
Appeal Decision

Inquiry opened on 13 June 2017

Site visit made on 12 June 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 3 July 2017

Appeal Refs: APP/D3315/C/16/3162172, 3162174, 3162175, 3162176
The Little Barn, Burts Farm, Ford Street, Wellington, Somerset, TA21 9PG

- 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 appeals are made by Mr Steven Wright, Mrs Kim Wright, Mr Stephen Spiller and Mrs Holly Spiller against an enforcement notice issued by Taunton Deane Borough Council.
 - The notice was issued on 3 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission:
 - a) The erection of a new building on the site ("The Little Barn"); and
 - b) The use of The Little Barn as a residential dwelling.
 - The requirements of the notice are:
 - a) Permanently cease the use of the building known as The Little Barn for residential purposes;
 - b) Demolish The Little Barn and permanently remove all resulting demolition materials from the site.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is varied in Sections 5 and 6 by deleting within them all of sub-section (b).
2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters and background

3. The appeal property is a detached single storey building located within its own plot of land at Ford Street, Wellington. It is occupied by three generations of the same family as their main dwelling house; the adult members of the family being the four appellants.
4. The appeal was initially made on ground (d) only. As such, part of the appellants' submitted written case was that in 2012 substantial repairs and restoration of an older building (used as a separate dwelling) had been carried out following heavy storm damage, and that no new building had therefore been erected. In this regard I wrote to the parties¹ before the Inquiry to advise

¹ Pre-Inquiry Note

that I considered that part of the submitted written evidence conflicted with the ground (d) appeal and appeared more consistent with an appeal on ground (b).

5. However, subsequent to the above the appellants conceded that the building subject of this appeal is in fact a new building which replaced the older one that had occupied a similar (but not the same) position. That being the case it was confirmed on behalf of the appellants at the Inquiry that the ground (d) appeal remained, and I was requested to also consider an appeal on ground (f). The Council did not object to the ground (f) appeal being introduced at that stage and I have therefore determined the appeal on these two grounds.
6. In reaching my decision I have also taken into account the further documents submitted at the Inquiry.
7. All oral evidence to the Inquiry was given under oath or affirmation.

Reasons

The appeal on ground (d)

8. The enforcement notice was issued on 3 October 2016. The breach of planning control alleged in Section 3 of the enforcement notice contains two elements. Firstly; that a new building has been erected, and secondly; that it is used as a residential dwelling. In the reasons for issuing the notice at Section 4 the Council say that the erection of the building occurred within the last 4 years² (hence since 3 October 2012). With regard to the use of the building as a residential dwelling the Council's reasons state that the breach occurred within the last 10 years³ (hence since 3 October 2006).
9. The appellants argue that the building was substantially completed more than 4 years prior to the issue of the notice, such that it is immune from enforcement action. Also, that before the building's erection the land was already in residential use for more than 10 years prior to the issue of the notice, such that the use of the existing building as a residential dwelling is also immune from enforcement action.
10. In pursuing an appeal on ground (d), the onus is on the appellants to establish, on the balance of probability, that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters alleged in the notice.

Evidence in support of the appeal

11. Steven Wright gave oral evidence in support of the appeal. He stated he carried out most of the building works in the construction of the new house starting in July 2012, with assistance from friends, family members, and paid contractors to carry out certain elements of the work. At that time of the works he and his wife (Kim Wright) were living in the separate dwelling house (Burts Farm) while his daughter (Holly Spiller) and her husband (Stephen Spiller) temporarily occupied a mobile home brought onto the site. Mr and Mrs Wright sold Burts Farm and moved into the appeal building with the Spillers in 2014.
12. He stated that by around the end of August or the beginning of September 2012 the building was fully constructed with walls, roof, doors and windows,

² S.171B(1) of the 1990 Act

³ S.171B(3) of the 1990 Act

and internal layout completed including bedrooms, bathrooms, kitchen and living areas and electrical and plumbing works installed. At that point he stated that his daughter and her family moved into the building and began permanently occupying it as their main dwelling.

13. In cross-examination he stated that at the time of a visit to the site by the Council's enforcement officer, on 29 October 2012, the outside of the site looked like a 'bomb site' because a lot of the remnant materials had not yet been cleared from the site. However, he insisted that the appeal building was finished and had already been occupied by his daughter and her family since at least the beginning of September 2012. When asked how he could be so sure of the date he stated that he could remember his wife's (Kim Wright's) birthday party on 29 September 2012 which was held in their house (Burts Farm). He recalled that the appeal building was finished and had already been occupied by his daughter and her family at the time of the party.
14. No contractors or suppliers invoices or receipts were produced by Mr Wright, nor any bank statements showing any payments. In cross-examination he stated that he paid Mr Oakley and others in cash for those elements of the build he did not do himself. With regard to the copies of contractors' quotations⁴ for carrying out of future works I consider that they are not evidence in themselves of when any works took place and hence they add no weight in support of allowing the appeal in that regard. However, I note that simply in terms of when they are dated they are not inconsistent with Mr Wright's oral evidence regarding when works to erect the building were undertaken.
15. Andy Oakley also gave oral evidence to the Inquiry. He is a building contractor and also a long-standing family friend. He stated that he arrived at the site during the first week of August 2012 and stayed on site throughout that month to help construct the appeal building. He also recalled his birthday (21 August 2012) at the site; that Holly Spiller had made a birthday cake for him in Burts Farm, and that she and her family moved into the completed appeal building a few days afterwards, by the end of August at the latest.
16. In cross-examination he confirmed that the building had been completed, with the kitchen installed and connected, toilets and water connections finished, and most of the electrical wiring work finished, and then occupied by the end of August 2012. He confirmed that the building was fully finished and occupied by the Spillers by the time of Kim Wright's birthday party which he attended on 29 September 2012.
17. Becky Wright gave oral evidence to the Inquiry also recollecting that her sister (Holly Spiller) and her family moved into the appeal building prior to her mother's birthday party on 29 September 2012.
18. Mandy Love is a family friend and gave oral evidence to the Inquiry that she recalled attending Kim Wright's birthday party on 29 September 2012. She remembered that at that time some of the food for the party celebration was stored with Holly Spiller in the appeal building and that it was fully finished and lived in by the Spillers at that time.

⁴ Documents 36 and 37 within Document 1 submitted to the Inquiry

19. Sean Nightingale is a family friend. He gave oral evidence to the Inquiry that the appeal building was externally completed around the end of May or beginning of June 2012. Under cross-examination he conceded that that date differed from the date recalled by other witnesses. He accepted that his recollection was imprecise and that he had not at any time seen the inside of the appeal building.
20. I have also taken account of documentation that had previously been submitted by the appellants to the Council as part of an earlier application for a Lawful Development Certificate (LDC) for *existing use as a single dwelling house*. I should point out that all of that evidence was submitted on the appellant's claimed belief that the appeal building was a restoration of the existing building, rather than it constituting a new building subject of this appeal. The Council considers that change casts a shadow on the reliability of the appellants' evidence in this appeal. Nonetheless, I consider it retains a degree of relevance to this appeal in terms of *when* building works and occupation of the appeal building occurred. In this regard I consider the LDC evidence overall does not undermine the appellants' claim that the building works commenced in July 2012 and were substantially complete and the building occupied by early September 2012.
21. Due to his uncertainty of when the works took place I attach no weight to the oral testimony of Mr Nightingale. With regard to the four other witnesses in support of the appeal, I consider that their testimony was unambiguous, precise (in terms of pinpointing completion and occupation of the building to before 29 September 2012 - the date of Mrs Wright's party) and corroborative of each other. Taken together their oral evidence was credible. It was given on sworn oath and in the knowledge of the serious criminal liability that could arise if it was later discovered that it included statements which they knew to be false or did not believe to be true.
22. For these reasons, I find the appellants' evidence convincing and attach substantial weight to it in support of the appeal.

The Council's evidence

23. Oral evidence was given to the Inquiry by Matthew Bale, an Area Planning Manager employed by the Council.
24. With regard to the events that took place in 2012 his evidence on this ground of appeal is based on his professional opinion following his examination and analysis of the relevant documents submitted to the Inquiry, rather than that of a first-hand witness to those events. That of course is no different an exercise than is before me in reaching my decision. However, given his considerable experience and his professional planning expertise I attach due weight to his evidence.
25. He referred to his analysis of photographic evidence of the site and a hand written letter from Mr Steven Wright⁵. Reference was also made to the following documents: a complaint⁶ received by the Council on 23 October 2012 alleging building works taking place at Burts Farm, the subsequent Council

⁵ Appendices A-E to Mr Bale's proof of evidence

⁶ Document 2 submitted to the Inquiry

officer's (Mr Hardy's) record⁷ of his site inspection on 29 October 2012; and a letter from Mr Hardy to Mr Wright dated 6 November 2012⁸.

26. With regard to the photographic evidence Mr Bale acknowledged that within the timeline of the images there was a gap from March 2011 to 2014. Consequently, I find that the images do not therefore contradict the appellants' evidence that the works were carried out in July/August 2012.
27. The note of the complaint received by the Council on 23 October 2012 is unclear; it says "*an extension being built or may be new structure*". It does not indicate when building works commenced or what stage they had reached. The description could be either of a building at an early stage of construction, or one substantially completed but with minor finishing works in train. I consider it is of limited evidential value since it is no more than a cursory reference to describe the generality of the subject of the complaint.
28. Mr Bale considered it unlikely that if the building was substantially complete and occupied by early September the complainant would have waited until 23 October to contact the Council. However, that is speculative. There are many potential reasons why there may have been a delay in contacting the Council. For example, if the complainant was unable to see the site every day it could have been the first time he/she had seen the site in several weeks or months, perhaps if on holiday, or away from the area for any other reason. That of course is equally speculative. Ultimately, the complainant did not give evidence to the Inquiry to explain the circumstances, and hence on balance I consider that the date of the complaint does not make the appellants' case any less probable.
29. The site inspection record is also regrettably short on detail. It states in a box titled "Activities or Development Observed": "*Timber framed building being constructed*".

And then in a box titled: "Notes of any Discussions":

*"Met Mr Wright who would not let me in so we talked over the wall. **He explained that the building that stood on the site was falling down and they had to replace it. The new building is on the same footprint and same height but the end wall has been moved away from the highway.** I said I think p.p (planning permission) is required but he was not convinced. Could not take photos or enter site".*

30. Mr Wright in his oral evidence denied refusing access and Mr Hardy is retired and was unavailable to give written or oral evidence to the Inquiry.
31. Mr Bale took the view that the highlighted text in Mr Hardy's note simply records what Mr Wright told him at the time. I agree that must be so with the first highlighted sentence. I accept that it may also be so with the second sentence, but I am not convinced that is the case. It could equally be interpreted as being a record, albeit quite limited, of what Mr Hardy saw himself; *The new building...etc.* If that is the case Mr Hardy arguably described a fully formed building. If I follow Mr Bale's interpretation; that the second sentence is merely a record of an exchange of words, it is curious that Mr Hardy did not note any detailed description at all of what he saw for himself in

⁷ Document 3 submitted to the Inquiry

⁸ Document 4 submitted to the Inquiry

terms of the stage of completion of the building, other than: "*Timber framed building being constructed*". That description is again very cursory in nature and does not give any real sense of what stage the building had reached.

32. In re-examination Mr Bale made the point that if the building had its external walls at that time, the timber frame would not have been visible to Mr Hardy. However, that interpretation assumes that it was indeed visible. It is not clear to me from the brief and limited notes, taken as a whole, that that is what Mr Hardy did see. It could be a loose description of the fully formed timber clad building. On balance I find that the record is open to some interpretation and calls for speculative conclusions by the reader. As such, it is not clear and detailed enough to convincingly contradict the appellants' evidence.
33. Mr Hardy did not see inside the building (substantially completed or not) and hence nothing can be taken from the record with regard to whether occupation had commenced. It is the appellants' case of course that the building was fully finished and occupied at that time, although the site still had the 'bomb site' appearance Mr Wright described in his evidence.
34. The letter from Mr Hardy to Mr Wright dated 6 November 2012, and Mr Wright's reply letter dated 13 November 2012, provide no greater clarity as to whether the building was substantially completed and occupied by the time of the site inspection on 29 October 2012.
35. In conclusion, and with particular regard as to whether the building was substantially completed and occupied prior to the 3 October 2012, I find that that these documents, taken together, are of questionable weight due to their lack of detail and clarity. In making that finding I make no criticism of Mr Bale in interpreting them in the way that he did so. It was a reasonable interpretation, but equally they could be interpreted differently as I have set out above.

Assessment

36. The documentary evidence to the Inquiry does not significantly diminish the appellants' case. Additionally, as I have set out previously, the oral evidence of witnesses in support of the appeal was unambiguous and credible. For these reasons, I find the appellants' evidence convincing and attach considerable weight to it in support of the appeal.
37. However, against that I must weigh the evidence of the Council. The judgment in *Gabbitts v SSE and Newham LBC [1985] JPL 630* makes it clear that if the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal in an LDC appeal provided the appellant's evidence alone is sufficiently precise and unambiguous. That test equally applies to an Inspector in an appeal against an enforcement notice on ground (d).
38. The Council's evidence comprised of a professional opinion based on an examination and analysis of the relevant documents in the Inquiry. In my view, as I have already said, the Council's interpretation was a reasonable one. However, in weighing the Council's evidence against the weight of the sworn testimony of witnesses to the events in 2012, I find on balance that it does not make the appellants' version of events less than probable.

39. I therefore come to the conclusion that on the balance of probability the appeal building was substantially completed and occupied as a residential dwelling house prior to the 3 October 2012, and probably by August/September 2012, hence more than 4 years before the issue date of the enforcement notice. Consequently, the appeal building itself was immune from enforcement action when the notice was issued. However, that is not the end of the matter.
40. It was argued for the appellants that the land occupied by the appeal building was already in residential use previously when the former barn was as an overspill to Burts Farm. It was said that friends of the appellants and others stayed in it when visiting. From 2009 the former barn was permanently occupied by the Spillers as a separate dwelling house until its replacement with the current appeal building in the summer of 2012. Thus, it is argued, the land has always been in continuous residential use.
41. However, I find this argument to be without merit. When the Spillers occupied the (first) Little Barn as a single dwelling house in 2009 it constituted a material change of use from its previous use as ancillary accommodation to Burts Farm, sub-dividing the single planning unit of Burts Farm into two units. That being the case the change of use of the first Little Barn to use as a single dwelling house would have become lawful after 4 years, that is to say in 2013. But that did not occur because, as has been found, the first Little Barn was replaced with the new appeal building in the summer of 2012. When the appeal building was erected and occupied in 2012 it began a new chapter in the planning history of the site, with no lawful use of the land for two single dwellinghouses.
42. Moreover, the Courts⁹ have established that if a dwellinghouse is erected unlawfully and used as a dwellinghouse from the outset, the unlawful use can properly be the subject of enforcement action within 10 years, even if the building as a structure becomes immune from enforcement action after 4 years. That is the case here. The appeal building was erected and occupied as a residential dwelling house in the summer of 2012. Its unauthorised use as such commenced at the same time, and thus falls short of the 10 year period for immunity¹⁰ referred to in the notice.
43. For all the above reasons I conclude that breach (a) in the enforcement notice is immune from enforcement action, while breach (b) in the notice is not immune. The appeal on ground (d) therefore succeeds to this limited extent and I have varied the notice accordingly.

The appeal on ground (f)

44. An appeal on ground (f) is a claim that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.
45. Given that I have found the building, as a structure, is immune from enforcement action, it is now only the use of the building as a residential dwelling house that is relevant to this ground of appeal.
46. The appeal on ground (f) was argued on the basis that if the building was found to be lawful it should be put to a good use, rather than remaining

⁹ Inquiry Documents 5 and 6 - *Lawson Builders Ltd, Paul Lawson and Jennifer Lawson v SSLG and Wakefield MDC* [2013] EWHC 3388 (Admin) applying *Welwyn Hatfield DC v SSCLG and Beesley* [2011] UKSC 15.

¹⁰ S.171B(3) of the 1990 Act

unused. However, there is no ground (a) appeal and deemed planning application for the use of the building as a dwelling house before me, and I am unable to grant any planning permission under ground (f). Thus any future use of the building would be a matter to resolve between the Council and the appellants either through a planning application or, if necessary, by way of a LDC application to confirm the lawfulness of any proposed use.

47. The notice requirement is to permanently cease the use of the building for residential purposes. Hence, it goes no further than simply requiring the unauthorised use to cease. It therefore does not exceed what is necessary to remedy the breach of planning control.

48. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Robin Upton	Director – Planning WYG
He called	
Steven Wright	Appellant
Andrew Oakley	Building contractor/family friend
Becky Wright	Appellants' daughter
Mandy Love	Family friend
Sean Nightingale	Family friend

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gavin Collett	Magdalen Chambers
Of Counsel	
He called	
Mr Matthew Bale	Area Planning Manager

DOCUMENTS SUBMITTED AT THE INQUIRY:

- 1 Folder containing LDC application and related documents 1-54
- 2 Copy of complaint form dated 23 October 2012
- 3 Copy of enforcement officer site inspection record
- 4 Letter from Mr Hardy to Mr Wright dated 6 November 2012
- 5 Transcript of judgment *Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15 (J.1188)*
- 6 Transcript of judgment *Lawson Builders Ltd, Paul Lawson and Jennifer Lawson v SSLG and Wakefield MDC [2013] EWHC 3388 (Admin)*