

Appeal Decision

Site visit made on 9 July 2024

by R J Perrins MA

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/J0405/C/22/3306027

**Sandy Hill Farm, Leighton Road, Three Locks, Soulbury, Buckinghamshire
LU7 0DT**

- 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 John Lane against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice was issued on 22 July 2022.
 - The breaches of planning control as alleged in the notice are:
 1. The material change of use of the land from agriculture to residential use
 2. The erection of a building for residential purposes
 3. The erection of an outbuilding.
 - The requirements of the notice are:
 1. Cease the residential use of the land
 2. Demolish the residential building hatched in black on the attached plan
 3. Demolish the outbuilding known as 'the Barn' marked cross hatched on the attached plan
 4. Permanently remove the mobile home, marked with an M on the attached plan, from the land
 5. Permanently remove all areas of hardstanding, including but not limited to, patios, paths, parking areas.
 6. Restore the land to its lawful use by the sowing of grass seed.
 - The period for compliance with the requirements is within 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds in part and permission for that part is granted subject to conditions, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matters

2. The appeal was due to be heard by way of Inquiry during the week commencing 8 July 2024. However, following the judgment given by the High Court in *Caldwell v Secretary of State for Levelling up, Housing and Communities* [2023] EWHC 2053 (Admin), the parties reviewed their cases and submitted an agreed Statement of Common Ground (SCG). The SCG was comprehensive addressing all matters and included some 52 appendices. In light of the SCG it was agreed there was no longer a need for an Inquiry.

3. I will address the SCG in more detail below in my deliberations under the ground (a) appeal. Nevertheless, the proactiveness of the parties (which is to be applauded) in seeking to resolve the differences between them has resulted in the appellant withdrawing all grounds of appeal save for the appeal on ground (a) and a revised appeal on ground (d). The parties have also asked me to consider varying the notice, which in turn would amend the considerations under the appeal on ground (a).
4. Before I turn to that suggested amendment, the SCG sets out that the appeal on ground (d) with regard to the stable building (referred to as the residential building in the notice), and associated hardstanding, should succeed. There is now no dispute that the building was completed as a stable, was used as a stable and was subsequently converted to and has since been used as a dwellinghouse.
5. Furthermore, it is common ground that the construction of the stable, and the conversion to a dwellinghouse, were both carried out more than four years before the Council took enforcement action for the purposes of s171B(1) of the Act. Moreover, the change of use took place more than four years before the Council took enforcement action. I see no reason to disagree with that position and will address that under the appeal on ground (d).
6. The SCG also sets out the following suggested variation for the matters which appear to constitute the breach of planning control:

“Replace matters 1 to 3 in Section 3 of the notice with: *The siting of a mobile home for independent residential use in the location marked with an M on the attached plan*”.
7. If I were to do that, before considering the grounds of appeal, the stable and associated hardstanding would not be part of the matters alleged and therefore could not be considered under the appeal on ground (d), or the outbuilding known as ‘the Barn’ under the appeal on ground (a). Given an appeal on ground (d) is still being pursued and needs to be determined I cannot simply delete the stable and hardstanding and rely on s173(11)¹ of the Act. Although, that may well be the final outcome. Therefore, it is necessary that any consideration of the alleged breach of planning control includes all of the matters originally alleged albeit in the correct manner.
8. To that end, I am mindful that the enforcement notice sought to address a breach of planning control under s171A(1) of the Act for carrying out of development without the required planning permission. The notice alleges a material change of use of the land and sets out that the breach of planning control has occurred within the last ten years. The notice therefore appears to embrace the material change of use and not operational development.
9. However, the parties are agreed that amending the notice to embrace both a material change of use and operational development would not result in prejudice. In addition, alongside the revised appeal on ground (d), I am asked

¹ s173(11) states that where: “(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities”

to consider, and allow, an appeal on ground (a) for the Barn (described as the 'outbuilding' in the notice) subject to agreed conditions.

10. Drawing this together it is apparent that the outcome being sought is that the mobile home and associated hard standing is removed from the land; the erection of the stable block and its residential use to be found lawful under the appeal on ground (d); and the Barn to be granted planning permission, subject to planning conditions under the appeal on ground (a).
11. However, if the notice were amended to reflect the parties' suggested allegation as set out in paragraph 6 above, then the appeal on ground (a) would need to be considered in light of the amended allegation. That could not include consideration of the Barn. Given the deemed planning application would stem from the amended allegation, only the mobile home would fall to be considered.
12. Given all of this, and having consulted the parties, I shall consider the alleged breach of planning control as follows:
 - 1. The material change of use of the land from agriculture to use for the siting of a mobile home for residential use.*
 - 2. The erection of a stable building and its change of use to a dwelling.*
 - 3. The erection of an outbuilding.*
13. That will ensure all matters can be considered for the revised grounds of appeal and I am satisfied that no prejudice would occur.
14. Finally, I have been asked to amend the requirements of the notice. That includes keeping what is currently requirement (6)². However, the requirement to restore the land by "the sowing of grass seed" is simply too vague and provides no surety that the land would be restored to whatever standard the Council is seeking.
15. I shall therefore amend the requirement to refer to the condition of the land before the breach took place. Again, to do so, would not lead to any prejudice.

The appeal on ground (d)

16. This ground of appeal reads "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". The arguments now advanced under this ground are only in respect of the stable building and its change of use to a dwelling.
17. As set out in the SCG it is now agreed that the building was completed as a stable, then used as a stable and then subsequently converted to and used as a dwellinghouse. The operational development to construct the stable building and then convert it to a dwellinghouse were both carried out more than four years before the Council took enforcement action. Furthermore, the change of use from stable to single dwellinghouse use falls within the scope of s171B(2) of the Act, and was more than four years before the Council took enforcement action.
18. There is no need for me to rehearse the arguments given the SCG. From the evidence before me, I see no reason to disagree with the parties. Therefore, I

² "Restore the land to its lawful use by the sowing of grass seed."

conclude, on the balance of probability, that the periods for taking enforcement action against the stable and its use as a dwelling had expired before the notice was issued.

19. The appeal on ground (d) succeeds in this respect, and I shall correct the notice to remove reference to those forms of development. In so doing, I rely on s173(11) of the Act.

The appeal on ground (a)

Main Issues

20. As set out above the appeal on ground (a) is confined to the Barn (outbuilding) and the main issues are: The need for the Barn and its effect upon the character and appearance of the countryside location

Reasons

Need

21. Policy E9 of the Vale of Aylesbury Local Plan (VALP) supports new agricultural buildings where, amongst other things, the development is necessary for the purposes of agriculture, the size is commensurate with the needs of the holding and there are no existing buildings which are capable of re-use. There is no dispute that the Barn is a building required for agricultural and equestrian purposes. The current usage and prospective future needs are substantially greater than those which justified planning permission for a barn of similar size in 2013. That was alongside the larger stable building, which is now no longer available for agricultural/equestrian use following its conversion to a dwellinghouse.
22. There is therefore a demonstrable need for a building in mixed agricultural and equestrian use and it accords with Policy E9 and Policy C2 of the VALP which sets out the criteria to be considered for equestrian development. I will nevertheless impose a condition restricting the use to agricultural purposes or mixed agricultural and equestrian purposes to safeguard the countryside location.

Character and appearance

23. The site lies within the Brickhill Area of Attractive Landscape in a Landscape Area designated as an area of Undulating Clay Plateau. The barn has a comparable footprint to that permitted under a planning permission granted in 2013 and can be viewed from open countryside to the north-east. Viewed within its context, it does not come as a surprise or draw the eye. The barn is evidently in use for the purposes of agriculture and is not too large in relation to the holding. The effect therefore on the landscape is minimal. That effect is further reduced by boundary vegetation, the close proximity with the stable building and other existing structures (excluding the mobile home) on site.
24. For these reasons the barn does not harm the character and appearance of the countryside location and accords with the following planning policies of the VALP. Policy BE2 which requires development to respect and complement the locality. Policy E9 which states that the scale, siting, external appearance and construction of new agricultural buildings should be designed in order to minimise adverse impact on the openness of the countryside and landscape

character. Policy NE4 seeks developments that have particular regard to the individual character and distinctiveness of the area. That is reflected by the National Planning Policy Framework (the Framework) which seeks high quality design.

25. However, I recognise that external lighting and other forms of permitted development could be potentially harmful to the landscape. I will therefore impose conditions in that regard to ensure the protection of the countryside location. A condition to require the removal of the Mobile Home within a shorter timescale than required by the Enforcement Notice would further mitigate the landscape and visual effects.

Other matters

26. I see no reason to disagree with the Council that given the very particular circumstances of this case, Biodiversity Net Gain conditions are not necessary. The level of parking on site, and access to it, is adequate and there is no need to change those arrangements. Given the size of the development an electric charging point for vehicles is not required.
27. In terms of the living conditions of those living in the converted stable, a condition requiring a scheme setting out the measures for the management of animal waste is necessary to protect them. Given the development has already occurred, I have where appropriate, amended the conditions in the light of the Planning Practice Guidance and to ensure they are enforceable in all respects.

Conclusion on ground (a)

28. S177(1)(a) allows for the grant of planning permission in relation to the whole or any part of the matters alleged in the notice. For the reasons given above, the barn (outbuilding) would not lead to harm to the character and appearance of the countryside location and would accord with the aforementioned planning policies and the Framework. The appeal on ground (a) succeeds, in so far as it relates to the barn. The appeal on ground (a) fails and planning permission is refused, in so far as it relates to the other matters alleged in the corrected notice – a split decision.

Formal Decision

29. It is directed that the enforcement notice is corrected and varied at Section 3 of the notice by the deletion of matters 1,2 and 3 and the replacement thereof with:

- 1.The material change of use of the land from agriculture to use for the siting of a mobile home for residential use.*
- 2.The erection of an outbuilding.*

In addition, in respect of the requirements at Section 5, the notice is varied by the deletion of requirements 1 to 6 and the replacement therefore with:

- 1. Permanently remove the mobile home, marked with an M on the attached plan, from the land.*
- 2. Remove from the site all debris associated with (1).*
- 3. Restore the land to its condition before the development took place.*

30. Subject to the corrections and variations the appeal is allowed insofar as it relates to the appeal on ground (d) concerning the stable building and its change of use to a dwelling. That has therefore been removed from the allegation. In addition, the appeal is allowed insofar as it relates to the specified part of the development being permitted and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of an outbuilding, at Sandy Hill Farm, Leighton Road, Three Locks, Soulbury, Buckinghamshire LU7 0DT and subject to the conditions set out in the attached Schedule.
31. The appeal is dismissed, and the enforcement notice is upheld as corrected and varied insofar as it relates to the material change of use of the land from agriculture to use for the siting of a mobile home for residential use.

RJ Perrins

Inspector

SCHEDULE OF CONDITIONS

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), the building hereby permitted ("the Barn") shall not be used other than for agricultural purposes or mixed agricultural and equestrian purposes
- 2) Prior to the installation of any external lighting on the Barn, details of such lighting to be installed shall be first submitted to and approved in writing by the Local Planning Authority. Such details shall include location, height, type, direction of light sources and intensity of illumination. Any lights shall thereafter be installed in accordance with the approved details and retained as approved unless altered for routine maintenance which does not change its details.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting that Order with or without modification), no enlargement or alteration shall be undertaken on the Barn.
- 4) Within 3 months of the approval of the Barn, the residential use of the mobile home, marked with an M on the attached plan, shall cease and the mobile home and any associated debris shall be permanently removed from the site.
- 5) The outbuilding hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed, and the land restored to its condition before the development took place, within three months of the date of failure to meet any one of the requirements set out in (i) to iv) below:
 - (i) Within 3 months of the date of this decision a written scheme setting out the measures for the management of animal waste, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. 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.

End of Schedule