The Planning Inspectorate

Appeal Decision

Site visit made on 7 July 2020

by J A Murray LLB (Hons),Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Appeal Ref: APP/Y2003/C/19/3233335
Land known as Meadow View, Bracon, Belton, DN9 1QP

- 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 Jacob Turner against an enforcement notice issued by North Lincolnshire Council.
- The enforcement notice, numbered EN178, was issued on 19 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the making of a material change of use of a barn to a mixed use as a barn and a single residential dwellinghouse.
- The requirement of the notice is to cease the use of the land and building for any residential accommodation purposes.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) 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.

Decision

1. It is directed that the enforcement notice be varied by substituting 6 months as the period for compliance in section 6. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld.

Ground (d)

2. To succeed on this ground, the appellant must prove on the balance of probability that the use of the barn changed to a mixed use as a barn and single residential dwellinghouse on or before 19 June 2015[1] and that this use continued for 4 years after that date, without significant interruption.

3. Although no sworn statements are submitted, the appellant says he has been living in the barn for more than 4 years and draws attention to a letter from the Council dated 11 June 2013, which he says identifies that residential use. This was addressed to Mr M Duffy of Wyvern House, Bracon, which lies immediately to the west of the appeal building. The appellant confirms that Mr Duffy is his late father.

4. The 2013 letter indicates the barn was built, along with a stable, pursuant to a 2003 planning permission, which included a condition restricting their use to domestic purposes incidental to the enjoyment of Wyvern House and its

[1] Namely 4 years prior to the issue of the enforcement notice.

occupants. The letter refers to allegations that the barn had been "used as residential accommodation", but records Mr Duffy's denial of this; his statement that he had no desire to change the building to a separate dwelling unit; and that it was likely to be used by his son. It is not clear whether the allegations made to the Council related to use of the barn as a separate dwelling, or just as residential accommodation in connection with, but not incidental to, Wyvern House, contrary to the condition on the 2003 permission.

5. That 2013 letter nevertheless records the findings from recent inspections that the building had a kitchen/diner, furnished living room and study on the ground floor, along with a bathroom and 2 bedrooms (1 with en-suite bathroom) on the first floor.

6. Planning permission Ref PA/2018/9 has now been granted for conversion of the stable to a dwelling. Unlike the barn, the stable lies within the development boundary. Wyvern house was sold independently of the stable and barn at the end of May 2017, and investigations following that sale, led to the issue of the enforcement notice.

7. Subsequently, a planning application Ref PA/2019/1274 (the 2019 application) for the change of use of the barn to a dwelling was submitted. That application has not yet been determined, but the accompanying Design and Access Statement indicated that the appellant had been permanently residing in the barn since 2017 but had also been "using it as residential accommodation from about 2014/15." In response to a notice issued under s330 of the 1990 Act, the appellant indicated that the use of the appeal building as a dwelling and barn/garage began in Jan/Feb 2015.

8. Representations from the current owners of Wyvern House, who purchased it in 2017, are compelling because of their detail. They indicate that the appellant was living at Wyvern House at the time of their first viewing on 7 January 2017 up to the completion of their purchase on 30 May 2017 and say, "from this point only was it clear that Mr Turner took up residence in the barn."

9. A similarly detailed representation from a neighbour, who says her property overlooks both the appeal barn and Wyvern House, also indicates the appellant was living at Wyvern House until it was sold, and he only moved into the barn at that stage. Another adjoining neighbour supports that view, making similar points, including that upstairs lights were only seen at the appeal property at night, after the sale of Wyvern House. Notwithstanding intervening boundary features, I am content that both neighbours could see enough of the appeal property and Wyvern House to enable these conclusions to be reached.

10. In the register of electors for 2014 (in force from 17 February 2014), the appellant was registered at a different address, namely 13 Ashtree Close. He was then recorded as being at Wyvern House on the 2016 and 2017 registers, in force from 1 February 2016 and 1 December 2016 respectively.

11. The appeal property was not registered for Council Tax until 1 June 2017, from when the appellant has been recorded as resident there, although the register of electors for 2018 and 2019 does not show him at that address, or indeed Wyvern House. Mr Duffy was liable for Council Tax at Wyvern House from 2003 to 15 December 2014. But the appellant was responsible for Council Tax on that house from 17 December 2014 to 30 May 2017.

12. Having regard to the 2013 letter, there appears to be no doubt that, at that stage, physical works had been undertaken to enable the barn to function as a separate dwelling. However, the key thing is not the building's availability or suitability for residential use, but whether it was actually put to such use throughout the relevant period. Indeed, a neighbour draws my attention to the following passage from another appeal decision Ref APP/R5510/C/13/2200738 & 2200739:

> *"6….There is, therefore, no dispute that the conversion works to provide the accommodation described took place more than four years before the date of the application. However, simply because the building provided all the facilities necessary for day to living does not necessarily lead to a conclusion that the building was then used and continued to be so used as a separate dwellinghouse."*

13. Taking the appellant's statements outlined above together, the evidence of his use of the appeal property is limited to a bald and somewhat ambiguous assertion that he had been using it as residential accommodation from 2014/15, though only permanently residing there since 2017. It is not disputed that the appellant occupied the appeal property as a separate dwelling from the middle of 2017. However, the assertion that it was being continuously occupied as such before that date is contradicted by cogent evidence from neighbours and the purchasers of Wyvern House and is inconsistent with electoral registration and Council Tax records.

14. Given the nature of the building and its internal facilities it may be that, prior to the sale of Wyvern House, it was used as additional accommodation for the occupants of that house. However, that it insufficient for success on ground (d), as the Council would not have been able to take enforcement action during that time.

15. The burden of proof falls on the appellant. Even if it can be said that, by virtue of the internal works, the use of the barn changed to a mixed use as a barn and single residential dwellinghouse on or before 19 June 2015, and even if there was some 'residential' use of it before 2017, the appellant has not proved on the balance of probability that such use continued for 4 years after the change, without significant interruption. Ground (d) must therefore fail.

Ground (g)

16. This ground is that the time for compliance with the notice falls short of what should reasonably be allowed. The appellant says he needs time to complete the conversion of the adjacent stable block and requests a period of 24 months to allow him to remain in the barn with his partner and baby son. He suggests this would be more sensible than the alternative of using permitted development rights to station a mobile home on the site whilst the works are completed.

17. Given that the Covid-19 pandemic has arisen since the appeal submissions were made, I gave the parties an opportunity to comment on the implications for the compliance period of that pandemic and associated restrictions. The appellant and his partner are naturally concerned that they should not put their 12 month old son at risk of infection by moving him "outside of the protective bubble of his present home." The appellant asks for the compliance period to be extended until after the end of the pandemic, as defined by the WHO.

However, the appellant previously referred to 2 options, namely the completion of the stable block conversion and the stationing of a mobile home under permitted development rights. These are not necessarily the only options, and the Council points out that the current regulations and guidance allow people to move home. Nevertheless, I am not persuaded that either of the options identified by the appellant need put the child at risk of infection.

18. I accept that the pandemic may slow progress, or make it more difficult to engage tradesmen, but there is no evidence that they would be unable to engage tradesmen to finish the stable conversion. Again, the Council points out that current regulations and guidance do not prevent construction work continuing. Furthermore, from my site inspection, it was apparent that only internal works remain to be completed.

19. It is not easy to predict the progress of the fight against Covid-19, or the extent of restrictions contained in regulations and advice over the coming months. However, whilst it would be a matter for the exercise of the Council's discretion, it would retain the power to extend the period for compliance under s173A of the 1990. Unlike me, the Council will be able to keep the situation under review.

20. There may be little to be gained from substituting temporary occupation of a mobile home on the site for temporary occupation of the barn. Against this, there is no evidence to demonstrate that it would be impossible to find alternative accommodation elsewhere. However, the Covod-19 pandemic could make that more difficult and it is desirable to minimise the disruption associated with the loss of the appellant's current home, particularly in the best interests of his baby son.

21. The appellant's request for 24 months is disproportionate and tantamount to a temporary planning permission and the option of aligning the compliance period with the end of the pandemic is too uncertain. However, in all the circumstances, extending the compliance period to 6 months would be a proportionate response and, to this extent, I allow the appeal on ground (g) and will vary the notice.

Other matters

22. A neighbour suggests, in relation to ground (f), that it would be appropriate for the notice to require the removal of domestic internal works. First, ground (f) is not one of the grounds of appeal. Secondly, whilst I note the decision in appeal Ref APP/E6840/C/16/3163967, I could not make the suggested variation, as this would make the requirements of the notice more onerous and would cause injustice to the appellant.

J A Murray

INSPECTOR