
Appeal Decision

Site visit made on 13 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/M9496/C/19/3235604

**A building to the north side of Main Road, Taddington, Derbyshire
SK17 9UF**

- 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 S Smith against an enforcement notice issued by Peak District National Park Authority.
 - The enforcement notice was issued on 8 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, operations comprising the erection of the Building.
 - The requirements of the notice are:
 - (i) Demolish the Building; and
 - (ii) Remove all of the materials used in the construction of the Building, including any materials used in the construction of the foundations and footings, to a place of lawful disposal.
 - The period for compliance with the requirements is 2 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. 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. It is directed that the enforcement notice be varied in paragraph 5(ii) by deleting the wording "to a place of lawful disposal" and substituting with "from the Land".
2. It is directed that the enforcement notice be varied in paragraph 5 by the deletion of "2 months" and the substitution with "3 months".
3. Subject to these variations the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

4. The notice requires at paragraph 5 (ii) that all of the materials used in the construction of the Building, including any materials used in the construction of the foundations and footings, are removed to a place of lawful disposal. However, the requirements can only go as far as remedying the breach of planning control and must also be restricted to the Land. The removal of the materials to a place of lawful disposal is therefore excessive. I shall therefore vary the terms of the notice in paragraph 5(ii) by deleting the wording "to a

place of lawful disposal” and substituting with “from the Land”. I am satisfied that this variation would not cause any injustice to the appellant or the local planning authority as it does not alter the purpose of the notice and it is no more onerous than the requirements in the original notice.

Appeal on ground (f)

5. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
6. The appellant considers that the second requirement of the notice is unnecessary. He believes there is no need to remove the materials used in the foundations and footings as these are below ground. In addition, there should not be a requirement to remove the materials of construction away from the site as the Land is a farmyard where cladding sheets and timber would normally be stored for use elsewhere on the farm holding when the need arises. Furthermore, the materials could be used in the construction of a replacement building which is currently being considered for planning permission by the National Park Authority.
7. Even though the materials used in the foundations and footings are underground, they still form part of the unauthorised development. To remedy the breach of planning control it is therefore necessary for the totality of the building to be removed, including the foundations and footings.
8. Furthermore, there is no certainty that the proposed replacement building will be granted planning permission, and I have not been provided with any substantive evidence that would lead me to conclude that the materials that have been used in the construction of the unauthorised building are required for the purposes of agriculture and required to be stored on the site. Moreover, only the complete removal of all of the materials used in the construction of the building, including any materials used in the construction of the foundations and footings from the Land, would remedy the breach of planning control.
9. The appeal on ground (f) therefore fails.

Appeal on ground (g)

10. The issue is whether the compliance period of two months is reasonable. The appellant considers that a period of nine months would be more reasonable as there is a need to house his cattle over the winter period. In addition, a decision on an application for a replacement building is pending with the local planning authority.
11. There is no certainty that the proposed replacement building will be granted planning permission and I therefore give this consideration limited weight. The National Park Authority accept that if the building is genuinely required to house cattle over the winter months then an extension to the compliance period may be appropriate. There was no evidence on my site visit that the building was being used for such purposes. However, it is not unreasonable to assume that the agricultural building in this location may be required to shelter

animals during the winter. The conclusion that I have reached is that a period of three months would be more reasonable in this instance as it would allow the building to remain over the winter months. To this extent the appeal on ground (g) succeeds.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Elizabeth Pleasant

INSPECTOR