



Appeal Decision

Site visit made on 26 January 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2024

Appeal Ref: APP/P1045/C/23/3319306

Tythe Barn, Hob Lane, Kirk Ireton, Derbyshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr George Matkin against an enforcement notice issued by Derbyshire Dales District Council.
 - The notice was issued on 15 February 2023.
 - The breach of planning control as alleged in the notice is building operations comprising the erection of a building.
 - The requirements of the notice are to:
 - a) Permanently remove the building from the site.
 - b) Reinstate the site to grassland.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Ground (b)

2. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred. The appeal building is constructed of sandstone and comprises four walls, with openings on three sides and an internal dividing stone wall. There is no roof. The appellant's case under ground (b) is advanced on the basis that the works which have been carried out constitute repair works, rather than the erection of a new building. The appellant advises that, whilst the repairs were relatively extensive, there are substantial sections of original fabric evident in the structure.
3. The Council does not dispute that a building has been located at the appeal site historically and advises it is believed that the building dates from the 17th Century. The Council states the roof of the building was lost a few decades ago and parts of the external walls had collapsed, with some structural cracks to the building fabric. The Council goes on to advise that works have recently been undertaken to 'substantially rebuild' and alter the appearance of the building and suggest the works are development constituting the demolition¹ of the former building and the erection of a new building.
4. Photographs of the building taken in 1992 show it was a stone built building, with a pitched roof. Images from 2009 show the building in a state of disrepair, with the roof and sections of wall missing and vegetation growing inside. A

¹ Notwithstanding demolition of the building is not alleged in the enforcement notice.

distant photograph, most likely taken from Nether Lane, is stated to show the building with trees growing through. However, the image is blurred, and it is not possible to determine whether the vegetation is simply obscuring parts of the building from view, or has resulted in sections falling down.

5. Another photograph, at Appendix 5 of the Council's Statement of Case, is stated to show the building in a 'state of dereliction'. However, the image is very unclear. The photograph is undated and, from the angle it has been taken, it appears to show the building, with something adjacent to it, perhaps building materials. Indeed, the appellant suggests in their final comments that the photograph shows a pile of rubble, the materials used to repair the building, rather than the building itself.
6. Photographs, stated to have been taken in October 2021, show the building with much of the upper sections of external walls on three sides missing, and what appear to be rotten wooden beams protruding from the elevation facing towards the village, missing stones and significant cracking. Given their condition, substantial sections of a number of walls in the 2021 photographs, in my view, are likely to be as originally constructed.
7. The footprint of the building does not appear to have changed and from my inspection of the site, it appears that significant sections of wall have been retained: the colour, shape and placement of stones in sections, of what I consider are likely to have been original wall (shown in the 2021 photographs) appears broadly consistent with what I saw on site, which suggests these sections have been repointed, rather than rebuilt. Had the appellant removed the walls entirely, I would not expect to see such consistency between the 2021 photographs and what I saw on site.
8. In a photograph dated 1 January 2022, works to the building appear to have begun, with steel girders placed on top of sections of wall. These steel girders were present during my visit and, in my view, assist in understanding the extent of stone which has been rebuilt on the upper sections of three of the elevations of building.
9. Although the upper sections of wall of the building are likely to have been rebuilt, the sections of wall which appear to have been retained are substantial. As a result, while parts of the building have been rebuilt² and new openings have been inserted, as a matter of fact and degree, I consider the works constitute the alteration and rebuilding of parts of the building, rather than the erection of a new building. I therefore find the description of the breach, which is the erection of a building, has not occurred as a matter of fact.
10. Section 55(1) of the Act sets out the meaning of development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. For the purposes of the Act, building operations include rebuilding and structural alterations of or additions to buildings.
11. It is not disputed that the works that have been carried out constitute development and since they have been done without the benefit of planning permission, there has been a breach of planning control. I have wide powers of correction, subject to there being no injustice to the appellant or the local

² Whether with stone originating from the site or not.

planning authority. I have therefore considered whether it would be possible to correct the notice to reflect the works which have been carried out.

12. Correcting the allegation would have implications for the ground (a) arguments put forward by the respective parties. Furthermore, where a notice is seeking to remedy the breach, the most that it can require is to restore the land to its condition before the breach took place. I am also concerned that the parties have not considered the implications of this fully through the appeal, both in respect of their ground (a) and ground (f) arguments. As a result, I believe correcting the notice would cause injustice to both the appellant and the Council.

13. Thus, for the reasons given above, the appeal under ground (b) succeeds.

Conclusion

14. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b).

15. The enforcement notice will be quashed. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR