



Appeal Decision

Site visit made on 2 June 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2020

Appeal Ref: APP/R4408/C/19/3237879

204 Darton Lane, Mapplewell, Barnsley S75 6AH

- 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 Claire Firth against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 18 September 2019.
- The breach of planning control as alleged in the notice is Without planning permission;
1. The erection of a detached building and; 2. The unauthorised change of use of the land to a base for a vehicle recovery business and storage and parking of recovery vehicles.
- The requirements of the notice are (i) Demolish the unauthorised breezeblock structure in its entirety, ensuring that the remaining land is restored to its original condition before the breach of planning control took place. (ii) Removal all vehicles and equipment associated with the operation of a vehicle recovery business from the site.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the notice is corrected to delete the relevant allegation and requirement, but otherwise the appeal fails, and the enforcement notice as corrected is upheld, as set out below in the formal decision.

Preliminary Matters

1. The notice alleges the erection of a detached building on the Land. However from my visit it was evident that there are two such buildings on the site and no specific reference, within the notice itself, as to which building is the subject of this enforcement action.
2. However the requirements of the notice indicate that the building the subject of the notice is the 'unauthorised breezeblock structure'. Because it was evident from my visit that only one of the buildings is finished in breeze blocks, (the other being finished in a dash render), I am satisfied that there should be no uncertainty regarding the building that is the subject of the notice. My view in this regard is strengthened by the fact that the appellant has not claimed any such uncertainty. My approach is therefore to deal with the appeal as relating to the breeze block building situated at the southern end of the appeal site.
3. There has been no appeal lodged on ground (a), namely that planning permission should be granted. The merits of the building are not therefore before me for consideration in this case.

Reasons

The appeal on ground (b)

4. This appeal is that the breach of control alleged in the notice has not occurred. The appellant's case, in this regard, specifically relates to the alleged change of use, there being no dispute that the alleged detached building has been erected.
5. The alleged change of use refers to the operation of a vehicle recovery business. For the appellant to succeed on this ground, they would be expected to demonstrate, on the balance of probability, that the appeal site is not being used on a commercial basis for the recovery of broken-down vehicles, and for the storage and parking of vehicles associated with that business.
6. The appellant claims that such a business is not being run from the site, but instead the site is used as a base for car restoration projects being undertaken as a personal hobby. It is claimed by the appellant that the pick-up truck is used to bring cars to the site for restoration and to transport vehicles to shows. Various V5C certification has been provided, to demonstrate that the appellant and her husband are the owners of various vehicles.
7. At my visit I observed several vehicles to be present on the site, both on the external compound area and within the two garage buildings there. The registration plates of some of the vehicles present, including a pick-up truck, corresponded with those for which the appellant's husband had provided a V5C certificate. I have no reason to doubt that Mr Firth is the owner of the vehicles in question. In addition to this, various vehicles being stored within the two buildings on the site, were of considerable age, their registration plates indicating that they dated from various years in the 1980s. A further vehicle appeared to have a foreign number plate.
8. Given the prevalence of non-contemporary vehicles and vehicles owned by the appellant's husband at the site, it seems to me, on the balance of probability, that the site is not being used in connection with a service for the recovery and mechanical maintenance of broken-down vehicles, belonging to different customers. Furthermore there is no information that leads me to the view that vehicles are being temporarily recovered to the appeal site before being transferred to a different location for repair.
9. I therefore conclude, from the information before me and on the balance of probability, that the appeal site is not being used as alleged, namely as a base for a vehicle recovery business and the storage of associated vehicles. The ground (b) appeal therefore succeeds with regard to the alleged use of the site.
10. Whilst I acknowledge that there have been various objections and concerns raised with regard to the effect of the use of the site on the living conditions of residents, this is not material to the question of whether the alleged use has actually occurred as a matter of fact, in the context of a ground (b) appeal.

The appeal on ground (c)

11. The ground (c) appeal is that the matter alleged does not constitute a breach of planning control. This element of the appeal specifically relates to the erection of a detached building on the site.

12. The appellant's case in this regard is that the development has simply replaced a pre-existing building that had got into a derelict and unsafe state, with the development taking place on an existing concrete base. The appellant claims that she was advised by the Council in 2016 that she could go ahead with the development, a point disputed by the Council. However there is no dispute that what has been constructed is a new garage building. There has been no information or evidence put to me, setting out why the building in question would not have required planning permission.
13. From the information provided by the parties, the appeal site boundary includes the house known as 204 Darton Lane, which together with the building subject to the notice are in the appellant's ownership. Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) allows for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as permitted development (PD), subject to various provisos. However irrespective of whether the development could be regarded as required for a purpose incidental to the enjoyment of No 204 Darton Lane, it would first need to be established that the building was located within its curtilage.
14. From my site visit I was able to see that the dwelling comprised an end of terrace property, with a small yard situated immediately to the rear. The edge of the yard is demarcated by a brick wall. This feature strongly delineates the end of the yard, as it gives way to a vehicular access track behind.
15. The area where the appeal building is situated, by contrast, is quite different in character to, and physically distinct from, the house and its immediate surroundings. This area is enclosed by relatively tall, steel palisade fencing and entrance gates, has the appearance of a non-domestic compound and is separated from the house and yard by the access track.
16. The respective parcels of land therefore form physically distinct character areas. The sense of separation between the area where the detached building is located and the dwelling known as 204 Darton Lane and its immediate surroundings, is very strong.
17. Therefore, despite being within the same area of ownership I consider, on balance and as a matter of fact and degree, that the detached building, subject to the notice, is not situated within the curtilage of the dwelling. Even if it had been demonstrated that the detached building was within the dwelling's curtilage, which is not the case here, it would still have been necessary for the appellant to demonstrate that the building was required for purposes incidental to the enjoyment of the dwellinghouse, in order to be regarded as permitted development. However the appellant confirms that although her family are the users of the building subject to the notice, they do not actually reside at 204 Darton Lane. Accordingly the detached building cannot be said to be required for a purpose incidental to the enjoyment of that dwellinghouse.
18. For the aforementioned reasons, and irrespective of other provisos, the detached building does not benefit from permitted development rights in accordance with Part 1 Class E(a) of the GPDO. No further information is before me as to why the detached building would not constitute a breach of planning control. The ground (c) appeal therefore fails.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed in part only, and the notice is corrected to delete the relevant allegation and requirement for one part of the matter the subject of the notice, but otherwise I will uphold the notice on the other part.

Formal Decision

20. It is directed that the enforcement notice be corrected by the deletion of the words "2. The unauthorised change of use of the land to a base for a vehicle recovery business and storage and parking of recovery vehicles" in paragraph 3; and by the deletion of the words "(ii) Removal all vehicles and equipment associated with the operation of a vehicle recovery business from the site." in paragraph 5.
21. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR