



Appeal Decision

Site visit made on 7 June 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/P2935/C/23/3332832

Land south of Horsley Banks Farm, Horsley, Northumberland, NE15 0NS

- 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 W Collard against an enforcement notice issued by Northumberland County Council.
 - The enforcement notice was issued on 13 October 2023.
 - The breach of planning control as alleged in the notice is the construction of a building.
 - The requirements of the notice are (i) remove the building from the land and (ii) following compliance with part 5(i) remove the resulting material from the Land.
 - The period for compliance with the requirements is respectively (i) 26 weeks and (ii) 28 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) 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 as amended have lapsed.
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Decision

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

Reasons

2. The appeal made on ground (d) is that at the date when 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
3. The appellant's claim under ground (d) is that the building was substantially completed in August 2019 and as the notice was issued on 13 October 2023 it is immune from enforcement action by virtue of section 171B(1) of the Act which states '*where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under the land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*'.
4. The appellant has submitted several aerial photographs as part of his statement of case. There is one from 17 July 2017, one from 27 May 2018, one from 29 August 2019, one from 30 May 2020, one from 17 July 2021 and one

- from 15 June 2022. In addition, there are photographs of the building dated 13 June 2019, 18 November 2022, and 7 February 2023.
5. In accordance with legal judgement, for an appeal to succeed on ground (d), the whole of the alleged building must have been substantially completed for more than four years for that building to be immune from enforcement action by virtue of section 171(B)(1) of the Act. In this regard, the development must be regarded holistically.
 6. It is clear from the evidence that on 17 July 2017, the 'U' shaped building was not on the land. By 27 May 2018, the aerial photographs show one 'U' shaped structure or foundations without a roof. There are no internal dividing walls. At this point, I do not find that a fully detailed building of character had been erected, or that the building was substantially completed.
 7. By the 25 August 2019, the same 'U' shaped structure can be seen in the appellant's aerial photograph, but the top of the building is shown in different colours. In my judgement, the different colours either depict the absence of part of the roof, or the provision of a combination of tiles and roofing felt. The evidence from the main parties is not clear in this regard, but it is nevertheless clear that the '*roofing work*' was not complete at this time (see below). The photograph dated 13 June 2019 does not provide any additional clarity of precision in respect of this matter in so far that there are also different colours for the parts of the top of the building that can be seen in such a photograph. Both the aerial image and the photograph cast doubt about the claim made by the appellant that the building was substantially completed on 25 August 2019.
 8. The aerial photograph dated 30 May 2020 shows the building with a full roof. On the evidence that is before me, the earliest possible date that the building was substantially completed was between 26 August 2019 (i.e., the day after the aerial image was taken) and 30 May 2020 (i.e., when the building had a full roof). The appellant has submitted an invoice dated 5 October 2019 from Apex Roofing Specialists Ltd (ARS) which states '*works carried out as agreed on the agricultural building as per quotation Refar4308*'. The appellant claims that ARS were '*instructed to complete the roofing works on site, following which an invoice was raised and dated 5 October 2019*'. I do not doubt the comment made by the local planning authority that in 2019 the appellant had buildings on the site which were referred to as 'agricultural buildings.' The invoice does not specify what works were undertaken and which building(s) the works relate to. Moreover, the invoice does not confirm that the appeal building was substantially completed.
 9. In addition to the above, it is noteworthy that a planning contravention notice (PCN) was returned from the appellant to the Council on 26 February 2020. In respect of the appeal building, the PCN states '*the building as it stands is not yet complete*'. I appreciate that the PCN does not use the words '*not yet substantially complete*', but nevertheless, and in combination with the other identified evidence, it raises doubt about the appellant's claim made under ground (d). Furthermore, in respect of planning application 20/00009/FUL for the appeal building, the planning application form dated 12 October 2019 (note the Council says that the planning application was received on 3 January 2020) has a description of development which reads '*proposed retention and completion of 1 No. agricultural building*', and, in answer to the question '*has*

the building, work or change of use been completed', the appellant's answer is 'no'.

10. There are comments in the associated planning statement such as '*retention and completion of 1 No. agricultural building*', '*partially constructed building*' and '*this application is partially retrospective*'. Collectively, this evidence casts doubt about the appellant's claim that the building had been substantially completed for four years prior to the notice being issued. Indeed, it casts sufficient doubt about the appellant's claim that the building was substantially completed on 5 October 2019 as per the ARS invoice date.
11. I find that the Council's evidence contradicts the appellant's version of events such that it makes it less than probable. The appellant's evidence is not sufficiently precise or unambiguous in terms of demonstrating that when the notice was issued, the building had been substantially completed for four years. On the balance of probability, I therefore conclude that the ground (d) appeal fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed.

D Hartley

INSPECTOR