Fareham Borough Council.
 - The enforcement notice was issued on 6 July 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a wooden building on the Land.
 - The requirements of the notice are: a) Demolish the timber building; and b) Remove all resulting materials, including timber and breeze blocks used in the construction of the building, from the Land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

The Enforcement Notice

2. The alleged breach of planning control relates to a wooden building, whereas the requirements of the notice relate to a timber building. Injustice to the parties however does not arise from omitting these terms, so the notice simply refers to a building.

The ground (a) appeal

Main Issues

3. The main issues are:
 - whether the building in this location is supported by local and national planning policy;
 - the effect of the development on the character and appearance of the area; and,
 - the effect of the development on the living conditions of neighbouring occupiers.

Reasons

4. The site is accessed via a long track and consists of a parcel of predominantly wooded land of rural character, albeit bounded on one side by the M27 motorway. The development before me relates to the retention of a substantial building, which is predominantly of timber construction.

Location

5. The site is located in the countryside for the purposes of the Fareham Local Plan 2037, adopted April 2023 (the LP). Policy DS1 of the LP states that proposals for development in the countryside will be supported in one of a number of prescribed circumstances. The appellant has brought to my attention that of a community facility, in support of the development.
6. The evidence before me is that the appellant purchased the site so his extended family and close friends could gather together as a place of worship in connection with their faith. As part of their faith, they are required to meet under open skies to carry on family, cultural and religious traditions.
7. The evidence is thus of a particular need to worship outside. The appellant advises that the building is intended to act as a shelter when gatherings occur on inclement days, and as a store for tables and chairs intended for outdoor usage. The building is therefore ancillary to the appellant's main use of the site, and for which it is contended that planning permission is not required as this does not occur for more than 28 days each year.
8. However, the building is of a significant scale. Whilst the site might provide an opportunity as a place for outside worship, I am not persuaded that such a significant building, given its purported and thus limited requirement, can be regarded as a community facility that cannot be met elsewhere for the purposes of the LP, particularly as there is then no planning permission for a community-based use of the site. It is merely agricultural land. The deemed planning application then only relates to retaining the building as opposed to any use of the land and in my view the scale and design of the building does not appear ancillary to the evidence otherwise before me of a seemingly modest requirement to support outside worship.
9. Paragraph 92 of The National Planning Policy Framework (the Framework) has also been brought to my attention. However, I have very limited evidence that the loss of the building would significantly impair the appellant's ability to practice his faith and outside worship.
10. I appreciate the appellant is willing to accept planning conditions relating to the use of the building or site. However, in light of the above findings, this would not address those concerns.
11. I conclude that the building in this location is not supported by local and national planning policy and therefore contravenes Policy DS1 of the LP and is otherwise not supported through the promoting healthy and safe communities objectives of the Framework. The policies of the LP now supersede those cited in the Council's notice and for which the appellant has commented upon.

Character and appearance

12. The wider area consists of a range of building types but is predominantly residential in character. The site itself cannot then be viewed from public vantage points and the presence of a timber shelter may not be unexpected in a countryside location.
13. However, the building is not of lightweight construction and is of a significant size. It appears more akin to a bungalow in terms of scale and design which includes decking and a porch. I therefore do not accept that it appears as merely a timber shelter. Even though parts of the building are then open-sided, I could see during my site visit that the walls are studded and therefore it appears to be unfinished as opposed a building that has been designed to be open-sided from the outset. Internally, there is studwork which gives the impression that various rooms are then sought to be created.
14. I accept the location of the site adjacent to the motorway may not equate to pristine countryside. Nevertheless, the site represents a pocket of well treed rural countryside and the presence of the building, exacerbated by its sheer size as well as its design, fails to respond positively to the rural characteristics of the area. The building does not appear uniquely rural or comparable to an outbuilding found within a garden.
15. I conclude the development is harmful to the character and appearance of the area in contravention of Policy D1 of the LP. This policy, amongst other things, requires development to appropriately respond to the positive elements of local character.

Living conditions

16. Given the location of the building, it does not adversely impact upon the privacy of neighbouring residential occupiers. Moreover, whilst the building may result in a more intensive use of the site, there is little evidence before me that an increase in comings and goings to and from the site results in an adverse impact on neighbours in terms of noise and disturbance.
17. I conclude the development is not harmful to the living conditions of neighbouring occupiers and therefore accords with Policy D2 of the LP. This policy, amongst other things, requires development to not have an unacceptable adverse environmental impact on neighbouring occupants.

Other Matters

18. I am satisfied that had I not identified harm and therefore been allowing the appeal, matters concerning appropriate parking provision within the site and the satisfactory disposal of wastewater could have been dealt with by suitably worded planning conditions.
19. I appreciate the building is not intended to be a dwelling and the appellant is concerned about how he feels the presence of the building and his use of the site has been perceived. My assessment is however restricted to the planning merits of the development before me, which I have considered above.
20. I have had due regard to the aims of the Public Sector Equality Duty as set out in s149 of the Equality Act 2010. However, dismissing this appeal does not interfere with the rights of the appellant to continue to use the land or practice

his faith, given the deemed planning application relates only to an ancillary building. Whilst I appreciate the appellants intentions, it however remains a proportionate response to dismiss the appeal, in light of my above findings.

Conclusion

21. For the reasons given above I conclude that the appeal on ground (a) should fail.

The ground (g) appeal

22. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 12 months is required.

23. However, whilst the building is substantial, there is very limited evidence before me as to why two months is too short to comply with the otherwise straightforward requirements of the notice. On this basis, a longer period would unnecessarily perpetuate the breach of planning control. I also note that the Council has powers under section 173A(1)(b) of the Act to extend the compliance period, albeit that would be a subsequent matter and is entirely for them.

24. The appeal on ground (g) therefore fails.

Overall Conclusion

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

Formal Decision

26. It is directed that the enforcement notice be corrected by:

- deleting the word '*wooden*' from section 3 of the notice; and,
- deleting the word '*timber*' from section 5 a) of the notice.

27. Subject to these corrections the appeal is dismissed and 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.

Paul T Hocking

INSPECTOR