



Appeal Decision

Site visit made on 24 September 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/W0530/C/22/3307285

**Land Adjoining 16 Chalky Road, Great Abington, Cambridge,
Cambridgeshire CB21 6AT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Jonathan James Tilley against an enforcement notice issued by South Cambridgeshire District Council.
- The notice was served on 24 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
- The requirements of the notice are:
 - i. Demolish the building (edged black in attached plan for identification purposes only) in its entirety
 - ii. Level, make good and seed the land with grass
- The period for compliance with the requirements is: 5 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal relates to an enforcement notice ("the Notice") served on 24 August 2022. It followed the withdrawal of an earlier enforcement notice.
2. Part of the appellant's case is that planning permission has been granted for the development, and that what has occurred is a breach of condition on account of variation from the approved plans, rather than the erection of a building without planning permission. This is a matter normally considered as an appeal on ground (b), and as both parties have addressed this point in their evidence, I will consider it as such.

The Notice

3. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990. Section 173(8) requires a Notice to specify the date it takes effect. Section 172(3) states that service of the notice shall take place not more than twenty-eight days after its date of issue, and not less than twenty-eight days before the date it takes effect.

4. The Notice does not specify the date on which it was issued, but does state when it takes effect (on 23rd September 2022 unless an appeal is made against it beforehand). The letter accompanying the Notice served on the appellant is dated 24th August 2022, which is not less than twenty-eight days before the date the Notice specifies it is to take effect.
5. There is no evidence before me that the Notice was issued more than 28 days before it was served, but even if that were not the case, the appellant has made an appeal before the Notice has come into force. I have seen no evidence that the appellant has been substantially prejudiced by the omission of the date of issue.

The appeal on ground (b)

6. Appeals on ground (b) are made on the basis that the alleged breach of planning control constituted by the matters stated in the Notice have not occurred.
7. The appellant's case is that the breach of planning control is a breach of the plans condition of planning permission reference S/2387/17/FL ("the planning permission") rather than the erection of a building. The Council's is that the permission has not been implemented, and that the breach of planning control is therefore the erection of a building.
8. The appellant considers a lawful start was made to the planning permission when the footings and foundations were dug, and that consequently, it may yet be carried out.
9. The planning permission was granted on 5th September 2017 and Condition 1 required the development to begin within 3 years of that date. Although the appellant does not state the date the initial works were undertaken, the Council have not disputed that they commenced within the planning permission's 3-year commencement period.
10. Condition 6 stated that "no development shall take place" before full details of hard and soft landscaping works had been submitted to and approved by the Council. The Council confirms these details were submitted and have been approved, although I have not been advised whether that occurred before or after operations commenced. Nevertheless, I have seen no evidence that the operations occurring in relation to groundworks for the building would have any effect on landscaping for the development, and hard and soft landscaping works do not go to the heart of the permission.
11. In Section 56 of the Act development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. In respect of development consisting of the carrying out of operations (as opposed to use of land), development of land shall be taken to be initiated at the time those operations are begun.
12. In this case, there is no dispute between the parties that the initial works of digging the foundations were comprised in the development permitted. The footprint of the building erected is the same size¹ and in the same location as that for one of the approved buildings.

¹ Even accounting for the 6cm difference in the length and width alleged by the Council in relation to above ground measurements.

13. On balance, the evidence before me suggests the approved development was initiated by the material operations of digging the footings, and the commencement of the planning permission occurred at that time.
14. The planning permission granted was for the erection of two barns for agricultural use. Condition 2 set out the approved plans, and condition 3 required the materials to be used in the external construction to follow the specifications stated on the application form.
15. The parties agree that the footprint and location of the building is largely the same as that shown on the approved plans for the northern of the two buildings granted planning permission. However, although there is disagreement over the eaves and ridge heights of the completed building, it is agreed that it does not accord with the approved plans in those respects.
16. I note the building is raised slightly above existing ground levels, which themselves vary on account of the topography of the land. I also note the appellant's claim that he excavated land around the building in order to provide a hardstanding area. That may be the case, but I have not seen it evidenced in the information before me, and the spoil heap could equally have arisen from the excavation of the footings for the building.
17. I have been provided with three different sets of measurements for the heights of the various parts of the building. The appellant's figures are measured from the height they advise was ground level prior to excavation of land around the building. The drainage installed appears to anticipate backfilling, albeit not of the height difference described by the appellant. Even so, the development before me is that which has been carried out, and not the development with further planned works.
18. The Council's figures are similar to those of a surveyor acting for an interested party, and specify the heights for different parts of the building on the northern and southern sides. The surveyor provides figures for the eaves and ridge height of the southern elevation of the building using technology to provide remote measurements, which are only marginally higher than those measured by the Council for that elevation. Given the similarity of the measurements by the Council and the surveyor, obtained independently, I attribute more weight to these measurements than to those provided by the appellant.
19. Significantly, the completed building also differs from the approved plans in other respects. Only two doors have been installed, rather than one on each elevation, each being roller shutter doors of significantly lower height, rather than 4m high timber doors. The higher eaves height results in a greater wall mass along the eastern and western elevations. The shallower roof pitch and higher eaves height changes the character of the northern and southern elevations from an agricultural one to one more typical of residential buildings, and substantially increases its mass.
20. At my site visit I also noted the building was not clad with timber weatherboard, as specified on the application form and plans, but with what appeared to be a plastic or composite material.
21. Overall, although the footprint is largely the same as the building for which planning permission was granted, the building constructed is materially

different, considering its form, height, roof pitch, eaves height, external materials and openings. The building is overall a larger building with a different character to that for which planning permission was granted.

22. With the information before me, the building erected is therefore not one of the buildings for which planning permission was granted.
23. The matters alleged in the Notice, that is the erection of a building without planning permission, had therefore occurred by the time the Notice was issued. The appeal on ground (b) therefore fails.

The appeal on ground (a)/the DPA

24. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters stated in the Notice as constituting the breach of planning control.

Main Issue

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

Reasons

26. Chalky Road is part of an area of 688 acres of land purchased by the Land Settlement Association (LSA) in 1936 to establish the Abington LSA Estate, divided into 62 holdings. The Neighbourhood Plan for the former LSA Estate at Great Abington 2018 to 2031 (2019) ("NP") describes the smallholdings as being of 1 – 11 acres, originally with outbuildings located to the side of the dwellings. Each with a piggery and a small green house, with other outbuildings often added, and many with several large glasshouses.
27. The LSA is therefore an area with a distinctive character based around large parcels of land with a small number of dwellings and agricultural land and buildings.
28. The NP describes the current situation as one where there are small and very large houses, businesses of various kinds being operated, and a considerable number of other buildings including glasshouses, barns, stables and sheds.
29. Among other things, the NP aims to retain the special character of the area by keeping the historic pattern of building, comprising a house with outbuildings surrounded by open land. Ensuring new development responds positively to local character and history, retaining the agricultural and paddock land outside areas defined by the original houses and their outbuildings.
30. The Land is one of those open areas which contributes to the agrarian character of the LSA. Its openness is a key feature in the road, and will become increasingly significant once the new dwelling is constructed on the site of the former piggery adjacent.
31. The building is primarily visible from the road, and is sited prominently in the centre of this undeveloped gap, beyond the build line identified in the NP for domestic development, original dwellings and piggeries. Some sites have been extensively developed beyond the building lines with agricultural greenhouses and sheds, but not in the vicinity of the Land. Furthermore, the

building erected lacks the utilitarian design of other large buildings, and appears neither wholly agricultural nor equestrian in character.

32. I therefore find the building does not preserve or enhance the character of the area, respond positively to its local context in the wider landscape and respect local distinctiveness. It is not compatible with its location or appropriate in terms of scale, form, siting, design, proportion and materials.
33. The development is therefore harmful to the character and appearance of the area, and conflicts with Policy HQ/1 of the South Cambridgeshire Local Plan (2018), which requires all new development to be of high-quality design and make a positive contribution to its local and wider context.

Other Matters

34. Firstly, having found above that with the evidence before me a lawful start was made to the planning permission, it remains extant and could be carried out to completion. The subsequent departure from the development approved does not remove any lawful commencement under Section 56 of the Act, and the appellant's first fallback position is therefore his ability to construct the approved building in the event that I uphold the Notice.
35. However, for the reasons given above in relation to the appeal on ground (b), I have found that the building erected is distinctly different from the approved building, and that it is harmful to the character and appearance of the area. The approved development would not cause the same harm, and the possibility that it may be constructed does not justify the development of the building which has been erected.
36. Secondly, the appellant advises he operates an agricultural smallholding of 17 acres, and could erect an agricultural building up to 12m high on the land as 'permitted development'. However, I have not been provided with sufficient information to establish whether an agricultural building could be erected on the land with planning permission arising from Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015; on account of Class A, Part 6 of Schedule 2, or any other part of that Order.
37. In particular, I saw no active agricultural use occurring on the Land other than a limited area used for the grazing of horses, and have been provided with no information demonstrating the necessity of such a building for the purposes of agriculture within the smallholding. Furthermore, any such development would require an application to the local planning authority for a determination as to whether prior approval would be required as to the siting, design and external appearance of the building. Any alternative building may therefore be of a different design, and more appropriate for its location.
38. I therefore attribute only limited weight to the appellant's fallback positions, and the harm arising to the character and appearance of the area and the consequent conflict with policies of the development plan is not outweighed by other matters.

Obvious alternative

39. I may also consider whether there is an obvious alternative to demolition that would overcome the planning harm at less cost and disruption to the appellant. But I may only do so if that alternative is part of the matters constituting the breach of planning control.
40. The appellant considers the building could be made to accord, in all respects, with the building for which planning permission was granted.
41. Extensive changes would be required to the building constructed to achieve that. Including removal of the roof, lowering of the walls, the installation of new roof trusses and a new roof, alteration to the size of the openings for the doors on the eastern and western sides, the creation of openings on the northern and southern sides, new and replacement doors, and removal and replacement of all the external cladding of the building.
42. Notwithstanding the broad description of the breach of planning control, as the erection of a building, the extent of the works required means the resulting building would amount to a different building that is not subject to the Notice. It is therefore not open to me to grant planning permission for it under ground (a)/the DPA. The appellant's alternative to demolition is not part of the matters constituting the breach of planning control, and it is not an obvious alternative to demolition.

Conclusion on ground (a)/the DPA

43. The development is therefore harmful to the character and appearance of the area and conflicts with policies of the development plan. There are no other material considerations that require a decision to be made other than in accordance with the development plan.
44. The appeal on ground (a) therefore fails.

The appeal on ground (f)

45. Appeals on ground (f) are made on the basis that the steps required to comply with the requirements of the Notice exceed what is necessary to remedy any breach of planning control, or remedy the injury to amenity, as the case may be.
46. In this case the Notice was issued to remedy the breach of planning control by restoring the land to its condition before the breach took place.
47. The appellant's case is that the building could be required to be made to accord in all respects with that for which planning permission was granted.
48. I found above that the building erected is substantially different to that for which planning permission had been granted, such that the development for which planning permission had been granted was not part of the matters constituting the breach of planning control, and that it was therefore not open to me to grant planning permission for modification of the building.
49. However, I also found above that planning permission S/2387/17/FL had been lawfully commenced, and therefore remains extant. Were I to vary the requirements, by introducing an alternative to demolition of the building and

restoration of the land, that alternative could require the building to be made to accord with the terms and conditions of the planning permission.

50. It would provide an obvious alternative which would remedy the breach with less cost and disruption, and the Notice could be varied accordingly without injustice to the appellant or the Council.

51. The appeal on ground (f) therefore succeeds.

Conclusion

52. For the reasons given above, I conclude the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Decision

53. It is directed that the enforcement notice is varied by:

- In Section 5, before criterion (i) insert the word: "Either:"
- In Section 5, at the end of criterion (i) insert: "; and"
- In Section 5, after criterion (ii) insert the words:

"Or:

54. (iii) Modify the building to accord in all respects with the terms and conditions of planning permission S/2387/17/FL."

55. Subject to the variations, 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.

Peter White

INSPECTOR