
Appeal Decision

Site visit made on 3 July 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref : APP/M2270/C/18/3206910

Land at the rear of 2 Maynards Cottages, Brenchley Road, Matfield, Kent, TN12 7PH.

- 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 Shaun Nelson against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 7 June 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of a building (shown in its approximate location marked by a black cross on the plan attached to the notice) to use as a self-contained residential dwelling.
- The requirements of the notice are i. cease the use of the building as a self-contained residential dwelling; ii. remove the kitchen and drainage connections which facilitate the use of the building as a self-contained residential dwelling; iii. remove the bathroom and drainage connections which facilitate the use of the building as a self-contained residential dwelling; iv. remove all resultant materials, debris and paraphernalia associated with the residential use of the building and surrounding land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(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

Preliminary matters

1. The Appellant says that he seeks the use of the appeal site as a holiday let. But the deemed planning application before me in this appeal is for the development already carried out and cited in the notice, namely the use of the building as a self-contained residential dwelling. I must determine the application as it appears before me. The suggestion that I consider the grant of permission subject to a condition restricting use to a holiday let goes beyond the remit of the deemed application. To do so would be to consider development that is different to that the subject of the notice. It is open to the Appellant to make an application to the Council for holiday let use through the normal planning process. I shall determine the deemed application for use as a self-contained residential dwelling.
2. The Appellant says that the breach of planning control has ceased. But I must consider the breach at the date of issue of the notice.

Ground (a) appeal and deemed application

Main Issues

3. The main issues in the determination of this appeal are (i) whether the location of the site is appropriate for a new dwelling and (ii) the effect of the development on the character and appearance of the surrounding area with particular regard to its location in the High Weald Area of Outstanding Natural Beauty.

Location

4. The development plan (including the Tunbridge Wells Core Strategy (the Core Strategy) and saved policies in the Tunbridge Wells Borough Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in emphasising that great weight should be given to conserving and enhancing the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (the AONB) and to preventing new dwellings in unsustainable locations. Core Policy 4 of the Core Strategy provides that the Borough's landscapes including the AONB will be conserved and enhanced. Core Policy 14 concerns development in rural areas and provides that new development will generally be restricted to sites within the Limits to Built Development of villages. The Framework seeks to promote sustainable development in rural areas and provides that rural area housing should be located where it will maintain or enhance the vitality of rural communities.
5. The appeal site is located in a rural area outside the Limits for Built Development and within the AONB. 1 and 2 Maynards Cottages are part of a small cluster of dwellings that front the highway. The appeal site is accessed via a private drive from a class C road up a relatively steep driveway which runs adjacent to the rear gardens of 1 and 2 Maynard Cottages. The closest settlement is Matfield and a bus stop is located opposite the site on the main road. The site is bounded by fencing and mixed woodland lies to the north east and southeast.
6. The appeal site has planning permission for an extension to the residential curtilage of 2 Maynard Cottages and a summerhouse has planning permission for use ancillary to the residential use of the main dwelling (the Permission). The building the subject of this appeal is materially different from the building the subject of the Permission.
7. The building the subject of this appeal has a fitted kitchen, toilet/shower room, living room and painting studio and is connected to water, electricity, telephone and television. Whilst I recognise that the site itself would not generate a large number of vehicle movements the cumulative effect of allowing such development in a location not allocated for housing would be likely to increase the amount of unsustainable journeys. Whilst I note the footpaths in the vicinity which might encourage walking and cycling the routes to local services are not easily accessible to persons with mobility restriction or people with buggies or young children. Public bus transport is infrequent for regular journeys.
8. I support the Council's concern about the location of the site. It will not maintain or enhance the vitality of the rural community contrary to the development plan and the Framework.

9. I have taken into account the potential economic benefits of the residential use of the site. Occupiers would contribute to the rural economy but this benefit is small and does not outweigh the identified harm. The potential social benefit and contribution of one housing unit does not outweigh my concerns.

Character and appearance

10. The building the subject of this appeal is a single storey flat roof mainly brick construction extended on both sides and with an area of raised decking at its front. An awning sits over the central section. It has a ramshackle shed like appearance of poor quality. Its location at the rear of the cluster of built development along Brenchley Road is not in keeping with the pattern of development in the locality. I agree with a local objector who describes it as out of keeping with its surroundings.
11. Whilst I note that it is not readily visible from public vantage points the relevant test in this case is whether it conserves or enhances the landscape and scenic beauty of the AONB. I conclude that it causes harm to the character and appearance of the surrounding areas and fails to conserve or enhance the landscape and scenic beauty of the AONB.
12. I have taken into account the grant of the Permission but the development the subject of the Permission is materially different to the development the subject of this appeal and the harm caused by the development carried out is significant.
13. For the reasons given above the development does not conserve or enhance the AONB and it causes harm to the character and appearance of the area contrary to relevant policies in the development plan (including core policy 4 and 14) and the Framework.
14. There are references before me as to potential adverse possession of the land but this is not a matter that falls within my remit in this appeal. My attention is also drawn to informal advice provided by the Council concerning holiday let use but this is not binding on the Council and not relevant to the deemed application before me.

Conclusion

15. I conclude that the development is not in a sustainable or suitable location for a new dwelling and causes harm to the character and appearance of the surrounding area failing to conserve or enhance the landscape and scenic beauty of the AONB contrary to relevant policies in the development plan and the Framework.
16. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the suggestion by the Appellant to clad the building and accept the removal of permitted development rights. But conditions could not overcome the identified harm.
17. The notice results in the loss of a potential home for future occupiers. I have balanced competing interests – the individual rights to a home and the need to bring the identified harm to an end without unnecessary delay. I conclude that the refusal of planning permission is proportionate so as not to violate individual rights.

18. For the reasons given above I conclude that the appeal under ground (a) should not succeed and planning permission should not be granted on the deemed application.

Ground (f) appeal

19. This ground of appeal is that the steps required by the notice are excessive.
20. There are two purposes that an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice seeks to restore the land to its condition before the breach took place and therefore its purpose is to remedy the injury to amenity. No lesser steps than those specified in the notice would achieve that purpose.
21. The Appellant argues that the requirement to remove the bathroom and kitchen is excessive as the notice does not prevent use of the building ancillary to the lawful residential use of the planning unit. He asks that the notice be amended to enable the retention of the bathroom and associated drainage connections.
22. It is established law that an enforcement notice attacking a material change of use can seek the removal of works that facilitate and are an integral part of the unauthorised change of use even if those works of themselves do not require planning permission. In this case the bathroom and kitchen are integral to the use of the building as a self-contained dwelling as they provide day to day living accommodation. I consider that in the circumstances of this case their removal is reasonable. The notice does not prevent the use of the building for lawful purposes.
23. The Appellant asks that if upheld the notice be varied to clearly specify the specific materials, debris and paraphernalia associated with the residential use of the land required to be removed. No alternative drafting is proposed.
24. It is essential that the recipients of an enforcement notice are clear as to the steps required to be taken. I consider that the description as to what is required to be removed is sufficiently precise and unambiguous to enable the recipients to know what to do. I do not consider that any variation is required to the steps.
25. For the reasons given above I conclude that the ground (f) appeal does not succeed.

Ground (g) appeal

26. This ground of appeal is that the time period for compliance with the notice is unreasonably short. The notice provides for a six month compliance period.
27. The Appellant seeks an 18 month period for compliance arguing that 6 months is not enough time to apply for planning permission and potentially submit a subsequent appeal to seek alternative re-use of the building and/or find alternative storage premises for the property.
28. But the notice does not require complex or technical work and the reference to a potential future appeal is speculative. I consider that 6 months is a reasonable period in which to require the works to be completed. It is

proportionate so as not to violate individual rights and strikes an appropriate balance between competing interests.

29. For the reasons given above I conclude that the ground (g) appeal does not succeed.

Formal Decision

30. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector