



Appeal Decisions

Site visit made on 30 July 2019

by Jessica Graham BA(Hons) PgDipl

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

Decision date: 22 August 2019

Appeal A: Ref APP/D3315/C/18/3214852

Appeal B: Ref APP/D3315/C/18/3214853

Land at Higher House Farm, Huntham, North Curry, Taunton TA3 6EF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - APPEAL A is made by Mr Peter Kemp (now deceased), and APPEAL B by Mrs Anne Kemp, against an enforcement notice issued by Taunton Deane Borough Council (now Somerset West and Taunton Council).
 - The enforcement notice was issued on 1 October 2018.
 - The breach of planning control as alleged in the notice is "The use of the barn as a permanent dwelling in breach of condition 03 of planning permission 36/2007/016. Condition 03 is as follows: The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times. Reason: The accommodation provided is unsuitable for use as a permanent dwelling because of its limited size, isolated location and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism in accordance with Taunton Deane Local Plan Policy EC23."
 - The requirements of the notice are
 1. Cease use of the holiday let building as a permanent residential dwelling
 2. Cease use of the land edged red as domestic curtilage and remove all domestic items and paraphernalia (currently within the area edged blue on the plan) from the land.
 - The period for compliance with the requirements is nine months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c),(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Reasons

2. The enforcement notice concerns an alleged breach of a condition attached to a previously granted planning permission. In such cases, the purpose of the notice should be to make the development comply with the conditional planning permission. Where the condition relates to an occupancy restriction, the appropriate requirement is simply to comply with the condition, leaving the Appellants with a choice as to how to comply.
3. The condition here at issue has three constituent parts. Firstly, it restricts occupancy to "bona fide holidaymakers"; secondly, it restricts periods of occupancy to no more than a total of four weeks in any twelve week period; and thirdly, it requires a register of holidaymakers to be kept. However, the breach of planning control alleged in the notice does not reflect these specific

terms of the condition, but rather alleges “The use of the barn *as a permanent dwelling* in breach of condition 03...” [my emphasis].

4. This departure from the precise terms of the condition is problematic, in that it confuses the purpose of the notice. I should say that this observation does not impute any strong criticism of the Council; I appreciate that as a logical necessity, “use as a permanent dwelling” would constitute a breach of Condition 03. The problem that concerns me relates to the implications that the Council’s choice of wording had for a potential appeal against the enforcement notice on ground (a). This ground of appeal is that planning permission should be granted for what is alleged in the notice.
5. The Appellants have consistently maintained that they have not used, and have no wish to use, the appeal site as a permanent dwelling. Rather, their intention was to seek the replacement of the existing holiday occupancy condition with a more modern alternative which, while still preventing use as a permanent dwelling, would not place time limits on individual periods of occupation but simply require that the building be used for holiday purposes only.
6. That being the case, the Appellants could not reasonably have perceived a need to lodge an appeal on ground (a) against a notice alleging “The use of the barn as a permanent dwelling”, since they did not wish to seek planning permission for that use. Whereas had the breach alleged by the notice been correctly worded – that is, reflective of the precise restrictions on occupancy imposed by Condition 03 – the Appellants may well have realised the necessity of submitting a ground (a) appeal in order to pursue their desired variation of its terms. In the current absence of an appeal on ground (a), it is not open to me to consider the planning merits of varying Condition 03.
7. I do have wide powers, under s.176 of the 1990 Act, to correct or vary the terms of the enforcement notice, provided I can be satisfied that doing so would not cause injustice to the Appellants or the local planning authority. I have given careful consideration to whether I could exercise those powers in this case. However, as discussed above, I consider that had the allegation been correctly worded in the first place the Appellants may well have pursued their option to appeal against the notice on ground (a). The deadline for paying the fee for the deemed planning application made on an appeal on ground (a) is now long past, so if I were to amend the wording of the alleged breach at this late stage, the Appellants would effectively have been deprived of their only opportunity to lodge an appeal on ground (a). That would clearly be unjust.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under s.176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the various grounds of appeal as set out in s.174(2) of the 1990 Act do not fall to be considered.

Jessica Graham

INSPECTOR