The Planning Inspectorate

Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal Ref: APP/V2635/C/19/3224445
Land at 2 White Horse Drive, Dersingham, King's Lynn, Norfolk

- 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 Justin Collison against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 29 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of outbuildings into independent self-contained residential dwellings.
- The requirements of the notice are "i) The use of the outbuildings as independent self-contained residential dwellings permanently ceases; ii) The four recently erected outbuildings to be permanently removed / demolished. Please refer to ***Appendix A***, which identifies the four outbuildings as "A", "B", "C" and "D"; iii) All resultant materials and waste are permanently removed from the land."
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 174(2) (a), (c), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld, with a correction and a variation.

Preliminary Matters

1. The appellant confirmed that, due to work commitments, he was unable to attend the scheduled site visit on 18 February 2020. This visit was subsequently aborted. An attempt to rearrange the site visit was unsuccessful. However I consider that a site visit is not essential in this case, considering the matters in dispute and the evidence presented. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.

2. The allegation in the notice is limited to the material change of use of outbuildings to residential dwellings. The notice does not allege operational development in terms of the erection of any outbuildings. However the notice requires not only the use of the buildings to cease, but also for outbuildings A, B, C and D to be demolished and removed.

3. Because unauthorised building works have not been alleged in the notice, it is only necessary to cease the use in order to remedy the breach. The requirement for demolition and removal of outbuildings would go beyond what

is necessary to remedy the breach as described. Accordingly the notice needs to be corrected to omit this element. I am satisfied that the notice could be corrected accordingly without resulting in injustice to the parties.

4. The Council states that where building operations have been carried out to facilitate a change of use, it may require land to be restored to its previous condition. I accept that where there has been a material change of use an enforcement notice can require facilitating works to be removed, even if such works on their own might not constitute development.

5. However, the works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased. The alleged breach of planning control in this case is expressed as the material change of use of outbuildings to residential dwellings, indicating that it is the latter use, and not the outbuildings combined with their use as dwellings, that the notice seeks to attack. If the outbuilding developments were considered to be unauthorised then, in the interests of natural justice, this should have been set out within the alleged breach of planning control.

6. The appellant states that at least one of the outbuildings is a shed rather than a dwelling, therefore implying that it is not encompassed by the alleged breach of planning control, and should be allowed to remain in place. Though this point has been made as an appeal on ground (f), that the steps required to remedy the breach are excessive, it is actually first and foremost a ground (b) appeal, namely that the alleged use has not occurred.

7. Notwithstanding this, because I will be correcting the notice, in any event, to omit the requirement to demolish any of the outbuildings, there is no need for the ground (f) appeal to be considered further. Furthermore, the alleged breach of planning control relates to the position at the time the notice was issued. If the use of any outbuildings for residential purposes has since ceased, this will accord with the requirements of the notice and the appellant would not therefore be prejudiced.

The appeal on ground (c)

8. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The appellant's ground (c) appeal is focussed on the claim that one of the outbuildings is on the site of an original garage, dating from approximately 1949, and that as such the outbuilding in question is considered to be permitted development.

9. However as I have established above that the allegation in the notice does not seek to attack the erection of outbuildings on the site, only their use, there is no need for me to consider this matter further.

10. It is not the appellant's case, that with respect to any of the outbuildings that have been subject to change to residential use at the time the notice was issued, such use would not have required planning permission. The ground (c) appeal therefore fails in this regard.

The appeal on ground (g)

11. The ground of appeal is that the time given to comply with the requirements is too short. At the time of appealing, the appellant raised the concern that tenants would need 6 month's notice of eviction, and when consulted more recently said that the compliance period should be reviewed, towards the period end, in light of the current public health emergency.

12. I have not been provided with any documentary evidence setting out the tenancy arrangements in place. However, in terms of the ongoing public health emergency, I have had regard to measures contained within the Coronavirus Act 2020, with particular reference to protection from eviction, and to Government policies regarding social distancing. I am sympathetic to extending the three-month period given and it seems to me that, in the present circumstances, a period of five months would be appropriate to allow for compliance. In arriving at this view I am mindful that there is uncertainty over how long the current emergency measures will remain in place and also of the discretionary powers available to the Council under s173A of the Act.

13. The enforcement notice which will be upheld, with a correction and variation, will interfere with the tenants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden.

14. For the above reasons the appeal on ground (g) therefore succeeds to this limited extent.

Conclusion

15. For the reasons given above I conclude that the appeal on ground (c) should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Formal Decision

16. It is hereby directed that the enforcement notice be corrected by the deletion of the following wording in paragraph 5:-

    "ii) The four recently erected outbuildings to be permanently removed/demolished. Please refer to ***Appendix A***, which identifies the four outbuildings as "A", "B", "C" and "D"."

17. It is hereby directed that the enforcement notice be varied by the deletion of the words "3 months" in paragraph 6, and the substitution of the words "5 months" instead.

18. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett INSPECTOR