



Appeal Decision

Site visit made on 6 November 2019

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeals A and B Refs: APP/X1118/C/19/3222674 and 3222675 Hillside, Cross, Croyde, Braunton EX33 1PL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Trevor Leighton against an enforcement notice issued by North Devon District Council ('the notice').
- Appeal B is made by Lynda Leighton against an enforcement notice issued by North Devon District Council ('the notice').
- The enforcement notice, numbered ENF10765 dated 18 January 2019, was issued on 18 January 2019.
- The breach of planning control as alleged in the notices is without planning permission and within the last 4 year [sic], unauthorised operational development consisting of the erection of a single dwellinghouse (known as The Barn) whose approximate position is shown edged blue on the attached location plan.
- The requirements of the notice are to: (1) Cease the use of the building shown edged blue on the attached location plan as a single dwellinghouse; (2) Remove the internal fixture and fittings relating to the residential accommodation within the building shown edged blue on the attached location plan; and (3) Remove all debris and other rubbish resulting from complying with step 2.
- The period for compliance with the requirements is within 6 months from the date when the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) (b) and (f) of the Town and Country Planning Act 1990 as amended. This case is exempt from the prescribed fees, so that 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 fall to be considered.
- Appeal B is not exempt from the prescribed fees, which have not been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed. The appeal is proceeding on grounds (b) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: Appeal A is allowed, subject to correction, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision. I take no further action on Appeal B.

Application for Costs

1. Applications for costs were made by Trevor and Lydia Leighton against North Devon District Council. These applications are the subject of a separate Decision.

Planning Background

2. Hillside is a large detached dwellinghouse in the open countryside, which is set within a generous plot. Over the years substantial building and improvement

works have been undertaken to it, including the erection of significant outbuildings. In this regard, the planning history of the site that is relevant to the appeal is common ground between the parties. The Council's references and descriptions of development for these works are as follows: 54149 - Erection of a garage/store and creation of off-street parking area, approved 18/07/2012; 55585 - Erection of replacement store/annexe, approved 07/06/2013; and 57702 - Application for a non-material amendment to planning permission 55585 in respect of replacement of window with door (west), amended design of gable window (north), inclusion of window (east), glazed gable end to south elevation & extended roof to southern gable end, approved 23/07/2014.

Appeals A and B - Ground (b)

3. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus is on the appellants to make their case, on the balance of probability.
4. In their statement, the appellants detail that building works at the property, relating to the planning permissions set out in my 'Planning Background' above, took place over a considerable period. With regards to the building on the appeal site they state that this was substantially complete in July 2016 and they have included photographs dated 18 July 2016 that appear to show this to be the case.
5. The Council state that when its Enforcement Officer visited the site in February 2017 'operation works' were still underway. I have not been provided with evidence as to what these works were, but I note that amongst the photographs submitted by the appellants are two showing work was on-going to the driveway directly adjacent to the appeal building in March 2017.
6. The appellants' statement conflicts with their answers to questions in a Planning Contravention Notice (PCN), which the Council served on them. In the PCN, they said that the building was complete in April 2017. However, they explain in their statement that this was as a result of having only a few days in which to respond. Notwithstanding the conflict, the appellants' statement provides comprehensive, coherent and persuasive evidence regarding the timing and nature of the operational development that has been undertaken over the years at Hillside.
7. The evidence leads me to find that the appeal building was substantially completed in accordance with the scheme approved under planning permission 57702 in July 2016.
8. The appellants state that the building was initially used for purposes incidental to Hillside on the weekend of 9 and 10 July 2016. They are able to recall this as it was in connection with a birthday party. At that time, the ground floor was used as overspill accommodation from Hillside and the upper floor was used for a band and dancing.
9. The appellants go on to state that the interior of the building was subject to alteration during the remainder of 2016 and into 2017. This included the provision of an internal staircase linking its ground and first floors and the conversion of the latter floor to a bedroom. The resultant building was first

occupied by the appellant's son and friends between 28 September and 1 October 2017.

10. By this time the building contained the facilities required for day-to-day private domestic existence, which amounted to its conversion to a single dwellinghouse¹. From this point onwards, not only was the building used for purposes incidental to the use of Hillside but was also used as a single dwellinghouse, albeit as holiday accommodation, separate from it. Therefore, this change of use, which requires express planning permission, occurred prior to the issuing of the notice.
11. From the evidence before me and taking all of the above matters into account, I am of the firm view that the allegation should be corrected to state the following

Without planning permission, the material change of use of the building to a single dwellinghouse.

12. The wording used in the allegation is incorrect, but it is apparent that the appellant and the Council clearly understood the intent behind the issued notice. There was no doubt that what was being enforced against was the use of the building as a single dwellinghouse and arguments have been put forward in this regard.
13. My intended correction derives from the material facts that have been presented. It reflects the reality and would not undermine the basis of the notice. Having regard to S.176(1) of the Act, I am content that the proposed correction does not cause injustice to either party. The notice is not flawed beyond correction.
14. In conclusion, at the time that the notice was issued the building contained facilities for independent day-to-day private domestic existence and was occupied and used as a single dwellinghouse as a matter of fact. A material change of use had occurred and, therefore, ground (b) must fail.

Appeal A - Ground (a)

Reasons

15. In the light of my finding in the Ground (b) appeal, the deemed planning application is for the material change of use of the building to a single dwellinghouse. Therefore, the main issue in this appeal is whether the use of the building for this purpose accords with prevailing planning policies.
16. Paragraph 79 of the National Planning Policy Framework, ('the Framework') sets out that planning decisions should avoid creating new isolated homes in the countryside unless one or more of five circumstances apply. Of these, sub-paragraph d) reads where "the development would involve the subdivision of an existing residential dwelling". This is a matter on which Policy ST07 of the North Devon and Torridge Local Plan 2011-2031, adopted October 2018 (NDTLP), which relates to development in the open countryside, is silent. However, the terms of paragraph 79 d) only apply to the sub-division of a single building, as was the case in the appeal decision for a site at Clyst St

¹ *Gravesham Borough Council v SSE and O'Brien* [1982] JPL 306

Mary² referred to by the appellant. In the case before me, given the detached nature of the building, paragraph 79 d) does not lend support to the creation of an unrestricted dwelling.

17. Amongst its terms, NDTLP Policy DM18 supports the reuse of buildings in the countryside for use as holiday lets. I have concluded, in the ground (b) appeal, that the building was not erected as a unit of holiday accommodation, therefore I find here that the terms of Policy DM18 are applicable and that these provide support for the use of the building as a holiday let. Its use in this regard can be controlled through a suitably worded condition.
18. The terms of NDTLP Policy DM18 acknowledge that there is a strong likelihood of new holiday accommodation being provided within the open countryside, away from service provision. It does not preclude its provision for this reason. Here, the walk along the lane to the services at Croyde is not a long one and, notwithstanding the lack of footways or lighting, I do not find it would present significant difficulties or dangers to those staying at the appeal site.
19. Given its location, the use of The Barn for purposes ancillary to the use of Hillside is also appropriate. This was the previous decision of the Council, albeit in relation to a smaller part of the building, and I have been given no substantive reasoning to find otherwise here.
20. I find on ground (a) that the use of The Barn as an unrestricted dwelling would not accord with the terms of the Framework. However, its use as a holiday let and ancillary accommodation accords with the terms of NDTLP Policy DM18 and guidance in the Framework.

Conditions

21. The Council proposed the use of a number of conditions in its statement, should the Ground (a) appeal succeed. The question of a condition limiting holiday usage has been addressed, above. I have, however, added the use of the building for purposes ancillary to Hillside in the manner suggested by the appellant.
22. Although the appellant states that work has already been completed in accordance with the Council's proposed condition requiring the provision of drainage facilities, I do not have substantive evidence that this is the case. I agree that a condition negating the discharge of surface water onto the highway is warranted, and I have attached a condition to this end. However, there was no timing provision in the condition, so I have added what I consider to be a reasonable time frame. The use of a condition relating to the provision of a bat and bird box is required in compliance with NDTLP Policy ST14. However, as the development has already commenced, I have amended the timing element of this condition in a similar manner.
23. Notwithstanding its position in the Area of Outstanding Natural Beauty, I have not been persuaded that a condition removing certain permitted rights is necessary. I have been aware of the terms of the PPG³ in assessing this proposed condition.

Decision on Ground (a)

² APP/U1105/W/17/3191044

³ Paragraph: 017 Reference ID: 21a-017-20190723. Revision date: 23 07 2019

24. Appeal A succeeds on ground (a) and the deemed planning application is approved. The enforcement notice will be quashed, and it follows that Appeals A and B on ground (f) do not fall to be considered.

Appeal A - Formal Decision

25. It is directed that the enforcement notice is corrected by: the deletion of the words "within the last 4 year, [sic] operational development consisting of the erection of a single dwellinghouse" and replacing this with "within the last 4 years, the material change of use of the building to a single dwellinghouse"

Subject to the correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the building to a single dwellinghouse (known as The Barn) whose approximate position is shown edged blue on the attached location plan at Hillside, Cross, Croyde, Braunton EX33 1PL as shown on the plan attached to the notice and subject to the following conditions:

- 1) The development hereby permitted shall not be used otherwise than for the provision of ancillary accommodation to Hillside or as short let holiday accommodation. The property shall not be occupied as a permanent dwelling. The owner or operator shall maintain a register of occupants for each calendar year and this shall be made available on request for inspection by any duly authorised officer of the Local Planning Authority.
- 2) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the disposal of surface water so that it does not drain onto the highway shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 2 months of the date of this decision a scheme showing the provision of an appropriate bat and bird box to be affixed to the building, to include details of their design and siting, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B – Formal Decision

I take no further action in respect of Appeal B.

Roy Curnow

INSPECTOR