



Appeal Decision

Site visit made on 15 January 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI)

an Inspector appointed by the Secretary of State

Decision date: 06 May 2025

Appeal Ref: APP/W0530/C/23/3328025

Land Known as Valentine Stables, 34A South Road, Great Abington, CAMBRIDGE, CB21 6AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Jeremy Vincent Zielinski against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice was issued on 18 July 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a dwelling house.
 - The requirements of the notice are:
 - i) Cease the occupation of the dwellinghouse;
 - ii) Demolish the dwellinghouse; and
 - iii) Remove all resultant materials and waste from the Land.
 - The period for compliance with the requirements is 12 months from the date the notice takes effect.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c), (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 and the enforcement notice is upheld.

The Appeal on Ground (b)

2. An appeal on ground (b) is made on the basis that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. When making an appeal on ground (b) the onus, on the balance of probability, falls upon the appellant to demonstrate that the alleged breach has not occurred.
3. The appellant's case on ground (b) is that he has not erected a dwellinghouse, as alleged, but that he has undertaken development permitted by the Council under planning permission reference S/1848/13/FL. That permission was granted, subject to nine conditions, on 04 September 2014 (the 2014 permission) with the development being described as "Replacement stable block, stallion semen collection centre/ laboratory with first floor residential accommodation".
4. The approved plans depict a two-storey building. The ground floor rooms annotated on the approved floor plan¹ show a reception, office, kitchenette/ container storage area, an "analysis/ lecture" laboratory, a clean room/"processing laboratory, a staff changing room, accessible toilet and associated circulation space. At first floor level, the living space was shown to have two bedrooms, each with an ensuite bathroom, and a combined living/kitchen space.

¹ Z/1978/10/PL-50 Rev E – "Proposed Laboratory" elevations and floor plans

5. Aside from one or two minor differences in fenestration the external appearance of the structure reflects that shown on the approved elevational drawings. However, the internal arrangement, as constructed was clearly not as shown on the approved layout plans at ground floor level. Photographs provided by the appellant in February 2022 in response to the Council's Planning Contravention Notice (PCN) show a complete absence of any laboratory space or research facility and that remained the case at the time of my accompanied site visit.
6. The ground floor has a decidedly residential appearance, with a domestic kitchen, equipped with kitchen units, cooker, island breakfast bar, with domestic furnishings and appliances. A dining area is present next to the kitchen in the space which was shown to house a kitchenette/ container storage and distribution on the approved plans. Next to that, where the plans depicted an office, is a domestic living room. What appears to be an office is present to the front in what was shown on the plans as a reception area. Throughout, the ground floor is decorated and equipped in a manner that belies a residential use.
7. There is no obvious reception area that would indicate use by customers of a business. No laboratory has been installed, no research or stored equipment associated with the business is apparent, either on the photographs from 2022 or at the time of my visit. Upstairs, where the staff accommodation was intended to be, there are two bedrooms, in the locations shown on the approved plans and a living area/ lounge, equipped with a sofa and television. However, no kitchen appears to have been constructed on the upper floor. In other words, the living space is clearly spread over the two floors, as would be the case in a typical house.
8. I recognise that the appellant and his wife may be employed in an equine business, relating to the associated livery activity at the site. No doubt the office may be used in connection with that purpose. However, that arrangement is no different to many dwellings where people will work from home in a designated office and it is very different to the use envisaged on the approved plans and the basis upon which the 2014 permission was approved.
9. The background papers associated with the planning application identified that the appellant and his wife resided in the adjacent dwelling on the site and that the accommodation at first floor level in the proposed scheme was required to house an additional worker who would be employed in the stud farm/ semen collection and analysis business. That accommodation was said to be needed in addition to the existing dwelling. What has actually occurred is that the appellant has since sold the existing dwelling and now lives in the appeal property with his wife.
10. There was no agricultural tie on the existing dwelling and it was within the appellant's right to sell the property. However, when combined with the fact that the new building has all the facilities and the layout of a dwelling, as opposed to a laboratory, the over-riding impression is that what has been constructed is a dwellinghouse, occupied by the appellant and his wife, as opposed to a stallion semen collection centre/laboratory on the ground floor with residential accommodation above which is what the approved plans depicted.
11. In fact, there is very little evidence that the stallion semen collection and analysis business ever got off the ground to any notable degree. The appellant's position is

that the business was hit by the Covid pandemic which effectively meant that any progress stalled in 2020 when the building was completed.

12. The appellant provided a number of bank statements and associated invoices to the Council in 2020 showing payments related to the equine business. However, the vast majority of the payments received appear to be for livery fees, with a number also involving a small payment for “Equest/Paramox” which appears to be an equine worming treatment, along with other ancillary payments for woodchip and farrier fees. The only payment for “Laboratory fees” is for a horse named Dublin, with a fee of £44 being received. There is no indication as to whether the analysis was carried out at the appeal site or whether the sample was collected and sent off. Given the absence of any obvious laboratory facilities on site it may have been the latter.
13. I recognise that the pandemic hit many businesses and that it would no doubt have had an impact on any planned business in this case. However, the lack of any clear record of the semen collection and analysis business, when added to the evidence that the laboratory and associated storage and analysis areas were never constructed raises serious doubts as to whether the 2014 permission was implemented. If the pandemic did cause issues with the business, the logical thing to do, if implementing the approved planning permission, would have been to construct the building as permitted, with accommodation at first floor level and space for the laboratories etc at ground floor level, even if that led to a delay in installation of those facilities. What actually appears to have happened is that the appellant constructed a dwelling from the off.
14. Furthermore the Council's Building Control record noted that work commenced on 02 May 2017, under reference 16/02998/FP, described for the purposes of Building Regulations as a “new 3 bed dwelling with a Stud office”. That description is markedly different to the description of the approved development in the 2014 permission and more reflective of what has actually been constructed on site.
15. In that regard, it seems to me that the development is not simply a breach of the conditions attached to the 2014 permission but that what has been constructed is of a fundamentally different nature in respect of the use of the building. Put simply, the appellant has constructed a dwellinghouse and not the development for which permission was granted in 2014.
16. Therefore, on the balance of probability, the breach, as described in the enforcement notice, has occurred as a matter of fact. It follows that the appeal on ground (b) must fail.

The Appeal on Ground (c)

17. An appeal on ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. Essentially, the appellant's position is that the development that has taken place has been constructed in accordance with the approved plans permitted by the 2014 permission and that no breach of planning control has occurred. However, as set out above, I have found that the breach of planning control, as described in the notice, has occurred as a matter of fact.
18. The evidence does not suggest that the 2014 permission was constructed and then converted into a dwellinghouse, it was built as a dwellinghouse from the off.

In other words, it does not appear to have been built for the purpose for which permission had been granted. The concept of a planning permission is for a building of a specific character, both externally and internally. Where a development is not carried out fully in accordance with a permission, internally and externally, the whole operation will be unlawful. Internally, the building was never implemented in accordance with the 2014 permission in terms of the ground floor commercial layout. As such, I am not satisfied that the building operations involved in the construction of the building can be said to be covered by the 2014 permission, notwithstanding that the footprint and external appearance are broadly the same.

19. Whether the 2014 permission was commenced at all is open to question, especially given the description of development provided on the Building Regulations application which indicates that the intention was always to construct a dwellinghouse. The onus rests with the appellant to make his case and it is not clear that the 2014 permission was commenced from the information provided, notwithstanding the similarity in the external appearance of the building. Even if it was commenced, what was subsequently implemented was a different development which was the erection of a dwellinghouse.
20. No permission exists for the erection of a dwellinghouse and the appeal on ground (c) must fail.

The Appeal on Ground (a)

21. An appeal on ground (a) is made on the basis that planning permission should be granted for the matters stated in the notice. That is predicated on the basis that those matters have occurred, as I have found to be the case in respect of the appeal on ground (b).
22. The appellant's ground (a) appeal is made on the assumption that I agreed with him in respect of the ground (b) appeal and that the breach, as described in the notice, had not occurred. In other words, that the breach amounted to a breach of condition 4 of the 2014 permission. Whilst he does not explicitly set it out in writing, the implication is that he invites me to correct the notice to refer to a breach of condition and then to grant planning permission under ground (a) on the basis of the corrected allegation. Under that scenario, I would effectively have to consider whether to grant planning permission for the development originally permitted i.e. the stallion semen collection centre/ laboratory with first floor staff residential accommodation, without compliance with condition 4 of the 2014 permission. That would be the scope of the ground (a) appeal.
23. However, for the reasons given, I have found that the development is not simply a breach of condition 4 but that it was erected as a dwellinghouse from the off. That sets the scope of the ground (a) appeal. In other words, I must consider whether to grant planning permission for the erection of a dwellinghouse. The appellant has not put forward any case that permission should be granted for the development as currently alleged in the notice. However, in the interests of clarity, it is worth spelling out the principal issues in respect of whether such permission should be granted.
24. Those are whether site is suitable for the erection of a dwellinghouse, having regard to its location and local and national planning policy and, if not, whether any

other material considerations would indicate that planning permission should be granted.

25. Policy S/7 of the South Cambridgeshire Local Plan (2018) (the Local Plan) states that outside development frameworks, only allocations within Neighbourhood Plans that have come into force and development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside or where supported by other policies in this plan will be permitted. Linked to that, policy H/19 sets out that dwellings to support a rural based enterprise will be permitted if a number of criteria are met.
26. Those are that there is a clear functional need for one or more workers to be readily available at all times; that the enterprise has been established for at least 3 years and is and would remain financially viable; that there is no other accommodation on site which is currently available; that a dwelling on the site/holding has not been sold on the open market within the last year and that the proposed dwelling is no larger than that required to meet the reasonable needs of the enterprise.
27. No evidence has been presented to indicate that the dwelling complies with those criteria. The rationale for the residential accommodation in the 2014 permission was that the additional accommodation was required in connection with the semen collection and analysis/ stud farm business. There is little evidence that business has developed as expected or at all from the information provided. There does appear to be a livery business at the site but no information has been provided to demonstrate that a dwelling is required to provide on site accommodation at all times or to demonstrate the viability of that business. Even if that was the case it is not clear that a two storey dwelling of the size constructed would be needed to meet any functional need.
28. Moreover, there was previous residential accommodation on site but the appellant has sold that dwelling. Criteria (d) of policy H/19 requires that no open market dwelling has been sold within the previous 12 months. It is a moot point from which date that 12 month period should run in retrospective cases such as this. However, it seems reasonable to take that from the date that the development was begun, as opposed to now, because otherwise it could potentially encourage unauthorised development on account of the length of time taken to consider enforcement action and for an appeal to be brought and considered. That would contravene the doctrine that someone should not gain from a result of unauthorised or potentially unlawful actions.
29. According to the Council, the dwelling was sold in July 2019 which is after work was commenced on the appeal property but not long before it was said to be completed. In addition, the appellant gained planning permission to erect a new dwelling in place of a former piggery at the site to a dwellinghouse in 2019. He subsequently sold that land, with permission in 2021. Consequently, during the period within which the unauthorised dwelling was being constructed the appellant has sold one dwelling and one plot with permission to construct a dwelling. That seems to be to amount to a clear breach of the aims of policy H/19.
30. In addition the Neighbourhood Plan for the Former Land Settlement Association's Estate at Great Abington 2018-2031 was adopted in 2019 and forms part of the development plan for the area. Policy GAL2 is a criteria based policy relating to

the construction of new dwellings on land associated with former plots. Amongst those criteria planning permission for new dwellings will only be supported where it would result in no more than one additional dwelling per plot, over and above the 1983 baseline. The rationale is to limit new residential development to retain the unique character of the plotlands and to limit additional traffic on single track roads which serve them, taking account of the limited services in the area and the need to travel arising from new dwellings. In this case, the dwelling is clearly in conflict with those aims as it results in 2 additional dwellings, given that permission has already been granted and implemented to erect a dwelling on the site of the former piggery.

31. Overall, the erection of a new dwellinghouse on the site is plainly contrary to the relevant policies of the development plan, as identified by the parties.
32. There are no obvious material considerations to outweigh that conflict and indicate that a decision should be taken other than in accordance with the development plan. Whether or not it could be said that the 2014 permission was implemented is not a consideration that assists the appellant in my view. The fall-back position would be the erection of a building for a different purpose. Given that the appellant has not progressed that business and has not developed the laboratory/ analysis space to date, the likelihood of him doing so must be questionable. Consequently, even if a similar building could still be erected to serve that purpose is not a matter that carries significant weight in determining whether permission should be granted for the dwellinghouse in question.
33. I am mindful that the effect of the notice will have a significant effect on the homelife of the appellant and his wife given the requirement for the use to cease and the building to be demolished. It is clearly a case where Article 8 Convention Rights are engaged². Whilst the appellant, who is professionally represented by a firm of solicitors, did not raise Article 8 Rights within the appeal submission it is clearly a matter of relevance in the appeal.
34. Rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
35. The effect of the notice would be to remove the appellant's current place of residence. However, there is no indication that they would be rendered homeless or unable to secure alternative accommodation. Similarly, it would also no doubt be more difficult to look after any horses in livery at the stables if living off-site but that would be no means unachievable, either through shift patterns of workers or with technological assistance such that horses and the site could be monitored from off-site. I am also mindful that the appellant has sold a dwelling on the land previously, in addition to the land with planning permission for a new dwelling on the site of the former piggery. That was in full knowledge that no permission

² Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998

existed for a new dwellinghouse on the site, other than for first floor staff accommodation in respect of the proposed semen collection and analysis business.

36. Given the clear and flagrant breach of planning policy and the associated harm arising I find that interference with the Human Rights of the appellant and his wife would be proportionate in this case. Consequently, that is not a matter that outweighs the conflict with the development plan and the harm arising from the erection of a dwellinghouse in conflict with locational policies of that plan.
37. The harm arising could not be mitigated by the use of conditions. The appellant has referred to the necessity, or otherwise, of conditions attached to the 2014 permission, particularly condition 4, which required the permitted staff accommodation to cease on or before 31 August 2017. It is not for me to review those conditions in the context of this appeal. For the reasons set out above, the ground (a) appeal is made on the basis that planning permission should be granted for the breach as stated which is the erection of a dwellinghouse. That is fundamentally different to the use approved by the 2014 permission and no conditions could overcome the fact that the site is unsuitably located for a new dwelling.
38. In view of the above, no material considerations have been put forward that would justify a decision other than in accordance with the development plan. It follows that the appeal on ground (a) should fail and that planning permission should not be granted for the breach of control described in the notice.

The Appeal on Ground (f)

39. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, any injury to amenity which may have been caused. It is clear in this case, given the requirements of the notice that the Council is seeking to remedy the breach of planning control in its entirety and not simply any injury to amenity.
40. The appellant contends that the requirements are excessive and that a requirement to cease the residential use would suffice, a requirement which would, in his view, leave the building to be occupied for a business purpose on the ground floor with unused space on the first floor.
41. However, it appears to me that request is based on the premise that the 2014 permission has been implemented and constructed. Based on my conclusions in respect of ground (b) I am not satisfied that is the case. The building was constructed as a dwellinghouse from the outset. The construction of a building for that purpose did not have planning permission.
42. If the requirements of the notice were varied to require the residential use to cease, as suggested by the appellant, what would effectively be left would be the empty shell of the building. The appellant maintains that would allow the building to be used for commercial purposes on the ground floor, in line with the 2014 permission. However, there is no evidence that the building has ever been used for that purpose. An enforcement notice cannot actively require a new use to commence. It can require an unlawful use to cease and s57(4) of the Town and Country Planning Act allows for the right of reversion to a former lawful use.

43. However, the building was constructed as a dwellinghouse and there was no prior lawful use of the building. To change from a dwellinghouse to a commercial use on the ground floor would involve a material change of use. The 2014 permission did not grant planning permission for a material change of use of a building but for the construction of a building to be used as a stallion semen collection centre/ laboratory with first floor residential accommodation above. No planning permission exists for such a material change of use and it is not clear that the building could lawfully be put to such a purpose.
44. Moreover, given that the building operations involved in the construction of the dwelling were not undertaken for the purposes of implementing the 2014 permission I am not satisfied that allowing the structure to remain would remedy the breach of planning control. Even if it could be argued that the 2014 permission was commenced, which has not been demonstrated by the appellant, what has been implemented is not what was authorised by that permission.
45. In other words, I am not satisfied that the existence of the 2014 permission entails that the building operations involved in the construction of the dwellinghouse were lawful, notwithstanding that the external appearance may be the same as the building approved by the 2014 permission. The erection of the dwellinghouse was unauthorised and, looked at holistically, it follows that the works involved to construct the dwelling were also unauthorised and not covered by the 2014 permission.
46. Accordingly, varying the terms of the enforcement notice to allow the building to remain would not remedy the breach of planning control and the requirements go no further than are necessary to remedy the breach of planning control. I can think of no obvious lesser requirement that would achieve that aim. It follows that the appeal on ground (f) shall fail and I shall uphold the notice.

Conclusion

47. 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.

Chris Preston

INSPECTOR