
Appeal Decisions

Site visit made on 25 April 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 July 2017

Appeal Refs: APP/P2365/C/16/3159873, 3159874 and 3159875

Land at Oakdene, Sanderson Lane, Hildale, Heskin, Chorley PR7 5PX

- 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 Mr John Finnamore, Mrs Lynn Finnamore and Miss Amy Finnamore against an enforcement notice issued by West Lancashire Borough Council.
 - The notice was issued on 15 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building for a mixed use of stables, dog grooming and dog kennelling.
 - The requirements of the notice are:
EITHER -
Dismantle/demolish the mixed use building identified as 'Building A' on the attached Plan 2 dated 17th November 2015 and remove the resultant materials from the site;
OR
alter the building to accord with the approved plans associated with planning permission reference 2016/0426/FUL dated 9 June 2016.
 - The period for compliance with the requirement is three months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended ("the Act").
-

Formal Decisions

1. No further action is taken.

Background

2. The building as described in the notice was refused planning permission in 2015 for its retention, and an appeal was dismissed on 27 January 2016.¹ Permission Ref 2016/0426/FUL was granted in June 2016, to retain the building for use as stable, feed store and tack room, subject to conditions, including Condition 2 requiring reduction of its footprint and removal of the clock tower to comply with the approved plan 15-029-P01 B ("the approved plan").
3. The appellants accept that the modifications required to the building were not completed when the notice was issued, but the Council confirms the extensions and clock tower were removed in November 2016. This would have exposed the internal block walls but I saw they were timber clad externally to comply with the approved plan. The internal walls were of ceiling height but a lower height is not stipulated in the permission. On inspection, the building conforms to the plans associated with the June 2016 planning permission.

¹ APP/P2365/W/15/3130747

Reasons

4. If a notice clearly cross-refers to another document, it would be artificial to read the notice on its own. The June 2016 permission is referred to in the notice. Condition 1 states that the development “hereby approved must be completed in its entirety *within six months from the date of this permission*”. However the notice was issued well before the end of that period.
5. Although the notice refers to a “mixed use” building it alleges only operational development. The approved plan shows the building as proposed, shorn of its side extensions and clock tower. The only other plans associated with the permission show its location and its existing form. It is clear from the way the Council puts its case that the notice targets only operational development alleged to be contrary to the approved plan. The permission may not be well drafted, for example it refers to retention which is not development, but the extent of what was permitted and required to be done was not in doubt and the required modifications to the building were within the scope of Condition 1.
6. The Council points out that the enforcement notice would have come into effect on 3 October 2016 with a further three-month period for compliance that would expire by 3 January 2017, some three and a half weeks after expiry of the six-month period allowed for in the planning permission to complete the necessary modifications. In its view the notice is clear on its face as to the steps to remedy the breach of planning control, and as to the reasons for issuing it.
7. The appellants state that they expected to regularise the works (which it appears they did) by the end of the six-month period set forth in the planning permission. They state, and there is no reason to disbelieve them, that they made the Council aware in correspondence that they would alter the building in accordance with the planning permission within the permitted timeframe.
8. By s173 of the Act and Regulation 4(a) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, an enforcement notice shall specify “the reasons why the local planning authority consider it expedient to issue the notice.” The reasons are stated as firstly, the breach of control occurred in the last four years and secondly, that it was inappropriate development in the Green Belt. The first reason is derived from s172(1)(a) and does not go to the issue of expediency, so the essential reason was conflict with the Green Belt.
9. When the June 2016 permission was granted it would have been considered that there was harm to the Green Belt but a fixed period was formally given to the appellants within which to remedy the harm. It is therefore reasonable to infer that, absent perversity or bad faith, additional factors came into play after planning permission was granted, which made it expedient that a notice should be served on the appellants before the period expired.
10. The Council explains that the notice the subject of this appeal was re-issued after a previous notice was withdrawn in June 2016 that related to additional development on the site. It adds that in an attempt to simplify the terms of the notices, the requirements of the re-issued notice were revised to include the alternative step of implementing the planning permission, making it clear that parts of the existing building could be incorporated for that purpose.

11. It is possible that the Council somehow overlooked the terms of the permission granted in June 2016 and the inconsistency with Condition 1 that resulted from re-issuing the notice when it did, but no such explanation is offered.
12. The requirement to specify reasons why it is expedient to issue an enforcement notice is not a particularly high threshold, it being established that it is impermissible to look beyond the notice where the reasons for it are maintained by the Council in substance. From that perspective therefore, it cannot be said that there is a breach of the statutory requirements.
13. However the notice does not allow anyone served with it to understand from the outset why it was issued when the very planning permission to which it refers contains a condition that would lead the recipient to believe that no enforcement action would be taken on those matters referred to in the condition, until the time formally allowed for them to be completed had passed.
14. I take into account case law to the effect that the enforcement notice is an important document and the recipient, who is being told he is doing something contrary to planning permission and that he must remedy it, must be able to find out from within the four corners of the document exactly what he is required to do or abstain from doing. This is a justified principle since the notice is a precursor to possible criminal proceedings and is apt to be registered against the title to a person's property, potentially causing problems with its future disposition. I do not see why in this appeal, the fact that the period for compliance would in practice expire some three and half weeks later² should undermine that principle.
15. The notice alleges a breach of planning control against the appellants that is inconsistent with what is purported to have been allowed in the 2016 planning permission. That is a document referred to in the notice, which acknowledged to the appellants a period in which they could remedy matters without formal action taken against them. As there is no rational explanation provided, this renders the notice hopelessly ambiguous. As a result the notice is a nullity.

Conclusion

16. Since I find the notice to be a nullity I take no further action in connection with this appeal. In light of this finding the Council should consider reviewing the register kept under section 188 of the Act.

Grahame Kean

INSPECTOR

² Even if a notice were issued immediately after expiry of the six-month period it would not have been effective until at least 28 days later and would still have had to specify a further reasonable period for compliance.