



Appeal Decision

Site visit made on 18 May 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 20 May 2020

Appeal Ref: APP/M1005/C/19/3228636

Yew Tree Inn, Yew Tree Hill, Holloway, Matlock DE4 5AR

- 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 Mrs Carole Westnedge against an enforcement notice issued by Amber Valley Borough Council.
 - The enforcement notice was issued on 16 April 2019.
 - The breach of planning control as alleged in the notice is i. The material change of use of the public bar areas at the Yew Tree Inn to use as a dwelling house; and ii. The material change of use of an area of car park at the Yew Tree Inn for use as a domestic garden.
 - The requirements of the notice are i. Cease use of the bar areas for a residential use; ii. Cease use of the car park as domestic garden; and iii. Remove all decking and garden paraphernalia from the garden.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is quashed.

Reasons

2. In his judgement in the case of *Miller-Mead v MHLG [1963] JPL 151* Lord Justice Upjohn stated that the test in deciding whether an enforcement notice satisfies the statutory requirement set out in section 173 of the Act must be "Does the notice tell him (the recipient of the notice) fairly what he has done wrong and what he must do to remedy it". This principle has been endorsed in other court judgements such as *Clive Payne v The National Assembly for Wales and Caerphilly County Borough Council [2006] EWHC 597*.

3. Section 176(a) of the Act states that 'On an appeal under Section 174 the Secretary of State may — (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority'. There are errors and defects in the alleged breach of planning control and in the requirements of the notice that are correctable without causing injustice to the Appellant, but there are others that are not.

4. The plan attached to the enforcement notice identifies, with a red line, the land to which the notice relates. The plan is at a small scale. Within the red line the plan also identifies the building that is Yew Tree Inn. The two storey plus attic original building has a south-east gable to the pavement to Yew Tree Hill and a

single storey relatively modern extension attached to its north-west gable. The extension is about one metre below the ground floor of the original building. To the north-east of the building is a triangular gravelled 'forecourt' and to the rear and to the south-west of the building is a car park and garden areas. Traditionally, the ground floor of the building was a public house and the first floor and the attic was in residential use by the innkeeper. The two former bar rooms and a dining area in the extension have been incorporated into the residential use.

5. The first element of the alleged breach of planning control is 'The material change of use of the public bar areas at the Yew Tree Inn to use as a dwelling house'. The 'public bar areas', which includes the dining area, are not now in use 'as a dwelling house'. They are not, in this regard, independently in use but are in use together with the upper floors of the building as a dwelling house. This defect of the notice is correctable, without causing injustice to the Appellant, by deleting 'as a dwelling house' and substituting instead 'for residential purposes'.

6. The first requirement of the notice demands the cessation of 'a residential use' but the 'bar areas' are not in such a use. This defect of the notice is correctable, without causing injustice to the Appellant, by deleting 'a residential use' and substituting instead 'for residential purposes'. The third requirement of the enforcement notice refers to 'decking' but the Council accepts that there is no decking on the land. This defect of the notice is also correctable, without causing injustice to the Appellant, by deleting 'decking and' from the third requirement.

7. The second element of the alleged breach of planning control refers to the use of 'an area of car park' as 'domestic garden'. 'An area' indicates that the notice does not allege the change of use of the whole of the car park, rather a part of it. But the Appellant cannot know from the notice which 'area of car park' the notice is referring to. In this regard, the small scale plan does not identify the extent of the car park, or the part of it to which the notice relates. At the site visit it was not possible to identify these areas precisely. Furthermore, the second requirement of the notice seeks the cessation of the use of 'the car park' as domestic garden, rather than 'the area of car park'. The use of the definite article in the second requirement is confusing though correctable without injustice.

8. The third requirement of the enforcement notice, as corrected, would require the Appellant to 'remove garden paraphernalia from the garden'. There are two areas of 'garden' at Yew Tree Inn. One of these is outside the enforcement land and is not relevant. The other is at a lower level than the car park and outside the former 'dining area' extension to the original building. This 'garden' area cannot be that to which the second element of the breach of planning control refers, because it is inaccessible to cars, so it is not being attacked by the notice.

9. In their appeal statement the Council has stated that "The Council has considered the whole planning unit to now be residential. The purpose of the (third) requirement was to ensure a comprehensive assessment of the whole planning unit". But the alleged breach of planning control only refers to the 'bar areas' in the building and 'an area of car park'. The garden at low level, as noted at the site visit, is the only discernible garden within the enforcement land. Given that the Council has "...considered the whole planning unit...", and their stance on the extent of residential use, the Appellant must be uncertain about the status of the garden and fearful that the Council is seeking the removal of garden paraphernalia from the garden that is not a subject of the breach.

10. The second element of the breach of planning control alleged in the enforcement notice and the plan attached to the notice do not clearly identify the part of the car park that the Council considers has been the subject of a change of use to domestic garden. Given that the only discernible garden at Yew Tree Inn is not part of the car park and is not therefore a subject of the breach of planning control, and that a requirement of the notice seeks the removal of garden paraphernalia from the garden, the notice does not tell the Appellant fairly what she must do to remedy the second element of the breach of planning control.

11. The enforcement notice is defective and thus flawed. The substantive defects are, principally, in the second element of the breach of planning control and in a corrected third requirement. These defects are not correctable because it is not known which 'area of car park' the Council is referring to in the breach and which 'garden' the requirement is referring to. The notice does not fairly tell the Appellant what she has done wrong and what she must do to remedy it, and to attempt to correct the defects would inevitably cause injustice to the Appellant. The notice is therefore invalid and has been quashed.

John Braithwaite

Inspector