



Appeal Decisions

Site visit made on 27 January 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal A Ref: APP/V2255/C/20/3256509

Building at Rushett, Stables Rushett Lane, Norton, FAVERSHAM, ME13 0SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Meldwyn Douglas Clifford Petherick against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 26 June 2020.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Building from commercial to use as a single dwellinghouse.
- The requirement of the notice is to cease the use of the Building as a single dwellinghouse.
- The period for compliance with the requirement is twelve months.
- The appeal was made on the ground set out in section 174(2)(a) 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.

Appeal B Ref: APP/V2255/W/20/3261861

Rushett Stables, Rushett Lane, Norton, FAVERSHAM, ME13 0SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs D Petherick against the decision of Swale Borough Council.
- The application Ref 19/504418/FULL, dated 30 August 2019, was refused by notice dated 5 November 2019.
- The development proposed is the change of use from B1 commercial use of property to part residential.

Decisions

Appeal A - APP/V2255/C/20/3256509

1. It is directed that 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.

Appeal B - APP/V2255/W/20/3261861

2. The appeal is dismissed.

Procedural Matters

3. A revised National Planning Policy Framework (the Framework) came into force in July 2021, after the appeals had been submitted. Other than a change to the relevant paragraph numbers, the revised Framework does not materially alter the approach in respect of the main issue raised in these appeals and therefore the main parties have not been prejudiced by its publication.

APP/V2255/C/20/3256509 & APP/V2255/W/20/3261861

4. At the site visit the appellant declined to give the Inspector access inside the appeal building. Both parties agreed that the internal layout of the building is as indicated on the drawings submitted with planning application Ref: 19/504418/FULL, subject of the s78 appeal.

The Enforcement Notice

5. The alleged breach of planning control is the 'change of use of the building from commercial to use as a single dwellinghouse'. The appellant states that an office and toilet space in the building is retained as B1 commercial use. It appears to me that, though the appellant only formally cited ground (a), this comment is in essence a hidden appeal on ground (b) that those matters [stated in the enforcement notice] have not occurred. I shall deal with ground (b) before considering the ground (a) appeal.

Appeal A on ground (b)

6. The appeal building was originally erected as stables and forms part of a larger site from which Mr Petherick has operated his business for many years, described as "a contracting business using his own machinery for earth and tree works and also a building business that restores and repairs barns".
7. The planning history includes an appeal decision dated 26 January 2016 Ref: APP/V2255/W/15/3133029 which granted planning permission for 'the change of use from stables to office and workshop B1 use.' (hereafter referred to as the 2016 Decision). The appellant relies on this decision in his submissions. Whilst I have not been provided with the approved plans, the 2016 Decision included a number of alterations to the former stable building including alterations to its roof and the insertion of a number of new windows and doors. The internal arrangements proposed a large workshop and an adjacent office area.
8. Notwithstanding the previous Inspector's comments, the Council considers that the use of the building as an office and workshop never commenced. It is undisputed by the appellant that following the 2016 Decision he undertook works to the building which reflect the drawings submitted with planning application Ref: 19/504418/FULL subject of the s78 appeal. The internal layout provides a lounge, bedroom with ensuite toilet, a kitchen/utility room, a toilet, hall, and an office with an ensuite shower/toilet. Mr and Mrs Petherick have lived in the building since 2017.
9. The appellant submits that an office and toilet are used in connection with his business. Unlike the s78 appeal which relates to the whole site, the enforcement notice relates to the building only.
10. The main purpose of the appellant's use of the appeal building is residential, being a primary use. This is reflected in the wording of the allegation. Notwithstanding, that the buildings were previously rated as office and workshop with non-domestic rates being paid from 2010, the appellant confirms that the need for a workshop became less resulting in space for residential use. Nevertheless, from all the available evidence, given the internal layout of the appeal building it is reasonable to assume that the office and toilet are ancillary to, or part and parcel of the residential use. There is little evidence to show that the appeal building is in a mixed use. The burden of proof lies with the appellant to make his case and the standard of proof is the

APP/V2255/C/20/3256509 & APP/V2255/W/20/3261861

balance of probabilities. As a matter of fact and degree, the matter alleged in the notice has occurred in the building as identified. The hidden appeal on ground (b) therefore fails.

Appeal A on ground (a) and Appeal B (s78 appeal)

Main Issues

11. The main issues are whether the appeal development in this location is acceptable having regard to its relationship to services and facilities and its effect on the character and appearance of the area.

Reasons

Location of Development

12. The appeal site is located in a hamlet of 7 dwellings accessed off Rushett Lane. It is surrounded by open countryside. The site is located outside any settlement boundary.
13. Bearing Fruits 2031 The Swale Borough Local Plan (LP) Policy ST1 sets out the broad presumption in favour of sustainable development in line with the Framework. LP Policy ST3 establishes the Council's settlement strategy and development policy that should apply in settlements and the open countryside. LP Policy CP3 seeks to deliver a wide choice of high quality homes in accordance with Policy ST3.
14. Being outside any defined settlement boundary LP Policy ST3 defines the appeal site as being in the countryside where development will not be permitted unless supported by the Framework and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value of the landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
15. I have been provided with no details regarding the scale and nature of the appellants' business or the amount of traffic generated. Whilst acknowledging that the use of the building in connection with the appellants' business will generate some traffic, a residential use in addition, results in more reliance on vehicles to provide access to facilities and services for day to day living. The introduction of a residential use may reduce car movements to and from the site as the appellants avoid the need to commute for work. However, the appellants still require access to everyday services and facilities. I have not been provided with information that leads me to conclude that such access can be gained by sustainable transport modes. Indeed, I note that the site is some distance from existing settlements such as Sittingbourne and Faversham and outside of any defined built-up boundary. Moreover, the lack of street lighting or footpath along this rural lane makes travel unlikely by foot or bicycle. It is, therefore, likely that the occupiers of the site are reliant on less sustainable transport modes for access to everyday services and facilities.
16. There are no specific policies relating to live/work units in the LP. As mentioned above, it is reasonable to assume that the office and toilet are part and parcel of the overall residential use and that their use in connection with the appellants' business is likely to be ancillary to the residential use. Even if the office and toilet were used solely in connection with the business, no evidence has been submitted to demonstrate that the business requires a live/work unit

APP/V2255/C/20/3256509 & APP/V2255/W/20/3261861

or that there is an essential need for the appellants to live/work in the same location to support the daily needs of the business.

17. Whilst the appellants state that the need for a workshop has become less and less, no cogent evidence has been submitted to demonstrate that there is no longer a demand for such a use. Moreover, the previous Inspector found that the building was suitable for an office and workshop B1 use in this rural location.
18. Thus, I consider that the building subject to the enforcement notice and the appeal site are not a suitable location for a residential use irrespective of whether it forms part of a mixed use of B1 commercial and residential. A residential use or a B1 commercial and part residential use is contrary to LP Policies ST1, ST3, CP3, DM3 and DM14. There is also conflict with the aims of the Framework in this regard.

Character and appearance

19. I acknowledge that the previous Inspector found that the appeal building in use as an office and workshop would not cause harm to the character and appearance of the rural area. However, the appeal building has a different appearance to the one approved by the 2016 Decision. Although there has been no increase in its overall size, the windows and doors that have been inserted give the building a domestic appearance. Moreover, despite the existing vegetation which partially screens the site, the residential use with its private garden area and domestic paraphernalia and associated parking has changed the rural character and appearance of the site to a harmful degree.
20. Consequently, the appeal development has a harmful effect on the character and appearance of the area. Thus, it conflicts with LP Policies DM14 and ST3 and the Framework where it requires developments to add to the overall quality of the area.

Other Matters

21. The appellants' SAMMS Mitigation Contribution Agreement for ten units or less, is not a matter determinative to the appeals. Also, I have had regard to all other matters raised, including the letters of support for the development. None of these alter my conclusions above. A lack of third-party objections is not in itself a reason for allowing development that is unacceptable.
22. I acknowledge that Mr and Mrs Petherick have lived in the area for some time. However, there is no evidence before me to suggest that the use of the site for business use only would result in security issues or unreasonable noise levels.
23. I have been provided with no cogent evidence that the appeal building has high levels of insulation and energy efficiency.

Planning Balance

24. With reference to case law (*Green Lane Chertsey (Developments) Limited v Secretary of State for Housing and Communities and Local Government, Runnymede Borough Council [2019] EWHC 990 (Admin)*), the appellants initially argued that the Council does not have a five-year land supply and then subsequently submitted that it did and therefore reference to paragraph 11 of the Framework was not necessary.

APP/V2255/C/20/3256509 & APP/V2255/W/20/3261861

25. The Council consider it has a 4.6-year supply of housing. Therefore, relevant policies for the supply of housing should not be considered up to date. In such circumstances, paragraph 11 d) ii of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have considered the appeal development in the context of sustainable development.
26. I have found that the appeal development is harmful to the character and appearance of the area and fails to comply with the aims of the Framework which recognises the intrinsic character and beauty of the countryside. However, the Framework also recognises that small and medium scale developments can make an important contribution to meeting the housing requirement of an area. However, the benefit of a contribution of a single dwelling is very small and I therefore give it little weight.
27. I find that the adverse impacts of the appeal development in this location having regard to its relationship to services and facilities and the harm to the character and appearance of the area, significantly and demonstrably outweigh the benefit of the provision of one new dwelling, when assessed against the policies in the Framework as a whole. Accordingly, I consider that the appeal development is not a sustainable form of development for either the purposes of the Framework or the development plan as a whole.

Conclusion

28. For the reasons given above, I conclude that that Appeal A should not succeed. I shall uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
29. For the reasons given above, I conclude that Appeal B should be dismissed.

Elizabeth Jones

INSPECTOR