



Appeal Decision

Hearing held on 4 February 2025

Site visit made on 3 February 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/C1435/C/24/3349236

Land at the Old Steam House, Lime Park, Church Road, Herstmonceux, HAILSHAM, BN27 1RF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Herstmonceux Museum Limited against an enforcement notice issued by Wealden District Council.
 - The notice was issued on 2 July 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a raised platform, balustrade, timber framework, pitched roof extension, and first floor additions in the approximate positions shown coloured green on the attached plan.
 - The requirements of the notice are: (i) Demolish, dismantle and remove the raised platform, balustrade and wooden framework around the trees on top of the pre-existing pergola. (ii) Demolish, dismantle and remove the first floor, pitched roof extension constructed on top of and adjacent to the existing outbuilding to the front of the main building. (iii) Remove the first floor additions made to the rear of the main building. (iv) Remove the wooden framework attached to the rear of the main building at first floor level. (v) Remove from the Land all materials, timber, rubbish, debris, machinery, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c), (e), (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.
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Decision

1. 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

2. Herstmonceux Museum Ltd were represented by Mr Nelson Kruschandl, who refers to himself as a custodian or caretaker. However, it would seem to be Mr Kruschandl who is responsible for the works subject to the notice. It was never made clear who the trustees of the museum were, except that they change every year, for reasons that were also unclear.
3. At the Hearing Mr Kruschandl handed in several multi-page documents that appeared to have been prepared overnight and contained a detailed account of the previous day's site visit. Having briefly scanned these documents I declined to accept them as they did not appear to be relevant to the matters before me.
4. The background to the appeal is a long history of dispute between Mr Kruschandl and his neighbours on the Lime Park Estate, as well as with the Council and the

police. Most of his evidence referred to this history and I shall refer to it only insofar as it is relevant to this appeal.

The Site

5. Lime Park Estate was a stately home that has now been divided up for residential use. An access road leads from Chapel Row past a series of houses and ends at the appeal site which sits between the Estate and a field beyond. The appeal site comprises at its centre, an old engine house that used to contain a steam powered electricity generator, which was apparently very rare if not unique. The original machinery has not survived and the Old Steam House is a fairly non-descript building that has no obviously visible historic features except for a subterranean pit that I was told was a condensation chamber. Around this, various single-story structures have either been added or refurbished. I do not know the history of the buildings on the site but Mr Kruschandl asserts they are now immune from enforcement action through the passage of time. The whole now forms a single building which, when I was shown around it, houses a series of 'exhibits' for the museum, furniture, tools, workbenches, domestic furniture and piles of stuff that I assume relates to Mr Kruschandl's work on experimental vehicles.
6. Separate to the Old Steam House and associated buildings, a few meters to the west, are a number of trees. One a tall stump and another a large Scots Pine are the site of the second area of development. They have been surrounded at ground level by a single-story structure that may well be weather-proof and consists of a large room with a flat roof, through which pokes the Scots Pine. The eastern end of the structure has a tall steeply pitched roof added to it while the rest is surrounded by balustrades and temporary roof coverings operated by a rope and pulley system.

The Question of Nullity

7. Mr Kruschandl asserts that it is difficult from the notice alone to understand which parts of the site the allegation refers to. If the notice is so obscure that it is not possible to tell what structures it is directed against then I should have to quash it.
8. However, I do not agree that it is obscure. When read in conjunction with the plan, which clearly marks out in green the areas of concern, it does make sense. The first part "*the construction of a raised platform, balustrade, timber framework, pitched roof extension, and first floor additions*", describes all the elements that are at first floor level in the areas marked in green. These are the eastern part of the building housing the museum and the structure built around the trees.
9. The eastern part of the main building has a new and largely unfinished pitched roof constructed on it and the plan clearly shows the extent of the roof that is subject to the allegation. Equally clear from the plan it is the whole of the structure at first floor level that sits on top of the structure built around the two trees. That is the tall, pitched roof, the balustrades, and the rope and pulley coverings, which is everything at first floor level. So I do not think the allegation is unclear and the notice is not a nullity.
10. There was a secondary argument that solar panels on the half-completed roof on the eastern part of the building could remain as they are permitted development, but the notice does not mention them and so is incomplete. I make no observation on whether the solar panels are permitted development or not as that would

depend on what the lawful use of the building is and that is not a matter before me. But, assuming they are permitted development then of course they can remain on the flat roof below once the pitched roof is removed.

11. Mr Kruschandl argued that as the notice was a legal document it had to be exactly precise. This is true in so far as it goes, but it is better to describe the situation is that the notice should be understandable and not misleading. The courts have consistently warned against legalistic pettifoggery such as arguing that the notice needs to mention solar panels simply because they are located on a roof it requires to be removed. Anything on a roof that has to go also has to go. If it can then be replaced because it is still permitted development then that is perfectly lawful. The Notice does not need to deal with every minor eventuality.

The Appeals on Grounds (b) and (c)

12. No argument was provided that the matters alleged had not occurred so there is no appeal on ground (b), but ground (c), that the matters alleged benefit from planning permission was argued.
13. Mr Kruschandl argues that the rope and pulley structures that raise and lower tarpaulins to protect people from falling branches are permitted development. The reason for this is that they are required to protect members of the public which is a health and safety requirement and therefore is permitted development. There are two problems with this argument. Firstly, because something is required for the purposes of health and safety legislation does not mean it is permitted by planning legislation. That is a fatal flaw in Mr Kruschandl's logic and secondly even if some form of protection from falling branches was required the somewhat Heath-Robinson pulley system is far from the only possibility. The simplest option would be to fence off the area of the trees to keep people away from them. So the rope and pulley structures do not benefit from permitted development.

The Appeal on Ground (e)

14. This ground is that the notice has not been properly served. Mr Kruschandl's argument was that the owners of the land on which the two trees and associated structure stand were not served and should have been. I should explain the issue is not whether any owners were not served but whether they were prejudiced by a failure to serve. It is often the case that not all the landowners can be identified but if that is the case there are two further questions. Firstly did they hear about the appeal through other means and so could have been involved had they wanted to be and secondly, if not, have they been prejudiced by not being afforded an opportunity to appeal.
15. In this case Mr Kruschandl advanced two mutually exclusive arguments. Firstly he claimed the land was owned by developers who have planning permission to build a housing estate on a nearby playing field. He suggested the Council did not serve them because the Council are desperate not to prevent the housing development going ahead. Firstly there is no evidence the land is owned by the developers. Secondly, there is no evidence the developers have any interest in this small portion of land which does not form part of the planning permission for the housing estate, and thirdly, it makes no sense to argue that serving them with the notice would in some way prevent the housing development going ahead.

16. Mr Kruschandl's second argument is that the land is not owned by anybody. Here the Council agree that according to the Land Registry the land is not registered. There is therefore no owner to serve the notice on. Mr Kruschandl argues that after a certain passage of time unregistered land escheats to the Crown. This may be so but I have no evidence as to what the Crown's interest in the land would be and an enforcement notice cannot be served on the Crown anyway. I thus have no doubt the notice was properly served.

The Appeal on Ground (a)

17. This ground is that planning permission should be granted for the matters alleged. Mr Kruschandl accepts the pitched roof over the structure around the two trees, the balustrades and the rope and pulley system are somewhat of a visual mess, but he would like to replace them with a smaller roof the design of which can be agreed with the Council through a condition. I shall deal with the appeal on this basis.
18. The main issues are the harm caused to the character and appearance of the area and the impact on neighbour's amenities. Council policies SPO13 from the most recent Local Plan and EN27, a saved policy from the old local plan are the most relevant. SPO13 requires development to be of a high quality and of good design, while EN27 goes a little further in that design should respect the character of adjoining development where appropriate and not have an adverse impact on the amenities of neighbours by reason of scale, height form etc.
19. The site is visible from the access road and from neighbouring properties. The general public also have clear views from a right of way that runs across the field immediately adjacent to the northern side of the site. The roof structure on the eastern side of the main building, if completed, would be a large structure in its own right and prominent in views from the footpath. While not specifically harmful in itself, it adds to the sense of the seemingly haphazard overdevelopment of the site and adds to the dominance of the buildings.
20. The structure around the base of the two trees is somewhat bizarre and to add a pitched roof with a tree sticking through it would not help. It would certainly not represent good design. As noted above the whole site suffers from an ad hoc approach to development so that adding more structures at a higher level simply exacerbates the problem. They would draw attention to the site, harm the character and appearance of the area, dominate the neighbours' properties and harm their outlook.
21. I agree with the Council the first-floor structures are harmful and out of place, contrary to both policies mentioned above and should not be allowed. No conditions would render them acceptable and the appeal on ground (a) fails.

Other Matters

22. I should mention briefly the somewhat twisted logic that Mr Kruschandl has brought to this appeal. The roofs are required as part of the on-going development of the museum. In particular, the structure around the trees is intended to be a night watchmen's house. However, there is no planning permission for the museum and a considerable investment would be required to turn what I saw into an actual visitor attraction, never mind the question of how the museum would be

accessed and what would be the impact of visitor numbers on the site and surrounding houses.

23. Mr Kruschandl seems to have grasped this and his solution is ingenuous, if wholly mistaken. In 1987 an enforcement notice was issued alleging that he was living at the Old Steam House, this was appealed the appeal was dismissed and the notice upheld. Mr Kruschandl argues that decision is ultra vires as it was based on incorrect information concerning the historic quality of the building, in particular because the Council did not think there was much historic material left in the Old Steam House. This view was countered in a report by East Sussex County Council in 1999 where they found a considerable amount of the building was original. According to Mr Kruschandl this means the appeal decision is no longer valid and the residential use is established. He proposes to swap the residential use for planning permission for the museum.
24. Unfortunately from Mr Kruschandl (and presumably the trustees of the museum), there are a number of problems with this scenario. Firstly, an appeal decision is final unless challenged in the courts, which it was not. Secondly, the decision did not turn on the historic status of the building, that is mentioned only in passing. Thirdly, the amount of the structure dating from the Victorian period has little if anything to do with whether a residential use should be allowed on site and fourthly it is not clear why a museum use should be considered preferable to a residential one.
25. I mention this only because it underpins some of the ground (a) arguments. As the future use of the building would seem to me to be completely uncertain, and indeed the current lawful use is also unclear, then allowing further development to consolidate the existing buildings might well simply add to the problems of the site and would not represent sustainable development.

Conclusion

26. I shall dismiss the appeal and uphold the notice.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nelson Kruschandl - appellant

FOR THE LOCAL PLANNING AUTHORITY:

John Honeysett

INTERESTED PARTIES:

Chester Hudson