



Appeal Decisions

Site visit made on 26 February 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2023

Appeal A Ref: APP/E2001/C/23/3327699

Land at Grange View, Keldspring Lane, Yapham Mill, East Riding of Yorkshire YO42 1PS

- 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 D Pemberton against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 12 July 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land to a mixed use for agricultural engineering and residential use.
 - The requirements of the notice are:
 - (1) Cease the residential use of the Land;
 - (2) Remove from the Land all chattels associated with the residential use of the Land;
 - (3) Remove from the building (outlined in blue on the attached Plan) the kitchen and all associated facilities (kitchen units and all associated fixtures and fittings and appliances), the bathroom(s) and all associated facilities (sinks, showers and bathtubs, and all their associated fixtures and fittings and appliances), and any and all built-in wardrobes and any and all other domestic fixtures and fittings.
 - The period for compliance with the requirements is six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended
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Appeal B Ref: APP/E2001/C/23/3331976

Land at Grange View, Keldspring Lane, Yapham Mill, East Riding of Yorkshire YO42 1PS

- 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 D Pemberton against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 27 September 2023.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of land from agricultural to residential use.
- The requirements of the notice are:
 - (1) Cease the residential use of the Land;
 - (2) Remove from the Land all chattels associated with the residential use of the Land;
 - (3) Remove from the building (outlined in blue on the attached Plan) the kitchen and all associated facilities (kitchen units and all associated fixtures and fittings and appliances), the bathroom(s) and all associated facilities (sinks, showers and bathtubs, and all their associated fixtures and fittings and appliances), and any and all built-in wardrobes.

- The period for compliance with the requirements is within 6 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision in Respect of Appeal A:

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

Decision in Respect of Appeal B:

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 Act as amended for the development already carried out, namely the use of the land and buildings at Grange View, Keldspring Lane, Yapham Mill YO42 1PS, as shown on the plan attached to the notice, for residential use subject to the condition appended to this decision.

Preliminary Matters

3. There are two enforcement appeals before me and I shall refer to them as Appeal A and Appeal B, as set out in the banner heading above. This decision letter covers both appeals. Previously, there was also a third linked appeal relating to the Council's refusal of a certificate of lawful use but that has now been withdrawn¹.
4. At the same time that appeal was withdrawn the appeals under ground (d) in respect of the two enforcement notice appeals were also withdrawn. As a result, there was no longer a need to test evidence under oath and I agreed to change the procedure to the written method. Given that the remaining matters in dispute did not require an internal visit to the property I carried out an unaccompanied site visit and am satisfied that was sufficient to make my decisions.
5. The two enforcement notices were essentially served in the alternative. That in relation to Appeal A was served first, with the allegation being that the wider site was in mixed use between agricultural engineering and residential use. The red line boundary encompasses the building that is alleged to be in residential use plus the wider site, including the portal framed building and external spaces. The appellant disputes that alleged breach has occurred under ground (b).
6. The second notice was subsequently served with the red line encompassing a smaller area around the building in question and contends that a material change of use occurred to residential use. It is self-evident that both notices cannot be correct; the building in question could not form part of a mixed use and also be an independent dwellinghouse at the same time.
7. Accordingly, I shall address the ground (b) argument first in relation to Appeal A. If the appeal succeeds on that ground I would essentially have two options; to quash the notice or to correct the description of the breach and/or the plan associated with it. Given that the Council has already served an alternative notice the obvious course of action would be to quash the notice in respect of

¹ APP/E2001/X/23/3318502

Appeal A and proceed to determine Appeal B in respect of the planning merits and other grounds.

8. If I were to find with the Council in relation to ground (b) in respect of Appeal A, the obvious way to proceed would be to quash the notice in respect of Appeal B because I would effectively be finding that the alleged breach, as described in that notice, had not occurred, notwithstanding that there is no ground (b) appeal in respect of that appeal. I would then go on to consider the planning merits and other grounds of appeal in respect of Appeal A.

Appeal A on Ground (b)

9. The red line of the enforcement notice encompasses the dwellinghouse, which was constructed in approximately 2014, in addition to the rectangular parcel of land which forms the base for the appellant's agricultural engineering business, including the portal framed shed and associated external space. Planning permission had been granted for an office and storage building in association with the business on the land and there is a dispute over whether the building was ever occupied for that purpose or whether it was built and occupied as a dwellinghouse from the outset.
10. However, that does not get to the heart of the argument in relation to the ground (b) appeal. The enforcement notice alleges a material change of use to a mixed use of agricultural engineering and residential use. It makes no difference if the recently constructed building was used for a time as an office or built as a dwellinghouse from the off. The description of the breach in section 3 of the notice does not explicitly state what the former use was. A change to a mixed use, as alleged, would be material whether the new building was formerly used as an office or whether the building was constructed as a dwellinghouse. The key question is whether the site is in mixed use, as alleged in the notice.
11. The Council has referred to relevant caselaw on identifying the correct planning unit, including *Burdle*². In *Burdle*, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key.
12. In this case the new building clearly has the appearance of a dwellinghouse and is set to the side of the workshop/shed which houses the agricultural engineering operation. The building has its own gated vehicular entrance leading to a parking area which is separate from that of the engineering business. It is physically enclosed by walls and fences and a picket fence separates the area in residential use from the commercial side. There is a lawn surrounding the property and there appears to be no direct physical connection between the two elements.
13. I appreciate that the site is in single ownership and it may be that some paperwork relating to the business takes place within the residential building. However, little evidence of any significant functional link has been provided. The Council's evidence refers to a lack of sheds or outdoor storage space associated with the residential part of the site with a suggestion that this will

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

entail that domestic items are stored within the commercial yard and buildings. However, without any evidence to support that assertion, in terms of photographs or details from any site visits to the premises, the suggested link seems tenuous.

14. Moreover, the Council's position that the site is in mixed use appears somewhat at odds with its previous conclusions that the building was constructed as a separate dwellinghouse from the outset, having regard to officer reports relating to the two applications for a certificate of lawful use³. In both of those decisions, which were not appealed, the Council was not satisfied that sufficient evidence had been provided to indicate that the building had ever been used as an office associated with the business. That is supported by notes from the enforcement officer who visited in 2016 and noted that the property had the 'trappings' of a dwellinghouse.
15. The stated reasons for issuing the enforcement notice, at section 4, state that "Rather, the initial, and only use of the building and the Land has been that of a dwelling for residential use". In my view, the Council's conclusions in that regard are supported by the evidence provided by the appellant relating to the evolution of the family business. Initially planned as an office to support a growing business, the building was no longer needed when the appellant's sons set up their own businesses elsewhere.
16. It seems probable that the appellant then decided to construct and occupy the building as a dwellinghouse from the outset. The photographs showing the building near completion depict a decidedly domestic arrangement with an elaborate wooden staircase, polished marble floor tiles, rugs, a sofa in the lounge, fully fitted kitchen and doors and other fittings with a domestic appearance. The style of the property and attention to detail betrays that it was not intended for a commercial purpose.
17. Since the appellant's sons left the business it seems that commercial activity in the adjacent premises has declined, having regard to his age and health. It is not clear what scale of commercial operations takes place, if any. Notwithstanding that, on the evidence presented it appears likely that the residential use is physically and functionally separate from that business. There may be a side benefit that the dwelling provides added security for the business premises as suggested by the Council. However, the primary function of the new building is clearly that of a dwelling. Overall, I am of the view, on the balance of probability, that the building and its clearly defined and enclosed curtilage is a separate planning unit in residential use.
18. It follows that the allegation of a mixed use, as alleged, has not occurred and the appeal on ground (b) should succeed. For the reasons set out above, there is little point in considering whether the notice can be corrected because the Council has already served an alternative notice which is the subject of Appeal B. The planning merits of the use can be considered under that appeal and accordingly, I shall quash the notice in respect of Appeal A and dismiss the appeal.

³ 21/04713/CLE and 22/03966/CLE

APPEAL B

The Appeal on Ground (a)

19. From the information before me, the main issue in the determination of the appeal on ground (a) is whether the site is in a suitable location for a residential use taking account of local and national policy in respect of rural housing.
20. The Council accepts that the building itself is immune from enforcement action and that would appear to be the correct position having regard to established caselaw⁴. In view of that the notice is not aimed at the unauthorised erection of a dwellinghouse, nor is it directed at the material change of use of the building because the building has always been in residential use by the Council's own conclusion. Rather, the notice is aimed at the material change of use of the land to a residential use. Where an appeal on ground (a) is submitted, planning permission is sought for the matters stated in the notice. It is important to stress that point because that is how I must assess the proposal when examining whether it complies with relevant local and national planning policy.
21. The site lies outside of any settlement boundary and is within the countryside, as defined by the East Riding Local Plan Strategy Document (2016) (the ERLP). The settlement hierarchy set out within Policy S3 of the ERLP seeks to concentrate new development within identified settlements. Beyond those settlements, policy S4 applies. The policy sets out that certain forms of development will be permitted within the Countryside.
22. The policy is positively worded and sub-section (A) states that outside defined settlement boundaries development will be supported to help maintain the vibrancy of villages *and* the countryside where it is of an appropriate scale to its location; where it utilises previously developed land where appropriate; and where it does not involve the loss of best and most versatile agricultural land. There is no allegation that the proposal contravenes any of those three latter criteria. The proposal is outside any defined settlement and would not help to maintain the vibrancy of any village but there is no suggestion that the residential unit would harm or fail to maintain the vibrancy of the countryside. It would be broadly neutral in that regard, albeit that maintaining an active population in rural areas and hamlets such as this could be seen as a minor positive.
23. Under sub-section C(1), which applies to the countryside outside villages, the conversion of buildings for various purposes, including new housing will be permitted where it would re-use a redundant or disused building without significant alteration or extension and where it would enhance the immediate setting. That policy does not require the subject buildings to be in close proximity to shops or services but appears to broadly accept the principle of re-using buildings within the countryside. That is consistent with national policy in the National Planning Policy Framework (the Framework) and Government policy more generally as can be seen through the roll out of permitted development rights for the conversion of agricultural buildings and other buildings to residential use.

⁴ Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council
[2024] EWCA Civ 467

24. However, the building was constructed as a dwelling from scratch and has been occupied as such ever since. In technical terms, permission is not being sought for the conversion of a redundant or disused building; it is being sought for the material change of use of the land. Policy S4 does not explicitly address that scenario, perhaps unsurprisingly because an application for residential development usually involves either the erection of a dwelling or the material change of use of an existing building. Situations such as this will only arise rarely in respect of enforcement cases where a Council accepts it can't take action against a building but is seeking to enforce against the use of the land.
25. In that regard, I cannot conclude that the proposal before me would comply with Policy S4 on its face because it is not a form of development that is directly addressed by the policy.
26. Nonetheless, the practical effect of the notice would be to leave the building unoccupied, without a defined purpose. The Council suggests that it could be put to use as office space in association with the adjacent business. However, on the evidence of the appellant, which has not been disputed, it is no longer needed for that purpose and the business does seem to be winding down in terms of the level of activity on account of the appellant's age and health and the fact that his sons are no longer engaged in the business. Furthermore, according to the Council, the planning permission for the office use was never implemented because the appellant constructed the building as a dwelling from the outset. As set out above I think that was likely to be the case.
27. Given that it wasn't implemented the planning permission for the office use will now have expired. Accordingly, once the enforcement notice was complied with, the building would, to all intents and purposes, be redundant. No planning permission exists to use the building for any other purpose. If an application was then made it would need to be assessed against Policy S4. Whilst the Council suggest that the building could be put to other commercial uses, policy S4 doesn't favour commercial uses over residential uses, as was sometimes the case in rural planning policies in the past. Residential conversions are considered acceptable in the countryside if they meet the specified criteria. The building would clearly be capable of conversion to residential use without any external alterations and there is no allegation of any harm to the intrinsic beauty of the countryside.
28. The Council maintains that it wouldn't enhance the immediate setting. However, securing a practical use for an existing building against a nil or uncertain use would bring benefits in itself in terms of ensuring that the structure is maintained. Moreover, the appellant has put forward a landscaping scheme as part of the appeal. Compared to the somewhat barren lawn surrounding the property at present the additional planting would soften the impact of the building and help it to blend in with the surrounding residential properties which have established gardens. The scheme indicates that native hedgerows and trees would be provided and that is suitable for the rural location of the site. The Council maintains that it would be difficult to control the height of any hedging but such a degree of control seems to be unnecessary; there is no reason to suppose the planting would be maintained any differently to any other domestic garden in the area.

29. On that basis I am of the view that the use of the building as a dwellinghouse would enhance the immediate surroundings when compared to the likely alternative.
30. The development cannot be considered compliant with policy S4 of the ERLP because the 'material change of use of land to residential' is not a type of development addressed by that policy. However, it seems legitimate to take account of the practical implications of the enforcement notice. Come what may, the building will still exist on the land. Once the enforcement notice was complied with, the re-use of that building would not contravene the requirements of policy S4 of the ERLP in terms of its location, design or impact on the character of the area.
31. The Council has also referred to paragraph 84 of the National Planning Policy Framework (the Framework) with regard to isolated homes in the countryside. However, although not within a village envelope as defined by the ERLP the site is within a small hamlet, surrounded by other buildings, with the commercial element on one side and dwellings opposite. It is not isolated from existing development and is reasonably close to Pocklington, with the road sign directly adjacent to the site indicating a distance of half a mile. The facilities in the centre may be more than that but not are unduly distant in a rural context.
32. Overall, in a context where the building itself is lawful and the re-use of that building would comply with local and national planning policy, after it was rendered vacant, I cannot conclude that the location is unsuitable for a residential use. No specific planning harm or policy conflict in terms of the building's location would arise.

Other Matters

33. The appellant has referred to a potential fall-back scenario whereby the adjacent workshop could be converted to a dwellinghouse under "Class MA" permitted development rights. It is not for me to determine whether such rights would apply to the building in question and, even if they did, the implementation of those rights requires an applicant to go through a prior approval process. I cannot pre-empt the outcome of that process which would be a matter for the Council to consider and I attach no weight to the appellant's argument in that regard.
34. The proposal before me would not technically 're-use' brownfield land because the building has never been unused or vacant. However, as above, the practical effect of the enforcement notice would be to render the building unoccupied. In that context, enabling the ongoing use of a previously developed site, as opposed to a nil use, would be in line with the aims of policy H4 of the ERLP and the aims of section 11 of the National Planning Policy Framework (the Framework) in making effective use of land.
35. The proposal would make a small contribution to the local housing supply. However, there is no indication of any shortfall in the local supply of housing and the contribution of a single dwelling is limited. As such, the weight I afford to any benefit in that regard is similarly limited.
36. The Written Ministerial Statement (WMS), dated 31 May 2015, identified that intentional unauthorised development is a material consideration in planning

decision making⁵. That statement is now 9 years old and its content has not been subsumed into any national planning policy documents but the statement itself has not been withdrawn. Accordingly, it remains a material consideration.

37. From the information before me I have little doubt that the appellant's intention was to construct a dwelling from the outset. The planning history belies those intentions but the most apparent evidence is the way the house was fitted out with decidedly domestic internal fixtures and fittings from the beginning. It seems highly unlikely that one would install and elaborate wooden staircase as a means of providing access to the first floor if that area was just to be used as storage for an agricultural engineering business. Likewise, marble or marble effect tiling in the kitchen and domestic kitchen units and appliances are way more than would be needed for a workspace for making drinks etc.
38. Whilst intentional, I find no evidence of concealment. The Council visited and were shown inside in 2016 when the photographs were taken and the enforcement officer noted that the building had the trappings of a house. For whatever reason, despite those concerns, the Council does not appear to have returned to the site and instigated enforcement proceedings until it was effectively too late to take any enforcement action against the building itself.
39. I am mindful of public confidence in the planning system and the effective enforcement of the planning system. A grant of planning permission in a case where the appellant has deliberately constructed an unauthorised dwelling could clearly be perceived as someone "getting away with it" or successfully playing the system. In the light of the WMS those matters undoubtedly weigh against a grant of permission. Whether that is such that planning permission should be refused is a matter I shall address in the planning balance below.
40. I have also had regard to the previous appeal decision relating to a proposal to construct a dwelling on the site. However, the context was notably different in that no building stood on the site at that point in time and the policy context was also different as the scheme pre-dated the current ERLP. Consequently, the previous appeal has not had a significant bearing upon my decision which is based upon the very specific circumstances of the present case.

Suggested Conditions

41. I have addressed the appellant's suggested planting scheme above, which is necessary to secure an enhancement to the immediate setting, required by policy S4. The Council has also put forward three suggested conditions in the event the appeal is allowed. The first two relate to the removal of permitted development rights for residential extensions/ alterations and curtilage development under Classes A to E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The reason given for those suggested conditions is 'in the interests of the amenity of the area'.
42. The building has a residential appearance, sits within its own plot of reasonable size and is adjacent to other buildings and residential properties. If the principle of residential development is accepted no obvious reason why the

⁵ Written Ministerial Statement ('WMS') dated 31 August 2015 titled "Green Belt protection and intentional unauthorised development."

implementation of permitted development rights would cause harm has been submitted, either in terms of the appearance of the building or the wider area. Consequently, I find that the suggested conditions are not necessary.

43. Thirdly, the Council requests a condition to ensure that the dwelling is connected to the existing foul and surface water drainage system. It is not clear if that is already the case or how the building is presently drained. However, the appellant has not opposed the condition and it is reasonable and necessary to secure adequate drainage of the site.
44. The wording suggested by the Council is unenforceable because it does not contain a timeframe for securing the necessary work. In addition, in retrospective enforcement cases it is necessary to include a requirement that the use being permitted shall cease if the necessary works are not carried out in the set timescale. The logic for that is that without those works, the development will not be acceptable in planning terms. I have amended the wording of the condition accordingly.

Planning Balance and Conclusion

45. As set out, I cannot conclude that the development complies with the relevant policies of the development plan, particularly policy S4, on the basis that the material change of use of land for residential purposes is not explicitly addressed in adopted policy. The situation before me is unusual in that the building operations are considered lawful but the use of the land is not. I have little doubt that the building was constructed as a dwelling from the outset and the deliberate flouting of planning regulations is a matter that weighs against the appellant. Instinctively it feels wrong for someone to benefit from that course of action.
46. Nonetheless, planning operates in a statutory framework and I must consider the proposal against relevant local and national policy and other material considerations. The courts have held that the enforcement of the planning system should be remedial rather than punitive. In other words, the aim is to address harm arising from unauthorised development, as opposed to taking action as a punishment for non-compliance.
47. As set out, the would have no defined use once the enforcement notice was complied with. Its subsequent re-use for residential purposes would comply with policy S4 of the ERLP, which applies to development within the countryside. It would also make use of previously developed land and make a small contribution to the local housing supply. There would be no obvious harm or planning policy conflict.
48. To put things another way, had the building been constructed as an office, as originally approved, and then been rendered redundant due to the changing needs of the appellant and his business, there would be no obvious reason to withhold planning permission for its use as a dwellinghouse. The only real purpose of the enforcement notice in this case appears to be to prevent the appellant from getting away with his actions in constructing the building.
49. However, whilst I am mindful of the WMS, in the absence of any clear harm and in the face of the policy context outlined above, the balance of material considerations is such that planning permission should be granted for the development in my view. Once the building became lawful the material

circumstances altered significantly from the considerations before the Inspector in the previous appeal. I can see little point in preventing the use of the building as a dwellinghouse when the re-use of the structure for that same purpose would comply with development plan policy.

50. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Chris Preston

INSPECTOR

APPENDIX:

Condition in Relation to Appeal B

- 1) The residential use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out below:
 - (a) The dwelling shall connect to the existing foul and surface water drainage system within 12 months of the date of this decision.
 - (b) The planting scheme shown on drawing number 2344.01 "Planting Plan", dated December 2023, shall be planted in the first planting and seeding season following the date of this decision.

Thereafter, any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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.