
Appeal Decisions

Site visit made on 8 August 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 6 September 2016

Appeal A Ref: APP/N4720/C/15/3141176

Appeal B Ref: APP/N4720/C/15/3141177

Land at 1A Kings Road, Bramhope, Leeds LS16 9JW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Julie Lowes (Appeal A) and Mr James Lowes (Appeal B) against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 10 November 2015.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agricultural land to use for the purposes of domestic garden associated with the dwellinghouse known as 1A Kings Road, Bramhope, Leeds and the erection of an outbuilding and domestic paraphernalia associated with that building.
- The requirements of the notice are to:
 - (1) Cease the use of the land for the purposes of domestic garden in association with the dwellinghouse, 1A Kings Road, Bramhope, Leeds.
 - (2) Remove from the land all domestic garden structures, furniture and associated paraphernalia, including the timber structure and hard standing they are sitting on.
 - (3) Backfill the excavated areas with soil suitable for meadow/grass land and level the land to the level as existed prior to the unauthorised change of use, and seed with a meadow/grass seed mix.
 - (4) Define the boundary between the domestic garden and the land enforced against by the erection of a timber fence no more than 2.0 metres in height or the planting of a hedge consisting of shrubs and/or bushes of native British species. The boundary between the domestic garden and the land enforced against is shown for identification on the plan attached to the notice marked with a blue line.
- The period for compliance with the requirements is: Step (1) is one month and (2) is three months, (3) within the first planting season after compliance with step (2), and step (4) is following completion of step (3) and no later than 31 March 2016.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the initial appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld subject to corrections.

Procedural matters

1. An initial appeal on ground (b) was made on 22 December 2015. On 3 February 2016 the appellants added ground (c) and (f). As there is significant overlap in what are known as the legal grounds of appeal, I shall combined ground (b) and (c).
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2. In presenting their respective arguments, the appellants and interested parties have referred to matters that are best placed under ground (a) - planning merits. Amongst other things matters such as precedent already set in the area for similar alleged development, and whether local and national planning policy is satisfied. I am afraid that all of these matters are not pertinent to this appeal. This is because there is no deemed planning application for my determination.

Matters concerning the notice

3. For greater precision, the allegation should state a material change in use of the land to reflect section 55(1) of the Act. The words *domestic garden* should be replaced with *residential use*, because that description accurately reflects the nature of the use of the land; there is no planning land use as *domestic garden*. Reference to the appeal property in the allegation is also superfluous. It does not automatically follow that the notice is fundamentally flawed, because the matters that appear to the council as constituting a breach of planning control are generally stated. The envisaged corrections will not alter the intention behind the notice and it will not undermine how it has been interpreted. If the notice is upheld the requirements will be corrected to ensure consistency with the allegation. I am therefore satisfied that no injustice to any party arises from any of these corrections. I shall correct the notice.

Ground (b) and (c)

4. The onus of proof is firmly on the appellants, with the standard of proof being the balance of probabilities.
5. No. 1A is a semi-detached property situated at the end of a row of dwellings. It includes garden to the front, side and rear which defines the extent of the building's curtilage. The latter equates to the residential planning unit. The rear garden to no. 1A was an irregular shape but it is now rectangular because a piece of former agricultural land has been included for residential use. The material facts clearly show that, prior to the issuing of the notice and on 10 November 2015, the land was actually in use for residential purposes. The matters alleged in the corrected notice occurred as a matter of fact.
6. For planning purposes, *development* means, amongst other things, the making of any material change in the use of any buildings or other land. I saw that an outbuilding and other domestic paraphernalia have been placed on the land. The area has a semi-private feel to it and possesses a sense of domesticity given the layout of the space. The scale of residential operations has changed the physical appearance and layout of the appeal property, because of the size and shape of the land. As a matter of fact and degree, the character of the land has significantly changed from its agricultural use to residential use in connection with the appeal dwelling. In all probability, the residential use is likely to have both on and offsite effect, which require assessment. It is materially different to the land's agricultural use and for planning purposes amounts to a material change in the use of land.
7. Therefore, ground (b) and (c) must fail.

Ground (f)

8. A notice directed at a breach of planning control by the making of a material change of use may lawfully require the land to be restored to its condition

before that change of use took place. It can require the removal of associated works as well as the cessation of the use itself – provided that the works concerned are integral to or part and parcel of the unauthorised use. Clearly, the discontinuance of the unauthorised use would remedy the breach. The outbuilding and domestic paraphernalia facilitate the material change in the use of the land, so the notice can lawfully require their removal. In my assessment, nothing short of total compliance would remedy the breach of planning control in this case. The steps required to comply with the corrected notice are not excessive. Therefore, ground (f) fails.

Overall conclusions

9. Having regard to all other matters, I conclude that the appeals on grounds (b), (c) and (f) should not succeed. I shall uphold the notice after corrections.

Formal decisions

10. It is directed that the enforcement notice be corrected by the deletion of all of the text in section 3, the breach of planning control alleged, and the substitution therefor of the following text:

Without planning permission, the material change of use of the land from agricultural land to residential use and the erection of an outbuilding and domestic paraphernalia associated with that use.

And

Deletion of the text in section 5, what you are required to do, sub-paragraph (1) and the substitution therefor by: *(1) Cease the use of the land for residential purposes.*

11. Subject to the above corrections, both Appeals A and B are dismissed the enforcement notice is upheld.

A U Ghafoor

Inspector