



Appeal Decisions

Site visit made on 11 March 2008

by Alan Woolnough BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
11 April 2008

Appeal A: APP/Y3615/X/07/2053182

West Hall Farm, Church Lane, Pirbright, Woking, Surrey GU24 0JJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs Watson against the decision of Guildford Borough Council.
- The application ref no 07/P/01336, dated 21 June 2007, was refused by notice dated 16 August 2007.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The matter for which a certificate of lawful use or development is sought is described in the application as whether 'the conversion of a barn to a single dwellinghouse having commenced within five years of the grant of planning permission reference 01/P/0173, in accordance with condition 1, may lawfully be completed'.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the formal decision.

Appeal B: APP/Y3615/C/07/2046060

West Hall Farm, Church Lane, Pirbright, Woking, Surrey GU24 0JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Clive Watson against an enforcement notice issued by Guildford Borough Council.
- The Council's reference is EN/07/00242.
- The notice was issued on 11 May 2007.
- The breach of planning control as alleged in the notice is without planning permission, the partial construction of a new building.
- The requirement of the notice is to demolish the new building and remove all resulting material from the land including the foundations and dispose of the material in a lawful manner.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part on ground (g) but is otherwise dismissed and the enforcement notice upheld subject to variations.

Application for costs

1. An application for costs was made by Mr & Mrs Watson against Guildford Borough Council in relation to Appeal A. This application is the subject of a separate decision.
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Background

2. The Council granted planning permission on 20 February 2002 for the conversion of a barn at the appeal site to a single residence (ref no 01/P/01753). Condition 1 required that development be commenced before the expiration of five years. The scheme approved at that time in fact comprised the conversion of three farm buildings. The main barn would accommodate the principal dwelling on two storeys (Building A), whilst two adjacent outbuildings would provide two storey residential accommodation ancillary to the main dwelling and a single storey domestic store (Buildings B and C respectively).
3. Following the discharge of the only condition precedent (condition 8, concerning landscaping) on 23 November 2006, a lean-to structure adjoining Building B was demolished and cow stalls were removed from within that building. The Appellants advise that these works took place on 5 February 2007, which date is not disputed by the Council. However, at this point Building B began to collapse. The Appellants proceeded to demolish Building B completely and replace it with a new construction, now partially built and the subject of Appeal B. The main parties agree that complete demolition and rebuild falls outside the scope of the 2002 planning permission. I have not been advised that any works pursuant to that permission have been carried out to Buildings A or C.

Procedural matter

4. The evidence provided by the parties does not enable me to deduce with certainty the precise form of conversion that was eventually approved for Building B. The matter is clouded by discrepancies between the only 'proposed floor plans' before me that were submitted prior to the grant of planning permission, as detailed in drawing no 1639/06, and the elevations in drawing no 1639/07A approved in February 2002. Those who represented the parties at my site visit agreed between themselves that whatever was approved for Building B in 2002 had been superseded by a minor amendment to the planning permission set out in drawing no 2142/01A dated 14 September 2005.
5. However, this is not confirmed to my satisfaction by the only relevant Council document drawn to my attention, dated 23 September 2005, which merely lists certain revisions shown in that drawing which 'would be acceptable as minor amendments to the approved scheme'. This letter reads as the opinion of a Council officer rather than a formal approval. Moreover, it makes erroneous references to the omission of a door and steps from the north-east elevation of the building, rather than the north-west, and makes no mention of the alternative internal layout. The latter differs markedly from that shown in drawing no 1639/06 and is such that, unlike the earlier scheme, it could have facilitated occupation of Building B as a self-contained residential unit.
6. The materiality of this uncertainty to my determination of the appeals is tempered by the fact that Building B has, in any event, been demolished. Nevertheless, it does prevent me from drawing reliable comparison between the approved conversion of that building, whatever form that finally took, and

the partially completed structure the subject of Appeal B, insofar as detailing and type of accommodation is concerned.

7. However, having said this, it is evident that the new building, the construction of which has reached roof height, is broadly similar in scale and proportions to that which it has replaced and bears a close resemblance to the scheme depicted in drawing no 2142/01A. Moreover, the Appellant confirms in his statement on Appeal B that this building, if completed, 'is to form ancillary accommodation to serve the main dwelling which is to be provided within the main barn (Building A)' and refutes the suggestion that the Appeal B development concerns the creation of a new single dwelling.
8. This being so, I am satisfied that it would not be prejudicial to the interests of any party for me to assume that, if completed, the building the subject of the enforcement notice is intended to:
 - be similar to, albeit not entirely in accordance with, the scheme depicted in drawing no 2142/01A, to the extent that it would be reasonable to condition the prior approval of plans for the completion of the building along such lines were I minded to allow Appeal B; and
 - provide residential accommodation that would be occupied as part and parcel of a single residential unit incorporating the conversions approved for Buildings A and C, rather than as a self-contained dwelling in its own right.I shall therefore determine Appeal B on this basis.

The notice

9. The requirements of an enforcement notice must be confined to what is necessary to remedy the breach of planning control alleged to have taken place on the land in question. The requirement in section 5 of the notice the subject of Appeal B to 'dispose of the material in a lawful manner' goes beyond this remit. I shall therefore vary the notice by deleting this phrase.

The LDC appeal – Appeal A

10. The wording of the Appellants' application for a LDC is such that it could be interpreted as seeking a decision as to whether or not the conversion of Buildings A and C may be lawfully completed in circumstances where it is not disputed that the development as a whole has commenced in accordance with the 2002 planning permission. However, it is readily apparent from the Appellants' submissions on Appeal A that, in fact, the question for which resolution is sought is *whether* a commencement of development pursuant to the 2002 permission has taken place and, ergo, whether the conversion of Buildings A and C can be completed without the need for a further permission. As both main parties have approached Appeal A in this way, I am satisfied that there is no injustice to either in my considering the LDC appeal on this basis.
11. The Council contends that the demolition of the lean-to adjoining Building B and removal of the cow stalls did not constitute a material operation 'comprised in the development' for the purposes of section 56 of the Town and Country Planning Act 1990 as amended and, therefore, did not secure a commencement of development pursuant to the 2002 planning permission. It cites two principal reasons. Firstly, demolition works of this kind do not require planning permission, being exempt from the Act's definition of 'development' by reason of the Town and Country Planning (Demolition – Description of Buildings)

Direction 1995. Secondly, even if demolition is accepted as capable of being a material operation in some circumstances, it does not qualify as such in this case as the works that have taken place go well beyond the scope of the permission alleged to have been implemented.

12. I will firstly address the scope of section 56 which, at (4)(aa), specifically lists 'any work of demolition of a building' (which, by reason of section 336, includes any part of a building) as falling within the definition of 'material operation'. Moreover, in practice, very little work needs to be carried out in order to secure a material operation for the purposes of this section. In particular, there is no requirement that an operation should itself require planning permission, or even constitute development, in order to be material. This is confirmed by case law arising from the judgement in *Malvern Hills DC v SSE* [1982] JPL 439.
13. The fact that, in this case, the demolition of the lean-to and removal of the stalls was not development and did not require planning permission is therefore an irrelevance. More pertinent is whether the operations in question were comprised in the development for which permission was granted or were *de minimis*. In this regard, the removal of the leant-to is clearly indicated on the approved drawings, and had to take place in order to implement fully the planning permission in the approved manner. This satisfies me that this particular element of demolition alone fell within the scope of the permission. I also consider that the scale of such demolition, considered in isolation from what eventually occurred, was significant enough to be material rather than *de minimis*.
14. This being so, I turn now to consider whether the demolition of the lean-to and removal of the cow stalls should be considered as material operations pursuant to the planning permission, in isolation from other works that took place, or instead should be regarded as having being designed for an alternative development for which no permission existed. To this end, the main parties express conflicting opinions, which I must weigh against each other in order to determine the balance of probability.
15. The Appellants have provided what I regard as a reasoned account of the sequence of events, the accuracy of which I have no sound reason to question. It appears to me, on the balance of probability, that building collapse was caused by the removal of the masonry cow stalls, following demolition of the lean-to. At this point test holes were dug to investigate the footings and on the evidence before me it seems likely that only then, once the Appellants had obtained erroneous advice from their architects, was demolition of Building B completed and its replacement with a new structure commenced.
16. On the other hand, the Council advances little more than conjecture in attempting to substantiate its assertion to the contrary. There is no cogent evidence before me that the Appellants deliberately set out to demolish Building B in its entirety and replace it when initially undertaking work on 5 February 2007 or that this initial work was designed as part of an alternative development. Even if it was, intent should play no part in the legal appraisal of this matter, as established by *Riordan Communications Ltd v South Buckinghamshire DC* [2001] 81 P&CR 85. What evidence there is suggests to me that an attempt was made in good faith to secure a commencement just

- before the planning permission expired by carrying out work shown on the approved plans.
17. I do not dispute that what subsequently occurred fell outside the scope of the permission. However, I find no reason why this in itself should prevent operations comprised in the approved development and carried out prior to the collapse of Building B, such as the demolition of the lean-to and the removal of the cow stalls, from being considered in isolation from what happened afterwards for the purposes of section 56. Accordingly, I find case law cited by the Council arising from the judgements in *South Oxfordshire DC v SSE* [1981] 1 All ER 954 and *Handoll & Suddick v Messrs Warner Goodman & Streat* [1995] JPL 930 CA, which considered works which were not pursuant to planning permissions, to be of limited relevance to my decision.
 18. It is a fact that the component of the approved development on which commencement works were focussed, the residential conversion of Building B, can no longer be implemented. However, the three elements of the approved scheme are not, in my assessment, so integrally interdependent that that the planning permission could not be implemented in part by converting Buildings A and C. In arguing against such a prospect, the Council cites the House of Lords decision in the case of *Sage v SSETR & Maidstone BC* [2003] 1 WLR 983 HL. However, this related to a substantially different matter to that addressed by Appeal A and, in my opinion, it is wrong to interpret that judgement as precluding the partial implementation of a planning permission in the circumstances that apply in this case.
 19. Although highlighted by the Council, I find the absence of an appeal on ground (c) under the umbrella of Appeal B to have no bearing whatsoever on my determination of Appeal A. Indeed, the two appeals address materially different matters. Nor have I addressed the possibility of estoppel that the Council seeks to refute, the Appellants having made it clear that they do not pursue this point.
 20. I conclude on the balance of probability that the demolition of the lean-to adjoining Building B and the removal of cow stalls from within the latter constituted material operations comprised in the development that was approved by planning permission ref no 01/P/0175320 dated 20 February 2002. As the works took place prior to the expiry of the permission, they secured a commencement of development pursuant to that permission at the point that they were substantially underway, irrespective of what subsequently occurred. I further conclude that, consequently, the 2002 planning permission remains valid insofar as it relates to Buildings A and C and that the conversion of those remaining buildings may therefore proceed in accordance with the approved plans. Accordingly, Appeal A succeeds.
 21. Section 191(4) of the 1990 Act as amended allows the Council to modify the terms of an LDC application and consider giving a certificate in somewhat different terms so as to accord with the facts and evidence. I am similarly empowered and shall therefore, in issuing a Certificate, amend the wording used by the Appellants in the original application so as to reflect properly the case that both sets of appeal submissions have addressed.

The appeal on ground (a) – Appeal B

Main issues

22. The appeal site is within the Metropolitan Green Belt and lies approximately 400 metres from the Pirbright Common Site of Special Scientific Interest, which forms part of the Thames Basin Heaths Special Protection Area (TBHSPA). I therefore consider the main issues in determining the ground (a) appeal to be:-
- whether the erection of the partially-constructed building the subject of Appeal B constitutes inappropriate development harmful to the function and purpose of the Green Belt;
 - the effect of that building upon the openness of the Green Belt;
 - the implications of that building and its intended use for nature conservation interests associated with the TBHSPA; and
 - whether there are other considerations which clearly outweigh the harm to the Green Belt and any other harm, thereby justifying the Appeal B development on the basis of very special circumstances.

Planning Policy

23. The Development Plan for the area includes the Surrey Structure Plan (SP), adopted in December 2004, and the Guildford Local Plan (LP), adopted in January 2003. The relevant policies from both plans have been saved pursuant to Directions dated 21 & 24 September 2007, issued by the Secretary of State under Paragraph 1(3) of Schedule 8 to the Planning and Compensation Act 2004, and thus continue to have effect.
24. SP Policy LO4 and LP Policy RE2 both address development proposals in the Green Belt. The former also seeks to protect the openness and intrinsic qualities of the countryside. LP Policy H9 sets out criteria expected to be met by extensions to dwellings in the countryside, whilst SP Policy SE4 requires development to contribute to improvements to the quality of rural areas, in general accordance with national policy in Planning Policy Statement (PPS) 7: *Sustainable Development in Rural Areas*. It also seeks to ensure that the design of buildings, including the way in which they integrate with their surroundings, is of a high standard.
25. LP Policy NE1 aims to safeguard the nature conservation value of the TBHSPA, in accordance with national policy set out in PPS9: *Biodiversity and Geological Conservation* and the associated Circular 06/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*. The Council's *Thames Basin Heaths Interim SPA Avoidance Strategy*, published in September 2006, seeks to give effect to these. However, I have not been advised that the strategy has been formally adopted as supplementary planning guidance or has been the subject of public consultation, and this tempers the weight that I attach to it.

Inspector's reasoning

Green Belt

26. SP Policy LO4 and LP Policy RE2 give effect to national policy included in Planning Policy Guidance Note 2: *Green Belts* (PPG2) that the construction of

new buildings within the Green Belt is inappropriate other than for a number of specified purposes, and that there is a general presumption against inappropriate development. Paragraph 3.4 of PPG2 sets out the range of new building development that is not inappropriate in the Green Belt. This includes the limited extension of existing dwellings, provided that this does not result in disproportionate additions over and above the size of the original building, as reiterated in LP Policy H9.

27. The Appellant argues that the appeal scheme falls outside the definition of inappropriate development by reason of this exemption. Due to an apparent proof-reading error in paragraph 5.40 of the Local Plan, it is not clear to me whether or not local policy should be interpreted as relaxing the terms of PPG2 so as to exclude domestic outbuildings, in some circumstances, from the definition of inappropriate development. However, irrespective of this, it is apparent that, once completed, the partially-constructed replacement for Building B is intended to adjoin the converted barn, Building A, and thus, if erected post-conversion would qualify as an 'extension'.
28. Nevertheless, notwithstanding my conclusions on Appeal A, the fact remains that, for the time being, there is no dwelling to which this structure would be incidental to. I must therefore regard it, for the purposes of applying the provisions of paragraph 3.4 of PPG2 and LP Policy H9, as a freestanding outbuilding that is not ancillary to anything. None of the exceptions listed in paragraph 3.4 justify the erection of such a building. I accept that the recent pre-existence of a structure of similar size and proportions to the Appeal B development limits any adverse consequences for the openness of the Green Belt or the general perception of the extent, as opposed to character, of built development on the appeal site. However, these attributes do not secure exemption from the general thrust of paragraph 3.4.
29. Accordingly, I conclude that the partially constructed building amounts to inappropriate development in the Green Belt, which paragraph 3.2 of PPG2 records is, by definition, harmful. In apparent anticipation, the Appellant seeks to portray such reasoning as 'a slavish application of Green Belt policy'. However, I do not consider that I or any other determining authorities enjoy sufficient discretion to interpret the relevant national advice less stringently. More properly, I shall consider later in my reasoning whether the arguments put forward by the Appellant in seeking preclusion from the category of inappropriate development may, instead, justify such development on the basis of very special circumstances.

Nature conservation

30. I have already concluded in considering Appeal A that planning permission still exists for the conversion of Buildings A and C to a single residence. Moreover, the Appellant has made it clear that, if completed, the Appeal B development is intended to function as part and parcel of that single unit. As I would be able to condition a grant of planning permission accordingly, I am satisfied that allowing Appeal B would not result in the creation of an additional dwelling over and above that which already has approval.
31. I find that, in these circumstances, the mitigation requirements of the Council's *Interim SPA Avoidance Strategy*, which is concerned only with additional units

of residential accommodation, do not apply. I therefore conclude that no significant harm to the nature conservation interests of the TBHSPA would result from the completion of the building or its subsequent use and that there is no conflict with the objectives of LP Policy NE1, PPS9 or Circular 06/2005.

Other considerations

32. I turn now to assess whether there are any considerations sufficient to clearly outweigh the harm arising from inappropriate development. The Appellant places emphasis on the fact that a building which had the benefit of planning permission for residential conversion has been replaced with a new structure of similar size, footprint and floorspace. However, although the Appellant plainly regards it as such, it would not be correct for me to accept this new-build scheme as the first stage of development leading to the overall conversion of the main building and store. As I have previously concluded, this development falls outside the scope of the conversion permission.
33. On the contrary, I take the view that the complete demolition of the latter has heralded a new chapter in the planning history of the appeal site, such that the principle of a replacement building, irrespective of its similarity to the permitted conversion, should not be taken as justified as a matter of course. Moreover, I find it significant that, despite the fact that demolition of the adjoining lean-to secured a commencement, an absence of footings casts serious doubt on whether Building B could ultimately have been converted in accordance with the 2002 permission in any event. Although the Appellant considers it reasonable to expect outbuildings within the curtilage of a dwellinghouse, there is no such provision in PPG2 as far as development in the Green Belt is concerned.
34. The Appellant also draws my attention to the provisions of LP Policies RE2 and H9 insofar as they relate to the erection of extensions to existing dwellings in the Green Belt. I accept that, although there is no 'existing dwelling' on the appeal site, the conversion of Buildings A and C could change this. I also acknowledge that these policies endorse the erection of residential extensions in the Green Belt subject to compliance with certain criteria, some of which would be met were the appeal scheme for an ancillary addition to an already completed dwelling.
35. In addition, I find that the detailed design of the building depicted in drawing 2142/01A, which a completed appeal development could be conditioned to resemble closely, is generally in keeping with the detailing of the approved Building A conversion. There is an intention to re-use materials from the demolished building, and the fact that the new structure is not prominent in views from the public highway limits its impact on the character and appearance of the area such that, in terms of visual impact, there is no serious conflict with SP Policy SE4 or PPS7. I also acknowledge the probability that the building, once completed, would be more attractive than the demolished lean-to, albeit not necessarily more so than a converted Building B.
36. However, the considerations that apply to residential conversions of existing buildings in the countryside and Green Belt as opposed to new-build development are materially different in respects that go well beyond matters of external appearance, hence the differences in the national and local policies

that apply to them. I find it highly significant that the main dwelling to which the 'extension' would be ancillary would, in this case, be a barn conversion as opposed to a structure originally erected for residential purposes. In particular, I attach significance to the supporting text associated with LP Policy RE10, which governs the re-use of rural buildings for residential purposes. Paragraph 10.41 records that 'extensions subsequent to the initial conversion are likely to detract from the building's character'.

37. In the light of this, I think it improbable that the Council or, as the case may be, an Inspector, would regard a proposal for a post-conversion extension to Building A as being in accordance with LP Policy H9. On the contrary, I think it far more likely that such a scheme would be held, in principle, to conflict with those criteria which require that there be no unacceptable effect on the character of the dwelling or on the existing context or character of adjacent buildings. Applying this finding to the slightly different situation before me, I regard the appeal scheme in the same way. I note that paragraph 10.41 further advises that small extensions may be acceptable as part of a conversion scheme providing that they do not alter the form, bulk and general design of the building to an unacceptable degree. However, the scale of the appeal development is such that I do not consider all of those requirements to be met in this case.
38. As I have already concluded, the absence of a material impact on openness and of any significant threat to nature conservation interests are both positive attributes of the scheme. I note, albeit with some surprise, that neither the Appellants nor their architects were aware that the appeal development required an additional planning permission. I also acknowledge that LP Policy RE9, being concerned with the conversion of rural buildings for non-residential purposes, is of limited relevance.
39. However, I find neither these nor any other matters, whether considered individually or cumulatively, to outweigh the harm to the Green Belt arising from inappropriate development. I therefore conclude that the development is not justified by reason of very special circumstances and is contrary to SP Policy LO4, LP Policy RE2 and national policy in PPG2.

The appeal on ground (g) – Appeal B

40. The Appellant contends that a period of two months allows insufficient time to tender and let contracts to undertake the removal of the building, bearing in mind the desire to salvage as much of the building materials as possible to minimise financial loss. I acknowledge that the Council has set a tight time schedule which would be difficult for the Appellant to meet, but find no justification for his alternative suggestion of six months. Four months appears to me to be a reasonable compromise and I shall vary the enforcement notice accordingly. The appeal on ground (g) therefore exceeds in part.

Conclusions

41. For the reasons given above and having regard to all other matters raised, I conclude as follows. With regard to Appeal A, I conclude on the evidence available to me, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed completion of the conversion of Buildings A and C to a single residence in accordance with planning permission

ref no 01/P/01753 dated 20 February 2002 was not well-founded and that the appeal should succeed insofar as it relates to that operation.

42. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended, varying the description of proposed development pursuant to section 191(4) of the 1990 Act as amended so as to accord with the available facts and evidence. I further conclude that Appeal B should succeed in part in relation to ground (g) but should otherwise be dismissed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal decisions

Appeal A: APP/Y3615/X/07/2053182

43. I allow the appeal and attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Appeal B: APP/Y3615/C/07/2046060

44. I direct that the enforcement notice be varied by: -
- (i) in section 5, the deletion of the words ' and dispose of the material on a lawful manner'; and
 - (ii) in section 6, the replacement of the words 'Two months' with the words 'Four months'.
45. Subject to the above variations, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Alan Woolnough

INSPECTOR



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 21 June 2007 the proposed operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The demolition prior to 20 February 2007 of a lean-to structure adjoining the building hatched in black and marked 'Building B' on the plan attached to this certificate constituted a commencement of development pursuant to planning permission ref no 01/P/01753 dated 20 February 2002 for the purposes of section 56 of the Town and Country Planning Act 1990 as amended.

Signed

Alan Woolnough

Inspector

Date 11th April, 2008.

Reference: APP/Y3615/X/07/2053182

First Schedule

The completion of the conversion of the buildings cross-hatched in black and marked 'Building A' and 'Building C' on the attached plan to a single residence in accordance with planning permission ref no 01/P/01753 dated 20 February 2002.

Second Schedule

Land at West Hall Farm, Church Lane, Pirbright, Woking, Surrey GU24 0JJ

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 as amended.
 2. It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
 3. This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
 4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness
-



Plan 11th April, 2008.

This is the plan referred to in the Lawful Development Certificate dated:

Alan Woolnough

Alan Woolnough BA(Hons) DMS MRTPI

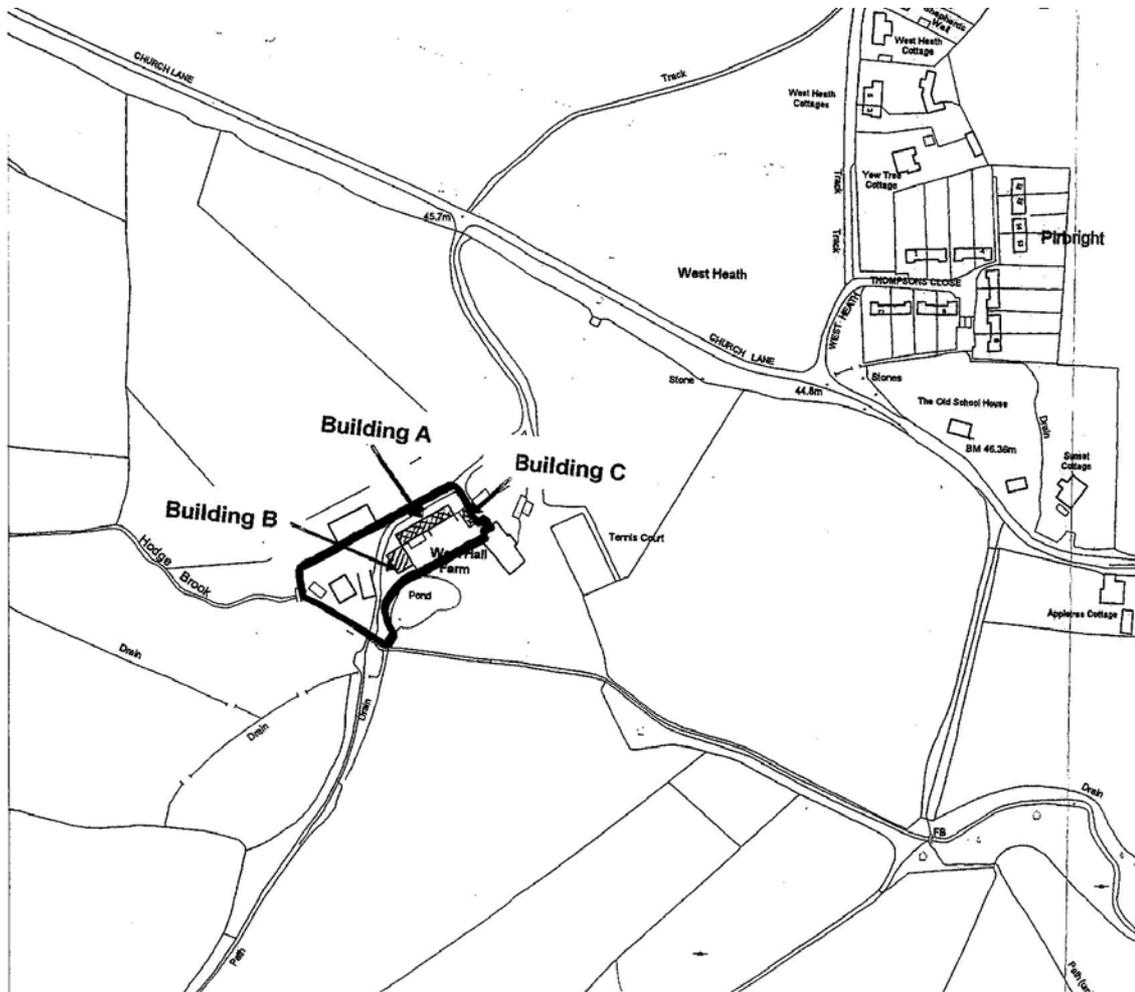
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Scale not stated





Costs Decision

Site visit made on 11 March 2008

by **Alan Woolnough BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
11 April 2008

Costs application in relation to Appeal APP/Y3615/X/07/2053182 West Hall Farm, Church Lane, Pirbright, Woking, Surrey GU24 0JJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Watson for an award of costs against Guildford Borough Council.
- The appeal was against the Council's refusal to grant a certificate of lawful use or development (LDC) for the completion of the conversion of a barn to a single residence pursuant to planning permission ref no 01/P/01753.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Application

1. The application is made with reference to paragraph 10 of Circular 8/93 and Annexes 3 and 7 to that Circular. The Applicants seek a full award of costs related to unnecessary expense resulting from the Council's unreasonable behaviour in refusing to grant a LDC.
2. As the application is made in writing, I need not summarise the Applicants' case here. Although the Council's observations on the application were invited, it did not respond within the time period allocated.

The Inspector's Conclusions

3. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. The Circular advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
4. The Council refused to grant a LDC for two reasons. The first of these was that the demolition cited by the Applicants as a commencement pursuant to the relevant planning permission, ref no 01/P/01753, was not a material operation under section 56(4) of the Town and Country Planning Act as amended, on the basis that it did not in itself amount to development requiring planning permission. However, this was an erroneous interpretation of the relevant legislation, for the reasons explained in my decision on the appeal.
5. In fact, as the legal advice subsequently obtained by the Council acknowledges, little is required to establish the initiation of development. Indeed, section 56 itself confirms that demolition may be a material operation, and case law establishes that such an operation need not in itself amount to development, let alone require planning permission in its own right. I therefore find that the Council has failed to substantiate its refusal on this ground.

6. The second reason for refusal contends that such work as may have been carried out, including the demolition cited by the Applicants, was an operation designed for a development other than that which is the subject of planning permission ref no 01/P/01753. In defending this, the legal advice obtained by the Council effectively portrays the entire sequence of demolishing the lean-to, then demolishing the building to which it was attached and then replacing that building with a new structure as a single operation.
7. In doing so, it correctly opines that this sequence of events, taken as a whole, did not fall within the scope of the relevant planning permission. However, the advice concentrates thereafter on the fact that the erection of a new structure was unlawful, which no party has contested. In following this approach, it skates over the facts that the first part of that sequence was, in itself, a material operation comprised in the development the subject of the relevant permission and was not *de minimis*.
8. There is no reasoned argument before me as to why that initial element of demolition, which concerned a lean-to structure readily distinguishable from the building it adjoined, should not be considered in isolation from subsequent events. Indeed, the concept of what the operation in question was 'designed for' is no different to the concept of 'intent', which the Council's legal advice correctly identifies as irrelevant as a matter of law. I therefore find that the Council has also failed to substantiate its second ground of refusal.
9. To conclude, I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated in this case, by reason of the Council's failure to substantiate properly either of its grounds for refusing to grant a LDC. I therefore find a full award of costs to the Applicants to be justified.

The Formal Decision and Costs Order

10. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended and all other powers enabling me in that behalf, I HEREBY ORDER that Guildford Borough Council will pay to Mr & Mrs Watson the full costs of the proceedings relating to the appeal, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal against a refusal to grant a certificate of lawful use or development for the proposed completion of the conversion of a barn to a single residence pursuant to planning permission ref no 01/P/01753 on land at West Hall Farm, Church Lane, Pirbright, Woking, Surrey GU24 0JJ.
11. The Applicants are now invited to submit to Guildford Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Alan Woolnough

INSPECTOR
