



Appeal Decision

Inquiry Held on 25 June 2019

Site visit made on 25 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/D3315/C/18/3211485

Land to the East of Stancombe Farm, Langford Budville, Wellington Somerset TA21 0SD

- 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 Ms Jessie Knights against an enforcement notice issued by Taunton Deane Borough Council.
- The enforcement notice was issued on 15 August 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of a building on the Site shown in the approximate position on the attached plan as a rectangle coloured black ("The Building") and the area surrounding the Building as shown on the 3 attached photographs from agricultural use to residential use.
- The requirements of the notice are (i) Cease the use of the Building for residential purposes; and (ii) Remove from the site all residential and domestic equipment and materials associated with the residential use including the garden pergola seat.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (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 variation.

Preliminary Matters

1. As a result of local government reorganisation, from 1 April 2019 the Council is now known as Somerset West and Taunton Council.
2. At the beginning of the Inquiry, I acknowledged that the Council's proof of evidence and supporting documents had been submitted after the 4-week deadline specified in the regulations. However in view of the relatively limited scale of evidence provided and to balance the reasonable expectation of the appellant to have the matter dealt with expediently, a short adjournment was agreed to allow time for the documents provided to be considered.

The appeal on ground (c)

3. The ground (c) appeal is that there has not been a breach of planning control. There is no dispute between the parties that the building subject to the notice is now a residential dwelling and that the only factor that could safeguard its lawful status would be if it was too late to enforce against it due to the passage of time. This, however, is a ground (d) argument. An appeal on ground (c) would be considered independently of the question of immunity periods, and

accordingly the relevant question is '*would the change of use have required planning permission?*'. I have not been provided with any evidence to persuade me that the change of use of the building to residential use would not have required planning permission. The ground (c) appeal therefore fails.

The appeal on ground (d)

4. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground, it would be necessary for the appellant to demonstrate that the use as a separate self-contained residential unit had continued for a period of not less than four years before the notice was issued, that is from 15 August 2014. The Council dispute this ground but say that even if the development could be regarded as immune from action by applying the test of the passage of time, the appellant has taken steps to deliberately conceal the existence of the residential unit. This in turn means that she is unable to rely on the aforementioned immunity period.
5. The site comprises a smallholding, with a small number of animals, including pigs and horses and some sporadic structures including caravans and horseboxes. There is no dispute that the building subject to the notice, a former cricket pavilion, was developed on the site more than four years ago. Consequently, the structure in its own right benefits from immunity from enforcement through the passage of time.
6. The appellant's case is that whilst there has been regular overnight use of the building for lengthy continuous periods for several years, full time residential use of the site by the appellant's father, Mr Peter Brading, has continued for more than four years prior to the enforcement notice being issued.
7. In terms of when residential use of the site can be said to have commenced, the question of when the building could be regarded as first forming a dwellinghouse is clearly a key consideration. In this regard it is established in case law that a key characteristic of a dwelling is its ability to afford to those who use it the facilities required for day to day private domestic existence¹. Thereafter the continuity of occupation of the building for residential purposes is also a key matter.
8. At the Inquiry and in other evidence provided, various witnesses said that the interior of the building had been gradually improved over time and included the installation of a sink in December 2016. Prior to this time, it would appear that water was supplied from a borehole via a tap attached to the outside of the building and was transferred into the building in a tank. It would also appear that a cooker and hob was fitted around the same time. Beforehand, there had been reliance on a two-ring gas hob, although reference was made, particularly by Mr Brading, to a range of different cooking facilities. Notwithstanding this, the appellant conceded in cross-examination, that prior to December 2016 cooking took place in a caravan elsewhere on the site or outside. This may explain how a family acquaintance, Mr. Wilson, who gave evidence to the Inquiry, was able to recall being provided with a roast meal during a visit some years ago.

¹ *Gravesham Borough Council v Secretary of State for the Environment (1982) 47 P&CR 142*

9. The dwelling is served by a 'long drop' toilet housed in a separate adjacent building. There was general agreement by the appellant and other witnesses that this facility has been in place for some 9 – 10 years.
10. I acknowledge that the notion of precisely what facilities are required for day to day existence will vary from one person to the next; also the fact Mr Brading appears to have adopted a lifestyle based on limited material means and low environmental impact would indicate that he is likely to be more accepting of the most basic amenities than many other people would be.
11. However, in the context of the aforementioned case law, in an extreme case, even if it is possible to survive in the most basic of buildings through the shelter it provides and through importing minimal food and water to allow for sustenance and cleaning, this cannot be enough to make the building in question a dwelling.
12. I acknowledge the various adaptations that have been made on the site in order to accommodate day to day existence. I have taken into consideration that prior to December 2016 the building subject to appeal does not appear to have had an internal water supply and toilet facility and that cooking facilities appear to have been very limited. Whilst this is obviously not the extreme example that I have referred to above, I am not persuaded that, in combination, this arrangement would have allowed for sufficient convenience and flexibility, such that the building could be regarded as a self-contained residential unit, complete with facilities to afford the conditions for day to day existence, in the context of the *Gravesham* case.
13. Furthermore, it also became apparent at the Inquiry that some low-key agricultural use continues to be made of the wider site, in particular the rearing of a small number of pigs. It was indicated that the external toilet facility also serves this use of the site, and would appear to have done since before the permanent dwelling is said to have existed. Despite the fact that a domestic toilet could be located outside the main dwelling, particularly historically, this arrangement in this case would undermine the argument that the toilet forms part of a self-contained residential unit. Notwithstanding this, drawing the above considerations together, I reach the conclusion, on balance, that the appeal building did not become a dwelling until December 2016, following improvements to the kitchen arrangements.
14. In terms of the duration of use of the building for residential purposes, responding to a Planning Contravention Notice (PCN) issued by the Council in February 2017, the appellant stated 'No' when asked if the site has been used as a permanent residential site. A statutory declaration provided by the appellant's father², dated 30 April 2018, stated that the site had been occupied permanently for four years and eight months, therefore from September 2013. In evidence to the Inquiry, Mr Brading said, by contrast, that he had occupied the site permanently since 2012 following a serious accident. Jessie Knights when asked at the Inquiry about her father's residential occupation responded four to five years ago. Karen Knights in her proof of evidence replied that Mr Brading had lived there full time for the last five years. These latter responses would suggest full-time occupation commenced in 2014 or 2015.

² Associated with a previous application for Certificate of Lawfulness Ref 21/18/0010/LE

15. From the evidence before me and that presented at the Inquiry, the date when full time residential occupation of the site commenced is therefore ambiguous. Despite evidence being sworn and given on oath, when considering the contradictory nature of these statements, I do not find the information provided about when permanent residential occupation commenced to be sufficiently reliable, to conclude on the balance of probability that the Council is out of time to enforce. The supporting statements provided by various third parties, as appended to the appellant's evidence, do not overcome this ambiguity. However, even if the Council was out of time because of the duration of permanent occupation, this would not overcome the concerns I have raised above regarding when the change of use occurred.
16. Furthermore, despite the appellant's denial of concealment, I struggle to reconcile the negative response given to the question in the February 2017 PCN about permanent residential use of the site, with the revelation in sworn evidence made later on that the building has indeed been occupied full time as a dwelling since well before that time in 2017.
17. The question, which asked the appellant about any knowledge they had of permanent residential use of the site by anybody, was straight forward. The suggestion that the appellant was confused by the question or was unaware that her father was occupying land in her ownership and which she was visiting regularly at this time, is simply not compelling.
18. For all that Mr Brading says that the Council and members of the local community were aware of his presence on the site, I am not persuaded that the aforementioned response to the PCN was not an attempt to conceal his full-time residential occupation there.
19. I am mindful that the National Planning Policy Framework states that effective enforcement is important to maintain public confidence in the planning system and the Government's Planning Practice Guidance acknowledges that this relies on accurate information about an alleged breach of planning control. It is commonplace for Councils to rely on evidence given in PCN enquiries to inform whether enforcement action is taken.
20. From the information before me, I am not persuaded that permanent residential use of the site as a self-contained dwelling should have been obvious to the Council simply by visiting the site and talking to people present there. There is nothing in the appellant's or any of the other witnesses' sworn evidence to persuade me that Council officers were specifically informed by them that the appeal building was the subject of continuing permanent residential occupation. Furthermore, had the appellant confirmed residential occupation when asked about this in 2017, it would, in my view, have increased the likelihood of enforcement action being taken at this time.
21. Accordingly I conclude that even if I am wrong with regard to when the building first became a dwelling and that continuous residential use could be demonstrated over the key period, the appellant should not be able to rely on the time periods set out in S 171B of the Act to claim immunity from enforcement, as a result of the concealment of information. The ground (d) appeal fails.

The appeal on ground (f)

22. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. I acknowledge that the appellant does not dispute the requirement for the residential use of the building to cease, in the event of the appeal on ground (d) being unsuccessful.
23. However it is argued that the requirement to remove residential and domestic equipment and materials is excessive. It seems to me that the existence of such items are part and parcel of facilitating the residential use. The purpose of the notice is clearly to remedy the breach by ceasing the use and restoring the land to its condition before the breach took place. If domestic and residential items were allowed to remain in place, this objective would not be achieved, and it would also make it unreasonably difficult to prevent the resumption of the unauthorised residential use.
24. There is however a further complication in that the appellant argues that without reference to the specific items that should be removed, the requirements are ambiguous, particularly because there are items that have a dual use, not being solely used for residential purposes. The appellant states in closing submissions that for this reason the notice should be regarded as a nullity.
25. However I am not persuaded that there should be any difficulty identifying items that genuinely relate to the residential use of the land, and furthermore distinguishing such items from those on the site that may continue to be needed for welfare purposes only, both in terms of nature and quantity, in connection with any low-key agricultural use of the site. In this context and from the information before me, I am not persuaded that the garden pergola seat should not be removed. I therefore consider the requirements of the notice to be sufficiently precise and not readily open to misinterpretation. The ground (f) appeal fails.

The appeal on ground (g)

26. Despite, a lifestyle preference for living on the site, I am not persuaded, from the evidence provided, that alternative accommodation would not be available to Mr Brading in the form of the property, near Yeovil, undisputed to be occupied by his partner, and with whom he would still appear to be in a relationship.
27. This would overcome the need to seek alternative accommodation from scratch. Mr Brading states that it would be necessary to identify a suitable alternative site to accommodate the animals present there. However, whilst I understand that living close to his animals may be a preference, there is no evidence before me that this would be essential, and that horses and pigs could not remain on the site. I therefore see no justification in terms extending the compliance period to the 12 months requested. However a small extension to 6 months should be sufficient to allow the appellant's father to relocate, whilst making alternative arrangements for any domestic pets present on the site, should this be necessary. The ground (g) appeal succeeds to this limited extent.
28. I recognise that the loss of residential use of the site would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the

Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country which has been held to include the protection of the environment and upholding planning policies. Accordingly, whilst taking into account a variation to the enforcement notice to allow for an extended compliance period, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and would not be disproportionate.

Conclusion

29. For the above reasons, I reach the conclusion, as a matter of fact and degree and on the balance of probability, that the dwelling, in a form that would meet the accepted definition of such, has not been in use on the site for a period of more than four years prior to the notice being issued. Accordingly a material change of use of the property did not occur more than four years before the enforcement notice was issued. In any event I have found deliberate concealment, meaning that reliance cannot be placed on the immunity period in question.
30. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice with a variation.

Formal Decision

31. It is directed that the enforcement notice be varied by deleting the words "4 months" in paragraphs 6(i) and 6(ii) and substituting the words "6 months" in both cases instead.
32. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR

