



Appeal Decision

Site visit made on 17 September 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/T9501/C/18/3213604

The Byre, Scotchcoulthard, Haltwhistle, Northumberland, ND49 9NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andy Saunders against an enforcement notice issued by Northumberland National Park Authority.
 - The enforcement notice was issued on 11 September 2018.
 - The breach of planning control as alleged in the notice is described as –
Under reference 90/E/520 planning permission was granted for the conversion of farm buildings (of which the Premises are one unit) to form holiday accommodation. Condition 5 of the permission provides as follows: "The units hereby permitted shall be used solely for holiday purposes and shall not be sold off nor let (other than for holiday purposes) separate from the adjacent dwelling known as Scotchcoulthard." The Premises are being used as a private residential dwelling.
 - The requirements of the notice are to cease the use of the Premises for private residential accommodation.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on 'legal' grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the development and use are not relevant, and they are not an issue for me to consider in the context of an appeal under the grounds pleaded.

4. The alleged conduct of the Authority or members of the Town Council cannot be taken into account. Similarly, comments submitted by an interested party concerning procedural matters are not relevant to this decision.
5. The appellant requests that I consider extending the compliance period to ten years. This would amount to an additional ground of appeal under ground (g), that the period for compliance with the notice falls short of what should reasonably be allowed. The local planning authority has not had the opportunity to comment fully on this additional ground, and there would be prejudice if I were to consider this matter. In any event, an extension for such a long period would amount to a temporary planning permission. Ground (a) has not been pleaded and the prescribed fees have not been paid so there is no deemed planning application before me.

Background

6. Planning permission was granted in 1990¹ for the conversion and extension to former agricultural buildings to form four units for holiday accommodation at Scotchcoulthard, Haltwhistle. The approved plan² shows the range of buildings, including the farmhouse, located around a courtyard. The farmhouse is labelled "existing farmhouse" and the outbuildings are numbered 1–7. The plan attached to the enforcement notice identifies The Byre as unit 3.
7. The permission was subject to five conditions, of which Nos 2 and 5 are most relevant to the matters at issue. Condition 2 provides that the permitted development must be carried out in accordance with the approved plans. Condition 5 states the units hereby permitted shall be used solely for holiday purposes and shall not be sold off nor let (other than for holiday purposes) separately from the adjacent dwelling known as Scotchcoulthard.
8. The allegation is that one of the units, known as The Byre, is being used as a private residential dwelling, in breach of condition 5.

The appeal on grounds (b) and (c)

9. In order to succeed on ground (b), the appellant must show on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact. The appellant accepts that The Byre is being used as a private residential dwelling and not for holiday purposes. Therefore, the appeal on ground (b) must fail.
10. However, it is argued that condition 5 never applied to the appeal premises and so it has not been breached. This argument is more appropriately advanced under ground (c), that the matters alleged in the notice do not constitute a breach of planning control. Given the nature and extent of the submissions from all parties, I am satisfied that I can determine the appeal on ground (c) without prejudice. Hence, I have considered whether the appellant has shown on the balance of probability that the matters stated in the notice do not constitute a breach of planning control.
11. The decision notice states that the permission is for four units, not seven as shown on the plans. The appellant maintains that units 1-3 were built as per the plan. He says that it is not known when these units were converted to

¹ Ref 90/E/420 dated 10 October 1990.

² Layout plan stamped 90/E/430 dated 10 October 1990.

letting cottages, but a newspaper article from 1993 indicates one of these was used as accommodation by the author. Unit 4 appears to have been built later. It is further claimed that units 4 and 5 were built on a materially different location and units 6 and 7 were never built. It is contended that the permission must therefore relate to units 4-7.

12. When interpreting planning permissions, the principle is that a planning permission should stand by itself, and the meaning be clear from within the four corners of the document. The Courts have established that if the planning permission incorporates the application and plan, and there is something which is not clear, then that application and plan may be used as aids to interpretation, to define the scope of what is permitted³.
13. In this case, the application was for full planning permission which must be read with the approved plans⁴. There is also a condition which directly links the decision notice to the plans. However, there is a discrepancy as the description of the approved development states four units as opposed to the seven shown.
14. The Courts have held that it is permissible to look at extrinsic evidence, including but not limited to the application form and documentary evidence⁵, to resolve any ambiguity provided this does not alter the apparent meaning of the planning permission. I have therefore had regard to the approved plans, the application form and such supporting information as is before me, in order to interpret the permission.
15. The planning application form, dated 1 May 1990, describes the development as "rebuilding of collapsed structures construction of redevelopment into 4 holiday [sic] accommodation units building for..." [incomplete]. In contrast, the approved plans show the farmhouse, marked existing, and works to convert or extend other buildings in the complex. In total, seven separate units are clearly identified. The plans show that Nos 1-3 were covered by the permission. This is irrespective of whether the works comprised conversion to residential accommodation or rebuilding.
16. Furthermore, the statement submitted in support of the 1990 application sets out that development would be in two stages; (i) completion of restoration of existing buildings and (ii) rebuilding collapsed structures. It is explained that stage one would produce three units, while stage two would produce a purpose built unit for disabled people plus three further units. The statement also specifically refers to unit 3 as the one that would be suitable for disabled people. This document confirms that it was intended there would be seven units, as per the layout plan.
17. The only evidence that the permission is intended to be for four units is the numeral 4 in the planning application form that has been carried through to the decision notice. All other evidence before me strongly suggests the correct interpretation to be given to the permission is for seven units. In addition, unit 3 is clearly referenced in the supporting statement as part of the scheme.

³ R (aoa Shepway DC) v Ashford BC [1998] EWHC Admin 488, JPL 1073, *Wood v SSGLG & the Broads Authority* [2015] EWHC 2368 (Admin) *Slough Estates v Slough BC (No 2)* [1970] 2WLR 1187.

⁴ In *Barnett v SSGLG & East Hants DC* [2008] EWHC 1601 (Admin), [2009] EWCA Civ 476 it was held that a full planning permission must be read with regard to the approved plans.

⁵ *University of Leicester v SSCLG & Oadby and Wigston BC* [2016] EWHC 476 (Admin).

18. When reliance is placed on an existing permission, it is necessary to show that the relevant permission has been implemented. It is accepted that units 1-3 have been constructed in accordance with the approved plans. Consequently, the planning permission was implemented. It seems that the development deviated from the permitted works in that units 4-7 have not been built in accordance with the approved plan. This does not alter the fact that the development has occurred and, therefore, the conditions of the planning permission are triggered. The deviation from the plans becomes an enforcement issue.
19. The appellant draws my attention to "*The Firm of Archid and Gleeson*". These judgements are not provided but they appear to concern revoking planning permissions, which is not relevant in this instance.
20. I conclude on this ground, that it has not been shown, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. Therefore, the appeal on ground (c) must fail.

Conclusion

21. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice.

Debbie Moore

Inspector