



Appeal Decision

Site visit made on 17 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/X1118/C/19/3233186

Manleighs, Kiln Lane, Combe Martin, Devon EX34 0LY

- 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 Brian Lee Lethaby against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 13 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years unauthorised material change of use consisting of the sub division of a single dwelling house into 3 separate residential flats and the conversion of a garage/workshop/store to create a new dwelling house and operational development. Namely engineering works consisting of the removal of an earth bank, the formation of hard standing area, the erection of a blockwork structure including retaining wall and levelling of the land.
 - The requirements of the notice are: 1. Remove the means for separate permanent residential flats at Manleighs (except the unit known as Flat, Manleighs council tax reference 18029033702) and reinstate the single dwelling house at the building shown edged in blue on the attached location plan. 2. Cease the permanent residential use of the building (known as Manleigh Lodge) shown edged in green on the attached location plan. 3. Remove all toilets, showers, baths, kitchen units (fitted and free-standing), work tops, breakfast bar, kitchen/utility room appliances (fridges, tumble dryers, washing machines, dish washers, ovens/cookers, cooker hoods), fire places, internal and external flues, radiators, any plumbing connection heating or water supply, and any internal dividing walls which are not consistent with the planning drawings and application 40120, within the building (known as Manleigh Lodge) shown edged in green on the attached location plan. 4. Restore the earth bank to its condition before the development took place and reseed with grass. The approximate position of the earth bank is shown hatched blue on the attached location plan. 5. Remove the hard standing, restore the land to its condition before the development took place and reseed with grass. The approximate position of the hard standing is shown hatched in red on the attached Location Plan. 6. Re-instate the land to the north of the site to its condition before the development took place including the removal of tracks created and reseed with grass. The approximate area is shown hatched purple on the attached location plan. 7. Remove blockwork structure from the land to the north-west, whose approximate position is shown edged in purple on the attached location plan. 8. Restore the land to the north-west shown hatched in green on the attached location plan to its condition before the development took place and reseed with grass. Remove the services installed on that part of the Land. 9. Remove all debris and rubbish resulting from complying with steps 1 to 8.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. Following my site visit, correspondence¹ was sent to the parties outlining three of my concerns relating to the issued enforcement notice. Both parties have provided a response to those concerns as the Council were not minded to withdraw the enforcement notice.
3. The enforcement notice, amongst other things, alleges a breach of planning control relating to a material change of use consisting of the sub-division of a single dwelling house into 3 separate residential flats. The building concerned is referred to as 'Manleighs' and is edged in blue on the accompanying plan.
4. The only requirement relating to this building can be found at paragraph 6.1 of the enforcement notice. This requirement, when read as a whole, is vague and ambiguous as it does not specify with any reasonable clarity what is expected of the appellant.
5. A notice should therefore be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it; the appropriate test being derived from *Miller-Mead v MHLG* [1963] 2 WLR 225. I do not find that this is the case as the requirement to 'remove the means for separate permanent residential flats...' is insufficiently specific to comply with s173(3) of the Act and is unacceptable because of the uncertainty it introduces. A lay person would therefore not understand this to mean the removal of kitchens, bathrooms and living areas as since suggested by the Council. The importance of this is heightened as failure to comply with a requirement of an enforcement notice carries criminal liability.
6. Furthermore, there is no requirement to cease the use of the building as 3 separate residential flats.
7. This is in direct contrast with the cessation and detailed requirements found at paragraphs 6.2 and 6.3 of the enforcement notice, relating to the conversion of the garage to a dwelling.
8. An enforcement notice also cannot require the reinstatement of a use.
9. It is therefore clear to me that the enforcement notice is seriously defective, and the matters are too fundamental to be corrected without causing injustice to the appellant. This is because it would make the enforcement notice more onerous, and, other grounds of appeal or arguments may have subsequently been advanced by the appellant. It is therefore not the case that the allegation or reasons for issuing the enforcement notice are of concern, or, an insistence that elaborate wording should be required.
10. In respect of my other two concerns, I take the view that the enforcement notice did not enforce against a track or tracks. This matter did not form part of the alleged breach of planning control and was not identified on the accompanying plan. If the appeal had proceeded, as lodged, I would have corrected the enforcement notice to omit reference to the removal of tracks in paragraph 6.6. Otherwise, introducing this matter into the allegation would

¹ Email from the Planning Inspectorate on 19 February 2020

have led to injustice to the appellant as it would have made the enforcement notice more onerous or other grounds of appeal or arguments may have been advanced.

11. I also take the view that as there was no requirement to demolish/remove the retaining wall, in accordance with the provisions of s173(11) and s73A of the Act, upholding the enforcement notice would have resulted in an unconditional planning permission being granted for the wall, following compliance with its requirements. This would however only have been in respect of the retaining wall that was external to the blockwork structure, the extent of which was highlighted to me during my site visit, as opposed that integral to the construction of the building (i.e. its rear wall). Introducing a requirement to demolish the retaining wall would have led to injustice to the appellant as it would have made the enforcement notice more onerous.

Conclusion

12. For the reasons given above I conclude that requirement 6.1 of the enforcement notice is vague and ambiguous. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals on grounds (a), (c), (d), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

13. The enforcement notice is quashed.

Paul T Hocking

INSPECTOR