



Appeal Decision

Hearing Held on 30 July 2024

Site visit made on 30 July 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/M2270/C/23/3323664

Land adjacent to Garden Cottage [OS Plot 3417], Blind Lane, Goudhurst, Cranbrook, Kent TN17 1JB

- 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 Andrew James Balch against an enforcement notice issued by Tunbridge Wells Borough Council.
 - The enforcement notice was issued on 3 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of a timber framed building on the Land.
 - The requirements of the notice are: (i) Demolish the timber framed building. (ii) Remove all resultant materials, rubble and rubbish arising from compliance.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld subject to a variation.

Preliminary Matter

2. The case of the appellant also raises matters that are pertinent to a ground (b) appeal. It was agreed during the Hearing that I could consider these matters without injustice to the parties.

Applications for Costs

3. An application for costs was made by Mr Andrew James Balch against Tunbridge Wells Borough Council. An application for costs was also made by Tunbridge Wells Borough Council against Mr Andrew James Balch. These applications are the subject of a separate Decision.

The ground (b) and (c) appeals

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the construction of a timber framed building, has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there

has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

5. The evidence is that a building has likely been in the same approximate location since around 1968. The appellant purchased the site in July 2019 and there is photographic evidence as well as a description contained in a planning statement¹ submitted on behalf of the appellant of the building works since undertaken. In summary it is described that *'during the demolition, all reusable materials were kept for recycling, including the solid concrete floor which was broken up and reused as a hardcore elsewhere on the site.'* The photographs then demonstrate on the balance of probabilities that the original barn building has been demolished. Whilst the appellant now contends that the description is incorrect, in that the concrete base was retained and a screw foundation then used, there is no sworn evidence before me.
6. In any event, it is clear that even if the concrete base remained and some timber and roofing was then re-used in the construction of the building, the building enforced against was bought in kit-form and is thus a new building for planning purposes. The visual appearance and fenestration of the building is also materially different, and it was confirmed during the Hearing that it is smaller and lower in height.
7. The building is thus development for the purposes of s.55 of the Act. The work undertaken clearly goes well beyond the repair and maintenance of the previous barn, even if it is in the same approximate location. It has thus not phoenixed into place as a substantial renovation.
8. That there was no break or period of time between the demolition of the original barn and the construction of that now enforced against is therefore not relevant to my assessment. As a matter of fact and degree, the appellant has therefore failed to demonstrate on the balance of probabilities that there has not been the construction of a timber framed building on the land.
9. The appellant also contended the building amounted to a form of agricultural permitted development and is used in connection with an agricultural/forestry use of the site. The notice is however not directed at a form of use, rather, it is merely focussed on the construction of a building. I then have very limited evidence to demonstrate on the balance of probabilities that the building would qualify as a form of permitted development and note the appellant has since *'accepted that the building does not amount to permitted agricultural development as the land is only half the size of that which would qualify for that sort of development under the General Permitted Development Order 2015.'* This was again accepted during the Hearing, and it was confirmed that there had not been a planning permission granted for the building.
10. The appellant has therefore failed to demonstrate on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact or that there has not been a breach of planning control.
11. The appeals on ground (b) and (c) therefore fail.

¹ In support of a retrospective planning application for two buildings and access improvements, May 2022.

The ground (d) appeal

12. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the timber framed building would thus need to be 3 May 2019 given a 4-year period of immunity needs to be demonstrated.
13. As I have already noted, the evidence is that there has likely been a building in the same approximate location since around 1968. A barn was however demolished and replaced with the building now enforced against as I have found in the ground (b) and (c) appeals. The previous barn is therefore not relevant to my assessment.
14. There is no sworn statement or other such evidence before me. However, there is photographic evidence of the works undertaken in the construction of the building and it was confirmed during the Hearing that the substantial completion of the building enforced against was not until 9 February 2022.
15. Accordingly, the appellant is unable to demonstrate on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
16. The appeal on ground (d) therefore fails.

The ground (a) appeal

Main Issue

17. The main issue is the effect of the development on the character and appearance of the area, having particular regard to the High Weald Area of Outstanding Natural Beauty (the AONB).

Reasons

18. The site relates to a small parcel of agricultural land of approximately 0.75 acres located in a countryside setting, albeit with nearby residential properties. The site is within the AONB and outside of any settlement boundary, known as the Limits to Built Development (LBD).
19. The development relates to the construction of a timber framed building approximately 8m in length, 4m in width and with a height of 3.3m.
20. The building however is of a domestic appearance. In particular, the fenestration and narrow set of glazed double-doors gives the appearance of a leisure cabin. Whilst during my site visit it contained a small area for propagation and a seating area with basic facilities, such as a kettle, I do not accept it is the type of building that would ordinarily be found or put to an agricultural or forestry use.
21. My view is also reinforced by the difference in appearance and internal fitment of the other building at the site, referred to as the log store. This is actually a reasonable sized building with a rustic appearance that is fully enclosed and secure, with minimal fenestration. By contrast, the building enforced against has double glazed windows and planed timber floorboards, walling and a

- vaulted roof, which is more akin to a domestic structure. This is likely to be because it is a building bought in kit-form for such purposes.
22. It is therefore the type of building that would more reasonably be viewed within a domestic garden or other residential setting. It therefore follows that the building is not in keeping with its agricultural setting or improving of this hilltop area with its expansive views, even if the building is unlikely to be visible from public vantage points. Moreover, the site relates to a small parcel of agricultural land within the AONB, where great weight should be given to conserving and enhancing landscape and scenic beauty.
23. Whilst I appreciate the building replaced a previous structure at the site of similar dimensions, the photographs before me of this further reinforce the functional nature of that barn building and thus the inappropriate design of what has since been erected on this agricultural land. I appreciate the building is in the same location, however neither this nor the introduction of additional landscaping or painting the roof, which could be controlled by a planning condition, convinces me that an otherwise inappropriate building in design terms can be ameliorated.
24. That the site has an improved visibility splay to the highway, gates and a hardstanding driveway then has little bearing on my assessment. The building is then not proposed to be a residential one as so cannot be regarded as an infilling development. Neither could it be regarded as such spatially. In light of my findings concerning the inappropriate appearance of the building, a planning condition restricting its use to agricultural purposes only would not mitigate the harm I have identified.
25. I conclude the development is harmful to the character and appearance of the area, having particular regard to the AONB, in contravention of Policies 4 and 14 of the Tunbridge Wells Borough Core Strategy DPD, 2010, and Saved Policies LBD1, EN1 and EN25 of the Tunbridge Wells Borough Local Plan, 2006. These policies, amongst other things, collectively seek development constraint outside of the limits to built development and for development to respect the context of the site and conserve and enhance the AONB. For the same reasons the development contravenes Policies L1 and L3 of the made Goudhurst Neighbourhood Plan, 2022, the adopted Borough Landscape Character Assessment SPD, 2017, and the conserving and enhancing the natural environment objectives of the National Planning Policy Framework.

Other Matters

26. I appreciate that since the appellant purchased the site it has been largely cleared and there has been an intention for a productive agricultural use to develop, albeit largely for personal consumption. There may have also been some ecological benefits to this. I am however not persuaded that the loss of the building would result in the land becoming an eyesore as the log store building is already used to store tools and machinery and therefore the land could largely be maintained. It would also remain open to the appellant to explore other options for a building of appropriate appearance and a size reasonably necessary to support the agricultural use. That however is a matter entirely for the parties.

Conclusion

27. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal should fail.

The ground (g) appeal

28. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short as more than 2 or 3 months will be needed to restore the land. A period of 6 months is sought.

29. The notice however does not require the land to be restored. I am however sympathetic to a longer period than the 2 months given by the Council. A period of 4 months will therefore enable adequate time for the appellant to make the necessary arrangements and comply with the notice, without then unduly perpetuating the breach of planning control.

30. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

32. It is directed that the enforcement notice be varied by:

- substituting '*4 months*' as the time for compliance.

33. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anthony Ambrose, Solicitor
Andrew and Elaine Balch, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Hazelgrove, Tunbridge Wells Borough Council

INTERESTED PERSONS:

Anthony Harris, Local resident
Rowena McConnachie, Local resident
Caroline Richards, Local resident

DOCUMENTS:

1. Plan showing LBD from the appellant