

Appeal Decision

Site visit made on 27 February 2017

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

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

Decision date: 24 March 2017

Appeal Ref: APP/Z4718/C/16/3157226

Land off Lumb Lane, Almondbury, Huddersfield HD4 6SZ

- 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 Act'].
 - The appeal is made by Mr W H Airey against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 28 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
 - The requirements of the notice are to wholly demolish the building, clear any resultant debris from the site and restore the land to its previous condition prior to the development taking place.
 - The period for compliance with the requirements is within 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of the digit and text '*1 month*' in section 5, *what you are required to do*, and the substitution therefor by the following digit and text: '*3 months*'. Subject to this variation, the enforcement notice is upheld.

Reasons - ground (f)

2. Mr Airey should show that the steps specified in the notice exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. As a lesser step, he contemplates an alternative scheme for this agricultural building by fixing timber cladding to the external elevations and re-roofing. A similar proposal was submitted to the Council in 2015 but subsequently refused in May 2016¹. The submission before me is that this lesser step would remedy the breach, because the perceived harm to the Green Belt would be addressed.
3. Planning merits are to be considered only where ground (a) has been pleaded and the fee has been paid. It is not appropriate to introduce planning merits in the context of this ground (f) appeal. Section 174(2)(f) provides more limited powers than ground (a) in terms of instituting a solution short of total demolition. The power available to me under s 176(1) to vary the terms of the notice cannot be used to attack the substance of the notice.

¹ Application describes proposed development as retention and alteration of agricultural storage buildings (part retrospective), dated 12 June 2015, ref: 2015/62/91857/W, refused permission on 23 May 2016.

4. Unlawful building operations occurred as a matter of fact and express planning permission is required for the erection of the subject building. The reasons for taking enforcement action are clearly set out in the notice. The requirement is to demolish the building and it is necessary to consider whether that requirement is excessive.
5. The notice should divulge its purpose. From the whole document, it is clear the aim is to remedy the breach of planning control by restoring the land to its condition before the breach occurred; that falls within the meaning of s 173(4)(a) of the Act. It does not simply seek to remedy injury to amenity as claimed by Mr Airey, who is best placed to know the condition of the land prior to the erection of the building.
6. The advanced lesser step falls short of what is necessary to remedy the breach. Such a variation has the potential to turn the notice into requiring something less through under-enforcement. A variation of the kind advanced would not achieve the purpose behind the requirements because the building would remain in place, albeit with a materially different external appearance.
7. Even if a different view is to prevail and the notice could be varied to bring about the alternative scheme, it seems to me significant building operations would be required to alter the appearance of the agricultural building. The notice's terms would need to be substantially reworded to require cladding and re-roofing in suitable materials. I do not consider the notice can require the submission of details for the Council's subsequent written approval as that would go beyond its powers and create imprecision in its terms.
8. There is nothing before me showing how anticipated work could be achieved by rephrasing the notice's terms with sufficient specificity. In my opinion, formulating suitable requirements of this kind would introduce considerable degree of ambiguity and imprecision. In turn, that would potentially create interpretative problems likely to generate considerable debate as to the exact meaning of the requirements. Given the potential criminal liability that comes with a failure to comply with the terms of notice, I find such a potential outcome to be unacceptable.
9. Pulling all of the above threads together, I find that the steps required by the notice are not excessive. For all of the above reasons and applying current Case Law to the facts and circumstances of this case, I have no hesitation in dismissing this ground (f) appeal.

Ground (g)

10. I am of the opinion that one month is too short given the nature of the work required by the notice. However, the breach of planning control should not be allowed to continue more than absolutely necessary. So I also reject the claim that six months is required. Nonetheless, suitable contractors would need to be found and appointed; it is likely to take some time. Having regard to the scale and type of work involved in complying with the notice's terms, a compliance period of three months from the date of my decision is reasonable. I have therefore varied the period of compliance as stated above. Ground (g) succeeds.

Conclusion

11. Having regard to all other matters relevant to the appeal, I conclude that the Appeal should not succeed on ground (f), but a reasonable period for compliance would be 3 months. I have varied the enforcement notice, prior to upholding it.

A U Ghafoor

Inspector