



Appeal Decision

Site visit made on 3 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/G1630/C/22/3309587

Claydon House Farm, Claydon, Tewkesbury, Gloucestershire GL20 7BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Joseph Muscat against an enforcement notice issued by Tewkesbury Borough Council.
- The notice was issued on 27 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a building as shown edged blue on the said attached plan.
- The requirements of the notice are to: Within the area outlined in RED on the attached plan: (1) Demolish the building shown edged blue on attached plan; (2) Remove all debris, resultant from compliance with step (1) above, from the land.
- The period for compliance with the requirements is: 6 (six) months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act).
- Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.

Decision

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

Ground (d)

2. An appeal on this ground is based on the claim that at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Section 171B(1) of the Act provides that no enforcement action may be taken in respect any unauthorised operational development after the end of the period of 4 years beginning with the date on which the operations were 'substantially completed'.
3. Having regard to *Sage v SSETR & Maidstone BC [2003] UKHL 22*, the alleged building had no glazing, guttering, ground floor, access to the first floor, service fittings or internal finishes. It was held that a building could not be regarded as substantially completed for the purposes of s171B(1) of the Act even if outstanding works affected only the interior.
4. Therefore, for this appeal to succeed on ground (d), the appellant must demonstrate that the building had been substantially completed by at least 27 September 2018. Then it would be too late for the Council to take enforcement action against it. Regard should be had to the operations which the person originally contemplated and intended to carry out. If it is shown that he has stopped short of what he contemplated and intended when he began the development, the building as it stands can be properly treated as an uncompleted building against which the 4-year period has not yet begun. In

legal grounds of appeal such as this, the burden to make the case rests with the appellant.

5. The allegation in the notice is the unauthorised erection of a building. Its purpose is not specified. However, the reasons for issuing the notice cite the refusal reasons of the application for retrospective planning permission for the construction of an agricultural outbuilding (ref: 18/00059/FUL¹). These are that there is no identified need or justification that the development is reasonably necessary or designed for agricultural purposes and also that the development would not be in keeping with a local plan policy which seeks to protect landscape character. The Council's appeal statement supports its view that the building has been designed and constructed for a residential use and that at the date of the notice, the building had not been substantially completed for those purposes.
6. Nonetheless, the appellant maintains that the building has been constructed for agricultural storage purposes and is occupied in part by a local person for use in association with their agricultural contracting business. A copy of a 'statement of truth' says Neal Minchew has a tenancy of the majority of the barn which is used primarily to store agricultural equipment and occasionally hay and straw. A copy of a 'tenancy at will' dated 1 December 2017 shows the rent to be 'a peppercorn (if demanded) on termination'. At the time of my visit, the building was being used for storage purposes. There was a mixture of domestic items, some agricultural equipment/machinery such as 2 classic tractors and a hand driven plough and building materials and equipment. Small bales of hay were being stored on the upper level of the middle section.
7. The planning application and drawings which sought to retain the building for farm vehicles, equipment and hay/straw show a building with brickwork at ground floor level on the front and side elevations with vertical rough sawn Yorkshire boarding and a plain clay tile roof. Two sets of narrow double height doors and a single pedestrian access are shown on the front elevation, together with 3 small windows at ground floor level. The rear elevation, which is shown to be fully clad in Yorkshire boarding, displays a single pedestrian access and 2 windows to the ground floor. There is a window shown at ground floor level on both gable ends, and none were proposed for the upper level on any elevation.
8. What has been constructed is materially different from the application drawings with regards to materials, finishes and the size, design and number of openings. The appeal building is 23m in length, 6m in depth and with a ridge height of 6.3m. The building presents a mostly domestic appearance with an assortment of domestic sized windows and doors many of which are plastic. There are window openings on each elevation and at both ground and upper level. There are openings without frames and glazing. Some openings are open to the elements, and some are covered with plastic, boarding and corrugated sheeting. The building has a double skin with facing brickwork to the front and sides and the rear elevation is fully rendered. It appears to be insulated and fitted with a damp proof membrane beneath the concrete floor.
9. The building is divided into three separate bays. These are accessed from both the front and rear but there is no internal access between them. RSJs and timber joists provide for an upper floor level. Window openings in the upper level suggest that these areas were intended to be used, being lit with natural

¹ Refusal dated 20 January 2022

daylight, however this space is currently mostly void of flooring and stairs to make it easily accessible and useable. There are said to be 'no services that would render the building a dwelling' (appellant's comments on the LPA statement of case) however, it is reported to have water and electricity but no drainage (PCN ref 17/00115/ENFC dated 28 July 2022). Photographs dated 22 June 2022 provided by the Council show a meter box on the front elevation where previously there was none as shown on photographs dated 21 September 2021. Thus, it seems to me that electricity had been supplied to the building at some time between September 2021 and June 2022.

10. In accordance with the Sage case previously referenced I have looked at the building and have asked for what purpose is it designed. The building looks as if it was intended to serve a residential purpose and, irrespective of the fact that part of the building has been used for agricultural purposes, that does not mean that it was built for agricultural storage purposes. Indeed, any building can be used for storage. While the appellant has maintained a use of available salvaged materials enabled a higher quality build than one would usually expect for an agricultural building, there is a notable absence of evidence to show how the design and appearance of the 'as built' structure meets its originally intended use. Furthermore, as part of the application to retain the building, the accompanying agricultural questionnaire failed to identify any agricultural enterprise being undertaken at the land or on any associated land. The Council's agricultural consultant concluded that there was no justification that the development was reasonably necessary or designed for the purposes of agriculture.
11. Having regard to the building's physical features and its design and proportions, it seems to me that the appellant has stopped short of what they contemplated and intended when they began the development. The building has unfinished openings, exposed insulation, gaps in walls, no internal finishes, incomplete flooring to the upper level and no safe access to that level, no drainage and at some time after September 2021 further services in the form of electricity had been supplied. Furthermore, the building as it stands is neither properly watertight or secure as suggested in the appellant's submissions.
12. Based on the appeal papers and what I observed at the time of my visit, it is evident, as a matter of fact and degree, that the building had not been substantially completed for a period in excess of 4 years leading to the date of the notice. Consequently, the appeal on ground (d) cannot succeed.

Ground (f)

13. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (s173(4)(a)) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach (173(4)(b)).
14. The appellant considers that it is not necessary or reasonable to remove all the materials from the site. They say the materials may be useful to the farm and could be stored without any detriment to others or be harmful to the character of the area. Demolition of the building will result in a substantial quantity of materials and there is no suggestion what they may be re-used for or indeed when. The Council issued the notice to remedy the breach of planning control.

Leaving the materials on the site would not achieve the purpose of the notice. Given that the requirements go no further than requiring the appellant to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control.

15. Accordingly, the appeal on ground (f) fails.

Ground (g)

16. An appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

17. It is considered, by the appellant, that six months is too short a period of time to comply with the notice due to the extent of the development. It is also stated that horseshoe bats occupy the building, and these would need to be removed outside of any hibernation period. A period of 1 year is considered more appropriate.

18. While I appreciate that the operations to remove the building would take time, I am not persuaded that 6 months would be insufficient. Furthermore, there is no evidence to support the claim that the building is occupied by a protected species. However, if there are roosting bats, it would be incumbent upon the appellant to apply for the appropriate licence and to undertake the removal of any bats using a licenced professional. The Council considers 6 months sufficient time to comply with the notice. However, upon finding bats, if it was not possible to demolish the building and remove the resultant materials within the given timeframe, under s173A of the Act the Council, as stated in its submissions, may extend any period specified for compliance with the requirements of the notice.

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

S A Hanson

INSPECTOR