

APPEAL BY ALEKSANDRA TOSOVA AGAINST AN ENFORCEMENT NOTICE ISSUED BY THE COUNCIL FOR “WITHOUT PLANNING PERMISSION, THE CARRYING OUT OF OPERATIONAL DEVELOPMENT COMPRISING THE RECONSTRUCTION OF A BUILDING FOLLOWING PARTIAL DEMOLITION TO CREATE A NEW BUILDING”, AT MOSS HOUSE FARM, EARDLEY END ROAD, BIGNALL END

Enforcement Ref. **17/00062/207C2**

Appeal Decision **The appeal on ground (b) does not succeed but the appeal on ground (a) does succeed and planning permission for the development as described in the notice is granted**

Date of Decision **31 January 2022**

Appeal Decision

The appeal on ground (b)

The appellant argues that the alleged breach of planning control has not occurred as a matter of fact.

Having regard to the nature, scale and extent of the building operations that have taken place, the Inspector was satisfied that the works go beyond alterations and additions. All the evidence points to the likelihood that the building operations carried out have resulted in the reconstruction of a building following partial demolition to create a new building. The matters alleged have in fact occurred and ground (b) therefore fails.

The appeal on ground (a) and the deemed planning application (the DPA)

Planning permission is sought for carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building. The Inspector identified the main issues to be as follows:

- Whether the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building amounts to inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies and
- the effect of the development on the openness of the Green Belt and purposes of including land within it
- Whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other consideration. If so, would this amount to the very special circumstances required to justify the development.

Inappropriate development

The Inspector found that the appeal building cannot be in the same use as the previous building as that building no longer exists. Even if that were not the case, the interior of the appeal building is a shell and has never been occupied as a dwelling and the appeal building does not therefore have a current use for comparison purposes. The building does not fall within Paragraph 149 d) of the Framework as it is not a replacement building and it has no current use, and any previous use was lost by way of comparison as the original part of the barn no longer exists.

The appellant considers that the development falls within the exception contained in paragraph 149 c) namely the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. However, as the extent of the works go beyond extensions or alterations of a building and have resulted in a new building, this exception does not apply, and nor do any exceptions stated in the Framework. The development for which planning permission is sought constitutes inappropriate development in the Green Belt.

Effect on openness and purposes

The development replaces the longer arm of the original barn that formed a single L-shaped building of the same footprint and a similar height. There is a difference in the height of the development but this is slight, which has a very limited impact on openness both spatially and visually. Overall, the Inspector found the development to have limited harmful effect upon openness and the purposes of designating land inside the Green Belt given the site's location.

Other considerations

The steps required by the notice would, potentially, leave half of a barn standing, which does not achieve a useful purpose. Whilst some original features have been lost, the development, albeit incomplete, carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building is acceptable on planning terms.

The Inspector considered that demolishing part of a barn is likely to create significant visual harm to the landscape and permanently remove the longer arm of a historic barn. Substantial weight is attached to these considerations.

The loss of the appeal building will leave the appellant without their future home and no means to repay all the family and friends who have loaned them money over the years. Whilst the appellant has not been able to occupy any part of the barn as a family home, she has continued to rent elsewhere at additional long term expense. The Inspector attached significant weight to the personal circumstances of the appellant and the history of unfortunate events which have led to this appeal.

Green Belt Balance

Although the loss in openness is limited there is harm to openness. The identified Green Belt harms carry substantial weight.

On the other side of the scales, the Inspector attached very substantial weight to the reasons given to justify the partial demolition of the existing building and explanation justifying the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building. The arguments about the design, overall size and scale of the building attract substantial weight in favour.

There is no evidence to cast doubt on the appellant's personal circumstances and the Inspector attached significant weight to the potential consequences should the enforcement notice be upheld. She found that the other considerations in this case, individually or cumulatively, clearly outweigh the harm identified. Looking at the case as a whole, she considered that very special circumstances exist which justify the development.

Formal decision

The appeal on ground (a) is allowed, the enforcement notice is quashed and planning permission is granted for the carrying out of operational development comprising the reconstruction of a building following partial demolition to create a new building.

Recommendation

That the appeal decision be noted.