
Appeal Decision

Site visit made on 24 June 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 29th August 2025

Appeal Ref: APP/J3720/C/24/3345345

**Land at the English Barn, Idlicote Estate Barns, Idlicote, Shipston-on-Stour
CV36 5DW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The appeal is made by Mr M P G Dill against an enforcement notice (EN) issued by Stratford-on-Avon District Council.
 - The EN was issued on 24 April 2024.
 - The breach of planning control as alleged in the EN is: without planning permission, the following development:
 - i) The erection of a dwellinghouse through the rebuilding of a former agricultural building, together with the associated change of use of the Land from agricultural to domestic garden use in connection with the new dwelling.
 - ii) The partial demolition and external alterations to a former agricultural building to create a building for domestic use ancillary to the use of the unauthorised dwellinghouse.
 - iii) The laying of a patio area; and
 - iv) The creation of a driveway/parking area for the unauthorised dwellinghouse.
 - The requirements of the EN are:
 - a) Demolish the new dwelling located in the approximate location 'A';
 - b) Demolish the building located in the approximate location 'B';
 - c) Remove the patio area located in the approximate location 'C';
 - d) Remove the crushed stone associated with the driveway/parking area in the approximate location 'D';
 - e) Remove from the Land all the materials associated with the requirements a) to d) described above;
 - f) Cease the use of the Land for domestic purposes and thereafter only use the Land for agricultural purposes.
 - The periods for compliance with the requirements are: a), b), c), d), e), f) all 6 months
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the 1990 Act.
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Decision

1. The appeal is allowed and the EN is quashed.

Preliminary Matters and Background

2. The appellant has stated within his final comments that he is not proceeding with his ground (c) appeal. I have therefore made by decision on this basis.
3. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence for it to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

4. The appeal site forms part of a larger site known as Idlicote Estate Barns. That larger site has a relatively complex planning history. I have highlighted below the sections of that planning history that in my judgement are relevant to this appeal.
5. On 1 April 2020 a prior approval notification¹ (the 2020 permission) for *'the change of use of agricultural building into 1no. dwelling including associated operational development under Class Q(b)'* was granted subject to conditions. On 26 July 2021 it appears that a section 73, of the 1990 Act, application² for planning permission (the 2021 permission) for the development of land without complying with conditions, subject to which a previous planning permission was granted, was permitted. The decision notice for that application describes it as *'Vary condition 1 of 20/00365/COUQ (date of Decision: 01/04/2020). The amendments are being sought to allow minor alterations to the external elevations and floorplan'*.
6. Section 73 applications are commonly said to be seeking to vary or remove conditions to which an existing planning permission is subject. However, that is not strictly the case. If such applications succeed, a completely new separate planning permission is created that stands alongside the original one. The applicant then has the choice which planning permission they want to begin or implement. In my judgement, it appears that in this case the 2021 permission is a standalone planning permission for the change of use of an agricultural building into 1no. dwelling including associated operational development subject to the conditions in the decision notice. On 8 February 2022 applications to discharge conditions 4 and 8 of the 2021 permission were approved. There is no dispute that the development has not been carried out fully in accordance with the 2021 permission and its approved plans.
7. On 15th May 2024 a section 73 application³ for *'variation of conditions 1, 2, 3, 4, 6 and 7 of 20/00365/COUQ. The amendments are being sought "to allow alterations to the external elevations and floorplan"'* was submitted. Nevertheless, the Council considered that it was not a valid application for 2 reasons and refused to validate it.

The ground (b) appeal

8. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact. The appellant argues that the erection of a dwellinghouse through the rebuilding of a former agricultural building has not occurred. He considers that the former agricultural building has changed its use to a dwellinghouse with associated operational development. The ground (b) appeal has therefore been made only in relation to part i) of the allegation. Nonetheless, it is apparent the other three parts of the allegation are all associated with part i) and they are not separable from that part. Therefore, if the ground (b) appeal succeeds with regard to part i) and I find that the EN cannot be corrected, without injustice to the main parties, the EN would be quashed.
9. The appeal building is currently in use as a dwellinghouse and externally the walls have courses of blue bricks at the bottom with rendered blockwork and timber cladding above. The pitched roof is profiled metal cladding. There is no dispute

¹ Reference No: 20/00365/COUQ

² Reference No: 21/01567/VARY

³ 24/01240/VARY

that the blockwork and timber/metal cladding replaced the pre-existing blockwork, timber cladding and asbestos sheets. The Council considers that the replacement of those materials means that the building works are tantamount to a rebuild of the former agricultural building.

10. The Hibbitt judgment⁴ related to whether a proposed ‘conversion’ amounted to a ‘rebuild’ and if it did whether that was relevant with regard to Class Q (Class Q) of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In this ground of appeal, it is not for me to determine whether the operational development that has been carried out falls within the scope of Class Q. However, the findings in that judgment with regard to ‘conversion’ and ‘rebuild’ are relevant to this appeal.
11. Within paragraph 27 the judge states *that ‘in my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn..... In fact a more apt term than “rebuild”, which also encapsulates what the Inspector had in mind, might be “fresh build” since rebuild seems to assume that the existing building is being “re” built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion.’* The facts and circumstances of every case will be different, and it is for the decision-maker, as a matter of fact and degree, to determine whether the original building has been converted or a fresh building has been constructed.
12. In this case the appellant has provided a detailed timeline relating to the works to the former agricultural building. On 13 August 2021 the asbestos sheeting on the roof of the building was removed as required by the remediation strategy approved by conditions attached to the 2020 and 2021 permissions. Once the asbestos sheeting had been removed the foundation strips for the internal walls were dug. Image 1⁵ shows that the pre-existing blockwork and timber cladding were in place at that time.
13. There is no evidence to contradict the appellant’s evidence that the pre-existing concrete floor was retained under the damp proof membrane, underfloor heating pipes, insulation and floor screed. The openings for fenestration on the north, south and east elevations (as shown on the drawings associated with the 2021 permission) were cut through the pre-existing blockwork. The appellant states that during this stage deep cracks within that blockwork were revealed. Cracks in that blockwork appear to be visible on Image 2⁶.
14. The next stage was to construct internal partition blockwork walls, the infill blockwork between the fenestration openings on the west elevation and replacement blockwork to the corners of the south elevation adjoining fenestration openings. Image 5⁷ shows those works in progress and the pre-existing blockwork, with timber cladding above, to the east elevation can be seen in that photograph as can timber cladding to the gable of the south elevation.

⁴ Hibbitt v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

⁵ Appendix 6 to the Appellant’s Statement of Case

⁶ Appendix 6 to the Appellant’s Statement of Case

⁷ Appendix 6 to the Appellant’s Statement of Case

15. In November 2021 the appellant states that the timber wall plates on top of the blockwork walls to the north and east elevations were removed. He goes on to describe that cereal crop seed, from that stored previously for many years in the building, had sprouted within the blocks weakening them. Moreover, where the cuts had been made for the fenestration, he indicates that the blockwork could be physically rocked back and forth. It was at that point that the blockwork on those elevations was replaced as the builder deemed it was not structurally sound and that it was unsanitary and potentially combustible.
16. Photos 5 and 6⁸ show that by January 2022 all the timber cladding had been removed and timber studwork had been erected above the blockwork wall on the north elevation. The appellant states that the timber cladding had become degraded to a significant degree partly due to its age and it being exposed to the elements for 3 months when the asbestos sheets and guttering was removed. The structural timber frame posts were treated with hardener and encased in new cladding and new timber cladding was fitted in place of the pre-existing cladding. The dwellinghouse was occupied by late 2022.
17. In my judgement, the operational development, whilst extensive, did not go beyond what might sensibly or reasonably be described as a conversion. This is because, in this case, the detailed timeline indicates that the pre-existing blockwork and timber cladding were left in-situ whilst the works were ongoing. Given that openings for the fenestration were cut through the blockwork it is reasonable to consider that the intention was to retain that blockwork. Moreover, the works were carried out in stages and incrementally. It is clearly apparent from the appellant's images that the blockwork and timber cladding were left in place whilst the works were ongoing. As with any works on a traditional building unexpected findings meant the detailed nature of the development altered.
18. The blockwork and cladding were replaced as and when it became apparent that they could not be retained. Moreover, the pre-existing blockwork formed a relatively small proportion of the overall exterior wall area, and it was replaced by blockwork which was then rendered. Most of the pre-existing wall area including the large expanses of the gables was cladded with timber. That timber cladding provided some protection from the elements for any items stored in the former agricultural building.
19. However, in my experience, to enable a timber cladded former agricultural building to be utilised as a dwellinghouse and meet all the relevant building regulations timber stud framework or other supplementary infill panels are necessary even if the pre-existing cladding can be retained. That framework or panels are normally constructed adjacent to the exterior frame to enable the installation of insulation, dampproof membranes, services and internal finishes. Furthermore, the floor plans on the approved drawing⁹, relating to the 2021 permission, indicate that additional walling was proposed to be constructed alongside the pre-existing frame. The 2021 permission related to the change of use of the appeal building and in my judgement that timber stud framework can reasonably be considered to form part of the operational development involved in the conversion of a building.
20. Moreover, officers from the Council appear to have monitored the development and taken photographs, including in January 2022, at a time when the timber

⁸ Appendix 3 Council's Statement of Case

⁹ Drawing No: AD10

cladding was not in place and the Council states that it was apparent the blockwork had been replaced. There is no evidence to indicate that the Council raised any concern that the operational development taking place on the former agricultural building went beyond 'conversion' prior to the dwellinghouse being occupied. I consider that this supports my finding that the operational development, whilst extensive, did not go beyond what might sensibly or reasonably be described as a conversion.

21. Additionally, other planning applications on the adjacent agricultural buildings were being determined at a similar time. In June 2022 planning permission¹⁰ was granted by the Council for '*change of use of Barn E to one dwellinghouse and associated works*'. From the evidence before me, it appears that Barn E was a former agricultural building built from similar materials and to a similar design as the appeal building. The approved drawings relating to that planning permission show that the majority of the exterior walls and the roof were to be clad in Siberian Larch. The Council now states that this planning permission can reasonably be described as the replacement of Barn E with a new building.
22. Nevertheless, the planning permission states that it permits a change of use of Barn E and the associated delegated report states that '*this application is seeking planning permission to convert the building into a dwelling but with alterations to Barn E which go beyond the scope of the extant Class Q*'. Therefore, at that time the Council considered that the proposed development relating to Barn E constituted a conversion, and they determined the planning application on that basis.

Conclusion

23. For the reasons given above, I therefore find, on the balance of probabilities, that the alleged erection of a dwellinghouse through the rebuilding of a former agricultural building has not occurred as a matter of fact and degree. The description of the breach of planning control in the enforcement notice is therefore incorrect. Based on my findings above, I consider that the breach of planning control is the change of use of an agricultural building into 1 no. dwelling including associated operational development. I have considered whether I could correct the description of the allegation through section 176(1) of the 1990 Act. That section states that I can correct or vary the terms of the EN if I am satisfied that it will not cause injustice to the appellant or the local planning authority. However, I consider that it is highly likely that the appellant may have made differing grounds of appeal including a ground (a) appeal regarding that allegation as corrected. As such, the correction would cause injustice to the appellant.
24. The matters alleged in the EN have not occurred and the appeal on ground (b) therefore succeeds. Since the notice cannot be corrected without injustice, it must be quashed. In these circumstances the appeals under grounds (d), (f) and (g) do not fall to be considered.

D Boffin

INSPECTOR

¹⁰ Ref No: 22/01039/FUL