



Appeal Decision

Site visit made on 7 August 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024

Appeal Ref: APP/B3030/C/23/3330441

The House Barn, Westwood Farm, Main Street, Thorney NG23 7DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Andrew Sidebottom against an enforcement notice issued by Newark and Sherwood District Council.
- The notice was issued on 31 August 2023.
- The breach of planning control as alleged in the notice is without planning permission the demolition of Barn B and the substantial demolition of Barn A - as illustrated on the attached Plan A and shown on Photograph 1 and 2 attached to this Notice; and operational development consisting of the part-implementation of footings and foundations of two new dwellinghouses (illustrated in Photograph 1 attached to this Notice).
- The requirements of the notice are
 - A. Demolish fully what remains of Barn A and remove all resulting materials from the Land- including those stored on the land resulting from the unauthorised demolition that has already taken place.
 - B. Remove all materials used as part of the footings of the new dwellings from the land
 - C. Infill all foundation trenches with soil so that they are level with the land immediately adjacent to the trenches
- The period for compliance with the requirements are
 - A. Four months
 - B. Four months
 - C. Five months
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended). 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.

Decision

1. It is directed that the enforcement notice is varied by:
 - i) Deleting requirement A in paragraph 5 of the notice in full
 - ii) Amending requirement B in paragraph 5 of the notice by adding the words 'and foundations' after the word 'footings.'
2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal form refers to the appellants as being both Mr and Mrs Sidebottom. As only one person can appeal on a single appeal form, I have referred to

Andrew Sidebottom as the appellant as he is named first on the list of the persons served with the notice.

4. The appellant originally lodged an appeal under ground (a) which would have included a deemed planning application relating to the matters alleged in the notice. However, the ground (a) appeal subsequently lapsed due to non-payment of the fee. Whilst, I am aware of the planning history, the allegation relates to stand alone operational development. The planning merits of the development are not, in any event, matters before me for consideration when the appeal is proceeding under ground (f) only.

The Notice

5. It is the duty of the Inspector to put the notice in order. The requirements should flow from the allegation. The allegation includes 'footings' and 'foundations' as part of the operational development. Requirement B refers to the removal of footings but not foundations although requirement C refers to infilling foundation trenches.
6. Requirement B should include the removal of footings and foundations in order to provide consistency with the allegation and the other requirements. I will amend the wording of requirement B to add the words "and foundations" after "footings." There is no injustice arising to either party from the amendment as the parties have used both words in their evidence. I shall address the other requirements under ground (f).

The appeal under ground (f)

7. An appeal under ground (f) is that the steps required by the enforcement notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
8. The appellant states that requirements A and B are excessive. Section 173(4) of the Act sets out the purposes of an enforcement notice which are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
9. The amended requirement B includes removal of the materials used in the footings and foundations. As this requirement would restore the land to its condition before the breach took place this requirement, I agree with the Council that this requirement falls within the purpose set out in Section 173(4)(a) in seeking to remedy the breach¹.
10. The appellant wishes to retain and cover the footings and foundations as he has aspirations to construct an equestrian building as a 'fallback.' There is no existing planning permission for equestrian use or buildings. Retaining footings and foundations that were built for dwellings in case they are required in the future for a different purpose at an unknown date is speculative. There is no

¹ Paragraph 2.11 of the Council's statement

formal 'fallback' position. Requirement B is not excessive when the purpose of this requirement is to remedy the breach.

11. Requirement A states '*Demolish fully what remains of Barn A and remove all resulting materials from the Land- including those stored on the Land resulting from the unauthorised demolition that has already taken place.*' From the photographs supplied and my site visit observations, the bulk of the building has been demolished. The appellant wishes to retain the remaining structure and carry out repairs but the Council considers that the extent of the demolition means any future work would go beyond repair.
12. However, an appeal under ground (f) involves consideration of the statutory purpose of the requirements having regard to the allegation². The allegation refers to the partial demolition of Barn A. The Council cannot therefore require the demolition of the remaining part of Barn A as it is not part of the allegation and is outside the scope of this notice.
13. Similarly, the requirement to remove materials stored on the land arising from the demolition of the barns is also outside the scope of this notice. The allegation does not include the storage of materials on the land. I will therefore delete requirement A in full and the appeal under ground (f) succeeds to that extent.

Other matters

14. Whilst the appellant has referred to the Human Rights Act 1998 in relation to the lapsed ground (a) appeal, the Human Rights Act 1998 does not apply to an appeal which is proceeding on the limited ground (f).

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall vary and then uphold the enforcement notice.

E Griffin

INSPECTOR

² Section 173(4) (a) and (b)