



# Appeal Decision

Site visit made on 20th February 2007

by **Clive Whitehouse** BA(Hons) MCD MRTPI

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk)

Date 2<sup>nd</sup> April 2007

**Appeal Ref: APP/R1845/C/06/2019650**

**The Old Forge, Riverside Cottage, Lea Lane, Cookley, Kidderminster DY10 3RL**

- 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 G Key against an enforcement notice issued by Wyre Forest District Council.
- The notice was issued on 31<sup>st</sup> May 2006.
- The breach of planning control as alleged in the notice is: without planning permission, the construction of new walls and a new roof to the building shown hatched blue on the plan.
- The requirements of the notice are: (i) Demolish the rebuilt walls indicated with a green line on the plan and remove the roof of the building shown hatched blue on the plan. (ii) Remove from the land all building materials and rubble arising from compliance with requirement (i).
- The period for compliance with the requirements is 3 months for requirement (i) and 4 months for requirement (ii).
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.**

## Background and Procedural Matters

1. The appeal relates to a brick building in a rural location that, as its name implies, had its origins as industrial premises, although the Council regards its current lawful use as being for agricultural storage. Various alterations have been carried out to the building and its surroundings, some with planning permission, and some without. Although no change of use has occurred, the nature of the incomplete works to the building and the ornamental garden-style walls and paving outside appear to me to have a domestic character. I think that the Council's suspicions that the works have been carried out in the hope of a future residential conversion are probably well founded. At the time of my visit the property was for sale along with the appellant's house at Riverside Cottage.
2. Following my site inspection I sought clarification on a number of matters, since I found it difficult to reconcile the terms of the enforcement notice, which requires the demolition of more than half of the building, with its planning history and current appearance.
3. In the light of the further representations, the agreed sequence of events relevant to the case can be summarised as follows. Planning permission was granted in 1999 for the erection of an external brick skin around the whole of the old building (application No.WF.819/98) as a means of arresting its deterioration. Some time after the outer brick walls had been completed, parts of the original brick walls were replaced with internal blockwork walls in

the east, north and part of the south elevations. During 2005 the walls on all four sides of the building were increased in height by about 1m and a new flat roof constructed. In December 2005 an adjoining retaining wall collapsed and brought down the south east corner of the building. Planning permission for the reinstatement of that section was refused in April 2006, although the work had by then been completed.

4. The appellant now disputes that the Council is in a position to require the demolition of the permitted external brick wall or the parts of the internal walls that have been replaced with blockwork. I regard these representations, and the Council's further comments, as amounting to an appeal on ground (c), which I deal with below.

#### **Appeal on Ground (c)**

5. The appellant accepts that the increased height of the building and the new roof are unauthorised, but contends that the outer leaf of brickwork permitted by permission No.WF.819/98 is lawful and that the replacement or reconstruction of parts of the original walls does not constitute development by virtue of section 55(2)(a) of the Act.
6. The Council's position is that the brick skin is a cosmetic addition and that the replacement of parts of the original walls by blockwork is a building operation and thereby development subject to planning control. On this basis, the Council confirms that the enforcement notice is directed not only at the increase in the height of the building but at all those parts where the original walls have been replaced, including the corresponding outer leaf of brickwork. The effect would be the demolition of most of the building with the exception of the west wall and part of the south wall at their original height.
7. There is no dispute that the outer leaf of brickwork was erected in accordance with the 1999 permission. The outer walls appear to me to be properly constructed with some degree of structural integrity and I do not accept that they are mere "cosmetic additions". The 1999 permission contains no condition requiring the original brick walls to be retained as an inner leaf. The fact that parts of the original walls have been replaced does not in my view alter the status of the external walls. I conclude that the external walls built in accordance with the 1999 permission are lawful.
8. Section 55 of the Act defines the meaning of "development" for planning purposes. Sub section (2) states that works for the maintenance, improvement or other alteration of any building shall not be taken to involve development where the works affect only the interior of the building or do not materially affect its external appearance.
9. In my opinion, once the outer leaf of new brickwork was completed, the Council lost its ability to control the replacement of the original walls with blockwork. By that stage the works to the original walls had become internal and had no material effect on the external appearance of the building. I therefore conclude that the replacement of the original brick walls with blockwork is not development and is not subject to planning control.
10. The appellant has re-built the collapsed south east corner using the same type of brick. I found it hard to detect any difference on site between the re-built section of wall and the part constructed in accordance with the 1999 permission. In my assessment this reconstruction is in the nature of repair work that has had no material effect on the external appearance of the building. I conclude under the terms of section 55(2)(a)(ii) that the

reconstruction up to the height of the original wall is not development for which planning permission is required.

11. From the foregoing, I conclude that there has been no breach of planning control in respect of the walls up to their pre 2005 height that are marked by a green line on the plan attached to the notice. The appeal on ground (c) succeeds to that extent and I will correct the allegation and vary the requirements of the enforcement notice accordingly. The notice and the appeal on ground (a) will then relate to the raising of the height of the walls and the new roof.

### **Appeal on Ground (a)**

#### ***Planning Policy***

12. The appeal building is in the West Midlands Green Belt, a Conservation Area based on a section of the Staffordshire and Worcestershire Canal and a Landscape Protection Area. The development plan for the area is the Wyre Forest District Local Plan, adopted in 2004 and the Worcestershire County Structure Plan, adopted in 2001. Local plan policies GB1 and GB2 and structure plan policies D38 and D39 maintain strict control over new building development in the Green Belt. Building is restricted to that necessary for agriculture and other narrowly defined purposes. Development plan policies closely reflect national guidance for the protection of Green Belts in Planning Policy Guidance: Green Belts (PPG2).
13. Policy CA.1 requires development in Conservation Areas to preserve or enhance or otherwise harmonise with the special character and appearance of the area. Policy LA.2 resists developments that would have a significant adverse effect on landscape quality or character of the Landscape Protection Area.

#### ***Main Issues***

14. I consider the main issues to be (i) whether the development amounts to inappropriate development in the Green Belt, and if so whether there are other material considerations that clearly outweigh the harm by reason of inappropriateness and any other harm, and (ii) the effect on the character or appearance of the Conservation Area.

#### ***Green Belt***

15. No case has been advanced that the increased height and new roof, are required for agricultural purposes or for any of the other purposes for which building works may be permitted in the Green Belt. Indeed the internal works, which include an incomplete first floor, make the building less suitable for its lawful purpose. I conclude that the unauthorised works are inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful and very special circumstances must be demonstrated to overcome the presumption against such development. PPG2 states that the most important attribute of Green Belts is their openness.
16. The appellant contends that the works to the building have not increased its footprint or its visual impact and have resulted in no detriment to the Green Belt. One of the Council's photographs taken in 1998 shows the building before the brick skin was added and the approved drawings for the 1999 permission show the permitted height of the renovated building. I consider that the recent additions have made the building noticeably bulkier.

Although the footprint has not been enlarged, I consider that its increased height and bulk has a negative effect in reducing the sense of openness of the Green Belt. I conclude that no very special circumstances have been demonstrated sufficient to overcome the presumption against inappropriate development and the harm to the openness of the area.

### **Conservation Area**

17. The Conservation Area includes the canal structures and the scattering of old buildings along its course. The appellant says the Old forge is probably over 100 years old and is an established part of the canal-side scene. From the photographic evidence the original building was of a very utilitarian nature with an irregular window arrangement and a flat roof. This appearance was largely maintained when the brick skin was added. In my opinion the additional brickwork and raised roof have compounded the poor design of the building, as well as making it more obtrusive. I consider that the increase in height conflicts with the requirements of policy CA1, and I conclude on the second main issue that the alterations are detrimental to the character and appearance of the Conservation Area.
18. The requirements relevant to the Landscape Protection Area add little in this case to the considerations necessary within the canal-side Conservation Area.

### **Conclusions**

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application. The effect of compliance with the notice will be to return the building to its size and appearance after the brick skin was added in accordance with the 1999 permission.

### **Formal Decision**

20. I allow the appeal on ground (c) insofar as it relates to the external walls that were erected in accordance with the 1999 planning permission; the corresponding blockwork inner leafs and the re-built south east corner up to the original height of the walls. Accordingly, I direct that the allegation in the enforcement notice be corrected by deleting paragraph 3 and substituting the following paragraph.
21. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL  
  
Without planning permission, the increase in the height of the walls by approximately 1m and the construction of a new roof to the building shown hatched blue on the plan.
22. I further direct that the notice be varied by the deletion of sub-paragraph 5(1) and the substitution of the following sub-paragraph.

#### **WHAT YOU ARE REQUIRED TO DO**

Remove the roof of the building and reduce the height of the walls to the height shown on the drawings approved under planning permission WF.819/98. Reinstate the flat roof at the height shown on the drawings approved under planning permission WF.819/98.

23. Subject to these corrections and variations I dismiss the appeal, uphold the enforcement 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.

*Clive Whitehouse*

INSPECTOR