
Appeal Decision

Site visit made on 26 September 2016

by D E Morden MRTPI

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

Decision date: 10 January 2017

Appeal Ref: APP/C1760/C/16/3143983

The Forge, Lye Farm, Pugs Hole Lane, West Tytherley, Hants, SP5 1LA

- 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 I Vine against an enforcement notice issued by Test Valley Borough Council.
- The enforcement notice, ref 14/0307/PP, was issued on 15 January 2016.
- The breach of planning control as alleged in the notice is the material change of use from use as a farriers' forge (Use Class B2) to use as a dwelling house (Use Class C3).
- The requirements of the notice are cease the use of the land for the purposes of a dwelling house (Use Class C3).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision: The enforcement notice is quashed.

Application for costs

1. Applications for costs were made by Test Valley Borough Council against Mr I Vine and by the Mr Vine against the Council. These applications are the subject of a separate Decision.

History and background

2. In October 2008 planning permission was granted for the demolition of an existing store and steel frame barn and its replacement with a new forge. Its purpose was to supplement the farming activity taking place on the adjacent Lye Farm unit. The applicant subsequently retired leading to the application described in the next paragraph.
3. In December 2011 planning permission was granted by the Council for the 'change of use from B2 Farriers Forge to C1 overnight tourist accommodation'. Amongst other conditions attached to the permission, condition 2 stated that 'The tourist accommodation hereby permitted shall not be occupied as a person's sole or main place of residence and shall be occupied for holiday purposes only'. Condition 3 stated that 'The tourist accommodation hereby permitted shall not be occupied by the same person/people for more than 28 days in any one calendar year'.
4. In April 2013 temporary planning permission was granted (for a maximum of one year until 1st May 2014 but possibly less if the occupant family moved out before that date) for the then tenant family to remain in the building without meeting the requirements of conditions 2 and 3 of the December 2011 planning

- permission. The family was redeveloping its own property and wanted to stay in the one place whilst that was taking place.
5. In 2015 an appeal was dismissed following a Hearing on 22 September (Ref: APP/C1760/W/15/3065769) for the change of use of the forge from overnight holiday accommodation to permanent occupation by an agricultural worker. It stated in paragraph 10 of that decision that the structure was built as a forge when the father of the then appellant (Mr B Vine) worked as a farrier. It also stated that whilst permission was granted (the April 2013 permission) to use the building temporarily for permanent use rather than holiday accommodation, that permission had expired but it remained in residential use at the date of the Hearing in September 2015.
 6. In terms of occupancy of the building since the 2011 permission, from the information provided, the following is stated in the Council's April 2013 committee report (regarding the application for the variation of conditions 2 and 3 of that 2011 permission). Firstly, works converting the building from a forge to one that would allow holiday accommodation were completed (para 8.2 of that report). In that same paragraph it stated that the building had only been occupied, however, by persons using it as their main residence and never by anyone visiting the area as part of a holiday.
 7. The occupants in April 2013 (the Rusby family) were living in the building on a short term let whilst their own property that had been damaged was rebuilt. Temporary permission was granted allowing them to continue to occupy it until May 2014 or until their new property was ready to be occupied whichever was the earlier. It was acknowledged in the report that the occupation at the time was a contravention of the occupancy conditions of the 2011 permission.
 8. The appellant's appeal papers stated that at some point after the Rusby's had vacated the building it was occupied by the Bott family. Signed statements from Mr and Mrs Bott confirm that the family occupied the building from 6 December 2014 until 2 January 2016. The appellant's grounds of appeal stated that the family moved in as a holiday let whilst organising a caravan to live in as their family home was being renovated. The appellant agreed they could stay if Mr Bott helped with some farm duties as Mr Vine senior was working less. There was nothing put forward in the representations of either party to say that the building had been occupied since then or that there has been any other occupants than these two families at any time since it was converted.

Conclusion on the history and its relevance to the notice issued

9. The key decision in the history is the one in April 2013 which in essence granted a temporary permission for the use of the building as a dwelling. In addition to that is the fact that the building has only ever been used as a dwelling in the normal sense of the word and not as a holiday let. That is agreed by the parties (and mentioned in the Council's report to Committee in April 2013) even if some uses were worded to make it appear as if they were implementing the permission granted in 2011.
10. The key question, therefore, is what is the legal position at the expiry of the temporary planning permission? The effect of it was to grant planning permission for residential use of the building for a period of one year; a use that basically has continued to the present day even though there may have been some periods when the building was unoccupied and there was no use

taking place. In these circumstances it is necessary to consider the position at the expiry of the permission granted for a limited period under s72(1)(b). In this instance the use was required to cease either in May 2014 or when the occupiers could move back to their own property whichever came earlier.

11. The leading case on this is *Avon Estates Ltd v Welsh Ministers* [2011] EWCA Civ 553, a case which reached the Court of Appeal. On the facts of that case some seaside cottages were authorised to be built and occupied seasonally with a condition limiting the development to a 20 year period and requiring restoration of the land to its former state on or before the 'end' date. The challenge was mainly about the issue of whether conditions relating to seasonal use on a temporary planning permission (where such conditions had not been breached by the appellant) could survive after expiry of the permission given that the cottages had acquired lawful development status.
12. There was also discussion, however, of the status of a temporary permission which had expired. The Court of Appeal decided (overruling a decision in the High Court) that at the end of the specified period granted under s72(1) the permission ceases to exist as do its conditions. However (importantly for this case) the time limited condition requiring cessation and/or restoration does survive until the time for enforcement action has passed, since as the court put it '*.. such a condition circumscribes the entire authorisation of the use..*'
13. In my view, applying those principles, continuing the residential use is not a breach and, therefore, there is no material change of use as alleged. Any breach of planning control would be the failure to comply with the time limiting condition, namely condition 1 on the temporary permission granted in 2013. The enforcement action taken, therefore, is misconceived in this instance.

Overall conclusion

14. In these circumstances I agree with the appellant that the notice should have alleged a breach of condition of the 2013 planning permission and not a material change of use from a forge to a dwelling. I do have powers of correction and it is not unusual to correct notices that have been served as a material change of use when they ought to have been breach of condition (and vice versa). That can only happen however, if there is no prejudice to any party.
15. In this instance there are problems with correcting the notice. The appellant has not appealed on ground (a), being sure that the appeal would succeed on legal grounds. If I correct the Notice to allege a breach of condition and the ground (b) appeal and indeed those on grounds (c) and (d) are unsuccessful (as I believe would be the case on the information provided) the notice would be confirmed. Ultimately that leaves the appellant liable to prosecution without a chance to make all the arguments he might wish to make, in particular, that planning permission should be granted for the development enforced against.
16. Taking all these factors into account I consider that the notice is a nullity; it is void for uncertainty. I therefore have no alternative but to quash it as it is not correctible. The Council do have the time to issue a corrected notice.

D E Morden

INSPECTOR