

Appeal Decision

Site visit made on 21 August 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2024

Appeal Ref: APP/M3645/C/23/3330459

Land at Steeple Farm, Church Road, Burstow, RH6 9RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr E Carey against an enforcement notice issued by Tandridge District Council.
 - The enforcement notice was issued on 1 September 2023.
 - The breach of planning control as alleged in the notice is the failure to comply with a condition imposed on planning permission ref 2018/2178 granted under appeal reference APP/M3645/W/19/3224431 on 13 September 2019.
 - The development to which the permission relates is 'extension of the stables to provide area for storage of a trotting cart'.
 - The condition in question is No 2 which states that 'The development hereby permitted shall be carried out in accordance with the following approved plans: 1, 2, 3, 4 and 05.'
 - The notice alleges that the condition has not been complied with in that development is being built not in accordance with the approved plans.
 - The requirements of the notice are:
 - (1) Demolish the unauthorised building;
 - (2) Restore the Land to its former condition before the breach of planning control took place; and
 - (3) Permanently remove from the Land all material and debris resulting from steps (1) and (2),Or alternatively,
 - (4) Alter/ rebuild the building in accordance with the terms of condition 2 of planning application TA/2018/2178 allowed at appeal on 13 September 2019 under appeal reference APP/M3645/W/19/3224431; and
 - (5) Permanently remove from the Land all material and debris arising from step (4).
 - The period for compliance with the requirements is six months.
 - 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). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:

- Deleting requirement (4) in section 5 and substituting it with 'The building shall be modified to accord with the terms and conditions of

planning permission reference 2018/2178 granted under appeal reference APP/M3645/W/19/3224431 on 13 September 2019.

2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the appeal was submitted, a revised version of the National Planning Policy Framework has been published (December 2023), and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not bear directly on this appeal, I have not reverted to the parties for comment.

The Appeal on Ground (b)

4. The ground (b) appeal is made solely to 'secure remedy to the Plan', which is argued as being incorrect. However, a ground (b) appeal is that those matters stated in the enforcement notice have not occurred.
5. Nevertheless, the land edged red on the plan attached to the notice is substantially smaller than the red line boundary of the planning permission granted on appeal for the extension to the stables, and also includes a spur towards Church Road which was not included in the planning permission land.
6. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 stipulates that an enforcement notice shall specify 'the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.' In this case, an error in the plan is not enough on its own to support a finding of nullity or even invalidity because in addition to the address in section 2, the allegation in section 3 refers to a failure to comply with a condition of a planning permission. Consequently, the precise boundaries of the land are established by reference to the same, with or without a plan being attached to the notice.
7. I note the commentary provided by the appellant as to why he considers an error has purportedly arisen, however, there is no specific requirement for the plans to match, and, for the purposes of meeting the 2002 Regulations, the plan attached to the notice provides further assistance in precisely identifying the boundary of the land to which it relates, regardless of whether it correlates with the wider boundaries identified in the original planning permission.
8. Therefore, whilst I have the power to correct the plan, as recognised by the appellant, I do not consider that to be necessary for the reasons explained.
9. In any event, the appeal on ground (b) must fail.

The Appeal on Ground (a)

Main Issue

10. The main issue is the effect of the development on the character and appearance of the area.

Reasons

11. The appeal site is located just outside the small village of Burstow in an area characterized by agricultural fields, separated by mature, natural field boundaries and pockets of woodland.
12. In August 2001, planning permission was granted for the erection of four stables and feedstore, in an a 'L' shaped building. On 13 September 2019, planning permission was granted at appeal for an extension to the stables, creating a 'U' shaped building configuration¹. Condition 2 of that permission states 'The development hereby permitted shall be carried out in accordance with the following approved plans: 1, 2, 3, 4 and 05'.
13. Those approved plans, both existing and proposed, specify finishing materials that include a brick plinth to 1m height, stained, shiplap boarding, a clay tiled roof, tongue and groove stable doors and Perspex glazed windows. The roof is also shown to overhang the main functional elevation of the stables both for its 'L' shaped and 'U' shaped configuration.
14. An appeal made against the decision of the Council to refuse an application for an extension to the stables without complying with Condition 2 was dismissed in August 2023². In his decision, the Inspector noted that the external appearance and internal layout of the stables differed from that approved. He explained that the appellant was seeking to amend the condition to refer to updated plans reflecting the current appearance of the building, which varied from the approved plans by being of brick construction, with large barn style doors, bigger windows and having a slate tile roof with no overhang.
15. He found those materials ensure that the building does not have the appearance of a traditional looking stable block, and that the brick exterior walls and slate roof are much more akin to a residential dwelling. He also noted that the lack of roof overhang and the larger timber framed windows reinforce that perception. Indeed, when viewed from any sort of distance, including from the nearby public rights of way, the Inspector found it difficult to ascertain that the building is a stable block rather than a dwelling.
16. Based on my own observations, I agree. I also agree with the previous Inspector's findings that the general appearance of the building is in stark contrast to its rural surroundings and that it is overly prominent, incongruous, and harmful to the character and appearance of the area.
17. Submitted with this appeal is a drawing of the stables which is identical to that considered by the previous Inspector, save for the external materials, which the appellant accepts must be amended to overcome the above findings. To that end, the appellant states his willingness to alter the building so that the roof covering is a plain clay tile, and the walls are clad in stained timber weatherboarding, above a brickwork plinth.
18. So long as there is an appeal on ground (a), caselaw³ directs that I must consider whether the modified development would be 'part of the matters' and

¹ Appeal Ref: APP/M3645/W/19/3224431 for extension of stables to provide area for storage of a trotting cart.

² Appeal Ref: APP/M3645/W/22/3312070

³ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

should be permitted. Such options should be considered under ground (a), even though the actual application under ground (a) relates to the development as built. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker⁴.

19. As the size and function of the building would remain unchanged, a scheme restricted to amending the finishing materials can clearly be identified within the scope of the alleged matters and would therefore fall within the statutory powers open to me to grant planning permission under s177(1)(a) of the 1990 Act. Moreover, as the proposed materials reflect those originally approved, they are acceptable.
20. However, whilst external materials are clearly important contributors to character and appearance, the approved scheme also included traditional stable doors, fewer and smaller, higher-level windows and a roof overhang. Those constituent elements would combine to form a building which looks like stables and is in keeping with its attractive countryside setting.
21. Even after changing the external materials as proposed, the building would still appear as a dwelling, particularly from the nearby footpath, due to the size, style and number of windows and the larger sized doors instead of a series of stable doors. Consequently, merely changing the materials would not be sufficient to overcome the above concerns as the architectural features which contribute to the building's domestic appearance would remain.
22. The appellant states that the windows could also be reduced in scale, if I consider them excessive, which I do. Although, the appellant says he would seek to introduce such an alternative if the Council sought to maintain its objection on this point, I do not have an alternative scheme before me, which demonstrates how the size, number and position of the windows could be acceptably arranged, given that they would serve a differing internal configuration. It is not therefore shown that the remaining lack of stable style doors and roof overhang would be acceptably mitigated.
23. I have noted all of the representations submitted both in support and in opposition to the appeal, but for the reasons explained, I conclude that the failure to carry out the development without complying with the plans listed in Condition 2 results in unacceptable harm to the character and appearance of the area.
24. Even if the external materials were changed as proposed, unacceptable harm to the character and appearance of the area would still remain, contrary to Policy DP7 of the Tandridge Local Plan Part 2 Detailed Policies and Policies CSP 18 and CSP 21 of the Tandridge District Core Strategy 2008. Those policies state, amongst other things, that development should integrate effectively with its surroundings, reinforcing local distinctiveness and landscape character.
25. Although not raised within the reasons for issuing the enforcement notice, I note the previous Inspector highlighted that the appeal site lies just outside of the Burstow Conservation Area, which is characterised by large, detached

⁴ *R (oao Banghard) v Bedford BC* [2017] EWHC 2391 (Admin)

dwellings, on spacious plots, surrounded by mature trees and other vegetation. I agree that the significance of that heritage asset is derived from the verdant and rural character of the village and its surroundings. Because of the harm to part of those surroundings, I too find that the stable block building detracts from the rural setting of the Conservation Area.

Other Matters

26. Whilst the layout from a horse welfare point of view was previously found to be acceptable, the consequence of the current layout materially affects the external appearance of the building and contributes to its present domestic appearance. Moreover, it is not shown that the number and size of windows are necessary for air flow purposes.
27. I note the concerns raised about the future use of the building as a dwelling, but that is not part of the alleged breach of control, so is not a matter for this appeal.

Conclusion

28. For the reasons given above, I conclude that the appeal development is contrary to the development plan as a whole, and that material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (f)

29. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
30. In this case, the breach is the failure to comply with Condition 2, whilst the requirements are to demolish the building, restore the land to its former condition and remove all materials and debris arising (requirements 1-3), or alternatively, alter/ rebuild the building in accordance with the terms of Condition 2 and remove all materials and debris arising (requirements 4 and 5). The purpose of the notice is therefore to remedy the breach of planning control.
31. The appellant considers requirements 1-3 to be excessive. However, that ignores the alternative option provided by requirement 4. Because the enforcement notice is directed at a building which differs materially from the approved plans, the appellant should be given the choice of either demolishing the building or altering it to comply with the terms of the planning permission, as either step would remedy the breach in accordance with s173(4)(a).
32. Nevertheless, complying with requirement (4) (and (5)) of the enforcement notice to alter/ rebuild the building in accordance with the original planning permission would result in the whole building having a deemed planning permission by virtue of s173(11) of the 1990 Act, and, moreover, the conditions imposed on the original planning permission would cease to have effect.

33. To address that, and as long as no injustice would occur, I am able to correct the enforcement notice to require that the development is modified in accordance with the terms and conditions of the original planning permission. In this case, the appellant has actually suggested that the requirement should be corrected to make reference to the remaining conditions, despite acknowledging that this would normally be seen to cause injustice as he would be worse off than if he had not appealed and simply complied with the notice.

34. No injustice would therefore arise in the circumstances, so I will therefore correct the notice accordingly under the powers transferred to me by s176(1)(a) of the 1990 Act.

35. The appeal on ground (f) succeeds to that extent.

The Appeal on Ground (g)

36. A ground (g) appeal is that the time given to comply with the notice is too short.

37. The appellant has requested a period of 12 months because the works would need to be staggered, and he is concerned that six months would be too short a timescale, particular during the winter months.

38. However, a period of 12 months is excessive given the scope of the works. I am satisfied that six months would strike a reasonable and proportionate balance between any difficulties the appellant may encounter and the public interest in this case.

39. The ground (g) appeal fails.

Richard S Jones

INSPECTOR