



Appeal Decision

Site visit made on 18 July 2017

by Nigel Burrows BA MRTPI

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

Decision date: 15 August 2017

Appeal Ref: APP/F2605/C/16/3163533

Beetley Nurseries, Elmham Road, Beetley, Norfolk, NR20 4BP

- 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 Peter Bennett against an enforcement notice issued by Breckland District Council.
- The enforcement notice, ref: ENF/112/16/CAS, was issued on 8 November 2016.
- The breach of planning control as alleged in the notice is the material change of use of the Land from land used for a garden centre to a mixed use as garden centre and residential use including the stationing of a caravan for residential purposes.
- The requirements of the notice are:-
 - Permanently cease the residential use of the Land.
 - Permanently cease the use the [sic] garden centre building for residential use, specifically, but not limited to, the bathroom and bedroom spaces shown in photographs 'A' and 'B' attached to this Notice.
 - Permanently cease the use of the Land for the stationing of a caravan for residential purposes.
 - Permanently remove the caravan, shown in photograph 'C' attached to this Notice, from the Land.
 - Permanently remove all items and associated infrastructure used in connection with the residential use of the Land. Including, but not limited to, beds, baths, domestic furniture, and clothing.
- The period for compliance with the requirements is 9 calendar months.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction

Procedural Matters

1. The evidence submitted by the parties has drawn my attention to the planning policies applicable to the area. The submissions for the appellant under ground (f) also appear to address the planning merits of the development including the need for the appellant to reside on the land. However, the appeal against the enforcement notice is proceeding on grounds (f) and (g).¹ The Courts have held that in such cases the planning merits of the development do not fall to be considered. I have taken into account the evidence that has been presented only insofar as it is relevant to my consideration of grounds (f) and (g).
2. Having said that, the submissions lodged on the appellant's behalf under ground (f) argue the existence of a bedroom within the garden centre building does not constitute a breach of planning control. The submissions indicate this involves a temporary use for less than 28 days a year and state the building *'has not experienced a change of use'*.

¹ As confirmed in paragraph 5.1 of the statement of case prepared on the appellant's behalf

3. However, such arguments are more properly considered under ground (c) - that there has not been a breach of planning control. The Council has assumed the appellant's case is based upon the permitted development rights available under Article 3, Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, (i.e. the GPDO). This grants permission for temporary uses of land for not more than 28 days in any calendar year. However, as the Council points out, paragraph B.1.(b) confirms that development is not permitted under Class B if the land in question is a building, or lies within the curtilage of a building. It is also pertinent to note that paragraph B.1.(c) confirms the use of land as a caravan site is not permitted under this Class.
4. I share the Council's view that the residential use of the garden centre does not constitute permitted development under these provisions of the GPDO. The appellant has not advanced any arguments to demonstrate the residential use attacked by the notice would be permitted under any other part of the GPDO. In other respects, there is no evidence before me to demonstrate that the use attacked by the notice does not constitute development for the purposes of section 55 of the Town and Country Planning Act 1990, or to show that it is authorised under the terms of any planning permission.
5. As matters stand, the appellant has not provided any firm or compelling evidence to demonstrate that planning permission is not required for the matters alleged in the notice. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged. Consequently, even if the section 174 appeal had been lodged upon ground (c), it would not have succeeded.
6. Turning to the drafting of the notice, there appears to be a minor typographical error in the second requirement, which should state: 'Permanently cease the use of the garden centre building for residential use ... '. In the interests of the accuracy and legibility of the notice, I intend to correct the wording of this requirement. This correction would not cause any injustice to the appellant, who appears to be in no doubt about what he is required to do.

The appeal on ground (f)

7. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the development.
8. The manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Town and Country Planning Act 1990, by restoring the land to its condition before the breach occurred.
9. As noted earlier, the appellant has suggested the requirement to remove the bedroom in the garden centre is excessive as it does not constitute a breach of planning control. However, I have dealt with this argument within paragraphs 2 – 5 above. It is also evident that the presence of this bedroom is inextricably linked to the unauthorised residential use.
10. The appellant contends the removal of the bathroom is excessive, as staff would require washing facilities. However, as the Council points out, a fully equipped bathroom of the type installed within the building is wholly domestic in nature and goes beyond what might be expected for the use of garden centre staff (or customers). Once again, this accommodation appears to be inextricably linked to the unauthorised residential use.
11. The appellant also considers the requirement to remove the residential caravan is excessive. The submissions on his behalf argue that it should be allowed for a temporary period of 3 years in order to demonstrate the need for the appellant to live upon the land and also to demonstrate the viability of the business. However, these are ground (a) arguments concerning the planning merits of the development - which are not before me. ²

² As previously explained in paragraph 1

12. Overall, taking into account the purpose of the notice, I conclude that its requirements are not unduly onerous or excessive. It is not obvious to me that lesser steps would remedy the breach of planning control in this instance, or satisfy the purpose in section 173(4)(a). In the circumstances, I have concluded that the ground (f) appeal should not succeed.

The appeal on ground (g)

13. The appellant claims the 9-month period given to comply with the requirements of the notice is too short. The basis for this claim appears to be that he operates a multi-faceted business which requires constant vigilance and, therefore, security measures would need to be addressed if he is required to live off-site. It is also alleged the removal of the caravan and the infrastructure associated with the residential use would be a time-consuming activity. The submissions also indicate the appellant has nowhere else to live.
14. Be that as it may, the appellant has not suggested an alternative period for compliance with the notice. In any event, on balance, I conclude the 9-month period given by the Council is a reasonable and proportionate response to the breach of planning control that has taken place. This period should allow adequate time to remove the caravan and the infrastructure used in connection with the residential use of the Land. It should also give the appellant sufficient time to look for alternative residential accommodation elsewhere.
15. I have therefore concluded that the ground (g) appeal should not succeed.

Overall Conclusions

16. For the reasons given above, I conclude that the enforcement notice should be upheld, albeit with a correction. I have taken into account all the other matters raised, including the various 'anomalies' in the appellant's submissions highlighted by the Council, but I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

17. Paragraph 5 of the enforcement notice (WHAT YOU ARE REQUIRED TO DO) is corrected by inserting the word 'of' after the word 'use' in the first line of the second requirement.
18. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Nigel Burrows

INSPECTOR