The Planning Inspectorate

Appeal Decision

Accompanied site visit made on 26 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 15 November 2016

Appeal ref: APP/C1570/C/16/3147319
Radwinter Mushroom Farm, Bent Road, Radwinter, Saffron Walden, CB10 2TF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Uttlesford District Council..
- The appeal is made by Mr D. A. Moody.
- The notice was issued on 3 March 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the insertion of a window in the ground floor southern elevation of Plot 1, as indicated on the plan attached to the Notice and marked in blue, not in accordance with approved plans for planning permission UTT/13/2678/FUL.
- The requirements of the notice are as follows: (a) Remove the window in the ground floor southern elevation of Plot 1 on the Land as indicated on the plan attached to the Notice and marked in blue. (b) Reinstate the wall after the removal of the window in accordance with the approved plans for planning permission UTT/13/2678/FUL with bricks as detailed in the Finishes Schedule approved under reference UTT/14/2710/DOC.
- 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 (c) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal on ground (c) succeeds and the enforcement notice is quashed.

Preliminary matters

1. Planning permission UTT/13/2678/FUL granted planning permission for the demolition of existing buildings and the erection of 3 dwellings, including Plot 1.

2. I shall consider first the appeal on ground (c) before turning, as necessary, to the appeal on ground (a) and the deemed application.

The appeal on ground (c)

3. Ground (c) is relevant where an appellant wishes to contend that the matters alleged in the Notice do not constitute a breach of planning control. It is one of the 'legal' grounds of appeal against an enforcement notice. With such grounds of appeal the burden of proof lies with the appellant to make out his or her case, the relevant test of the evidence being the balance of probability.

4. In his case on ground (c) the appellant relies on a planning permission dated 19 April 2016, which he believes authorised the window in question. The Council's enforcement notice was issued on 3 March 2016 and, had not the appeal been lodged, would have taken effect on 14 April 2016. The window was therefore in place prior to this grant of planning permission. However, in a ground (c) appeal, an appellant can, if necessary, rely upon matters occurring since the date of issue of the Notice to show that the development which has occurred does not amount to a breach of planning control – but in doing so "the development which has occurred" must be that which was alleged at the time that the Notice was issued and not some subsequent altered development (see *Bury Metropolitan Borough Council v Secretary of State for Communities and Local Government [2011] EWHC 2192*).

5. The Council contested the appellant's ground (c) appeal but, without the benefit of their Statement, which had been returned by the Inspectorate because it had been submitted slightly late, I could not fully understand their case. I therefore allowed the submission of that statement, and afforded the appellant the opportunity to respond to it.

6. In their statement the Council set out their positon on ground (c) thus: "The appellants are stating that as the window was shown on the plans House Type Plans titled Elevations for Plot 1 drawing number RSE:01A and Sections and Layouts, Plot 1 RSE:02A which were submitted on the 8th August 2014 along with a number of other documents in order to discharge conditions 2, 3, 6, 7, 9, 14 of the planning approval UTT/13/2678/FUL the window has been granted permission. Reviewing the covering letter and the schedule of documents submitted what the conditions the documents related to it has become apparent that these plans were submitted in order to satisfy condition 9 which required details of accessibility. A schedule of materials and samples of materials were submitted in order to satisfy condition 2 which required samples of materials to be approved prior to the commencement of the development. The Council is of the opinion that by approving these plans in order to discharge condition 9 permission has not been granted for the insertion of this window".

7. Having the benefit of the further information submitted after the site inspection, it seems to me that, at the time that the appeal was submitted, on 24 March 2016, this may well have been a tenable argument. However, on 19 April 2016 the Council granted a further planning permission, under reference UTT/16/0474/FUL, for "Application to vary condition 2 of UTT/13/2678/FUL to allow the addition of a window to plot 1 at Radwinter Mushroom Farm Bent Road, Radwinter, Saffron Walden, Essex, CB10 2TF". Moreover, the only approved plans/document listed in the permission was Plan Reference/Version RSE:01 C, and this plan shows the kitchen window subject of the Council's Notice. The Council refer to condition 1 of this permission, which required that the materials used in the external finishes of the dwellings shall be as approved under reference UTT/14/2710/DC approved on the 13th March 2015: however, this should not be interpreted as effectively negating the purpose of the application and of the permission that has been granted.

8. Thus, it appears that the Council granted planning permission for the window shortly after taking enforcement action against it and, in these circumstances, the ground (c) appeal succeeds and the Notice will be quashed. This means

that I am unable to consider the appeal on ground (a) and the deemed application.

Formal Decision

9. The appeal on ground (c) succeeds and the enforcement notice is quashed.

Felix Bourne

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INSPECTOR