



Appeal Decision

Site visit made on 9 March 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal Ref: APP/X1118/C/19/3237891

Land at 1 Bydown Cottages, Swimbridge, Barnstaple, Devon EX32 0QD

- 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 Nicholas Eveleigh against an enforcement notice issued by North Devon District Council.
- The enforcement notice, was issued on 29 August 2019.
- The breach of planning control as alleged in the notice is Within the last 4 years unauthorised operational development consisting of the erection of a dwelling.
- The requirements of the notice are 1. Remove the kitchen (including all units, sink, taps, and cooking facilities) from the garden building within the land outlined in red on the attached location plan; 2. Remove all washing and toilet facilities (including bath/shower, taps, toilet and foul drainage) from the garden building within the land outlined in red on the attached location plan; 3. Cease the use of the garden building within the land outlined in red on the attached location plan as a separate unit of accommodation.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) 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.

Summary Decision: The appeal succeeds to the extent outlined and the enforcement notice is upheld as varied in the terms set out below.

Procedural Matter

1. In the light of the coronavirus/COVID-19 pandemic, both parties' views were sought as to whether the period for compliance in the notice should be extended pursuant to the powers available under s176(1)(b) of the Town and Country Planning Act 1990 (1990 Act) and with regard to any health or other impacts on the appellant and their family; any requirements or implications of the Coronavirus Act 2020 or the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; and any related regulatory or other Coronavirus/COVID-19 related issues. Comments made have been taken into account and I address this matter further below.

Background

2. Retrospective planning permission for demolition of a shed building and erection of a holiday unit and associated works was refused by the Council¹.

¹ Reference: 65913

An appeal against that refusal² was dismissed on the basis that the development did not provide a suitable location for a holiday unit, with regard to development plan policies.

The Appeal on Ground (f)

3. The appeal on this ground is that the steps required by the enforcement notice go beyond what is necessary. It is appropriate to first consider what purpose(s) the requirements are intended to achieve. This enables a proper assessment of whether the steps required are more than is necessary to achieve that purpose/those purposes.
4. Section 173 of the 1990 Act states two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy any consequent injury to amenity.
5. The allegation refers to the erection of a dwelling. The steps required by the notice do not require demolition of the dwelling but rather seek to prevent the use of the building as a separate unit of accommodation. The Council states that the purpose of the notice is to remedy the breach of planning control. Plainly, the steps do not seek to fully remedy the breach as the building is permitted to remain. However, s173(3) of the 1990 Act states that the steps in the notice are to achieve wholly *or partly* [my emphasis] any of the purposes referred to above.
6. As such, the purpose is to partly remedy the breach of planning control by preventing the use of the building as a separate unit of accommodation. It is apparent that the present bathroom and kitchen facilities were part and parcel of the unauthorised development. As such, the notice *can* require the removal of the kitchen and bathroom facilities, even if those works do not of themselves constitute operational development
7. That said, bearing in mind that the enforcement regime is remedial, it is appropriate that I consider the minimum steps required to achieve that purpose and whether the steps stated are proportionate.
8. The appellant proposes that the bathroom facilities and kitchen units and sink be permitted to remain, leaving in place the requirement remaining that cooking facilities be removed.
9. I agree that, as a matter of fact and degree, the presence of bathroom facilities alone would not be enough to afford the facilities for day to day private existence. Bearing in mind also the evidence that there was a bathroom in the demolished former building on site, it would not be proportionate to require removal of the bathroom facilities.
10. However, whilst there might not be a 'working kitchen' without cooking facilities, permitting the kitchen units and sink to remain would mean that it would take very little for the building to have all the facilities required for day to day domestic existence. Permitting these to remain would therefore render the enforcement notice ineffective in remedying the breach of planning control.

² Reference: APP/X1118/W/19/3223133

11. Consequently, I shall vary the notice so that the requirements stipulate the removal of all kitchen facilities, effectively leaving the bathroom facilities to remain.

Conclusion on Ground (f)

12. For the reasons given above I conclude that the requirements are excessive, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to the extent outlined.

Period for Compliance – Coronavirus/COVID-19 Pandemic

13. The Council has indicated that in the light of the ongoing pandemic, it would be agreeable to a 6 month period for compliance if this is deemed reasonable in the circumstances. The appellant has indicated that he is content with the 3 month period for compliance specified in the notice.
14. In view of the fact that the works required by the notice are relatively minor in nature, I consider that even bearing in mind the ramifications of the pandemic, the 3 month period for compliance specified in the notice is reasonable. If any unforeseen difficulties were to arise regarding compliance in the light of the pandemic, the Council could, under s173A(1)(b) of the 1990 Act, and entirely at its own discretion, waive or relax any requirement of the enforcement notice and, in particular, extend the period specified in accordance with s173(9) of the 1990 Act.

Formal Decision

15. The appeal is allowed on ground (f), and it is directed that the enforcement notice be varied by the deletion of all wording in requirement 2 of paragraph 6 and renumbering of requirement 3 as number 2.
16. Subject to these variations, the enforcement notice is upheld.

V Bond
INSPECTOR