



Appeal Decisions

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/M9496/C/20/3248084 (Appeal A) & 3248085 (Appeal B) Land at Bottle Croft, Main Street, Chelmorton, Derbyshire

- 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 Neil Howard (Appeal A) and Mrs Belinda Howard (Appeal B) against an enforcement notice issued by Peak District National Park Authority.
 - The enforcement notice was issued on 28 January 2020.
 - The breach of planning control as alleged in the notice is:
On 14 February 2008, planning permission was granted on appeal, the decisions being read together (references APP/M9496/C/07/2039362 + 2039262), for the retention of a temporary dwelling ("the building",) shown for the purposes of identification hatched black on plan no.14/0583 for a temporary period of 2 years, subject to conditions ("the Consents"). Condition 1 of the Consents state:
"This permission shall be for a limited period expiring 2 years from the date of this decision. On or before that date the building shall be permanently removed from the land and the site shall be reinstated to its former condition, unless an application to extend the permission has been approved in writing by the Authority."
It appears to the Authority that condition 1 of the Consents has not been complied with because:
 - a) The building (shown for the purposes of identification hatched black on plan no. 14/0583) is still on the Land
 - b) The site has not been reinstated to its former condition
 - The requirements of the notice are:
 - a) Remove the building from the Land
 - b) Reinstatement the site back to its former condition
 - The period for compliance with the requirements is:
 - a) 6 months after the notice takes effect
 - b) Within 2 months of compliance with step a) above.
 - The appeal is proceeding on the grounds set out in section 174(2)[d] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. Due to travel restrictions in place as a result of the COVID-19 pandemic I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have received no objection to this approach and am satisfied that the appeal can be determined on the evidence before me.

Reasons

3. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S171B of the Act sets out the time limits for taking enforcement action. In the case of operational development or the change of use of any

- building to use as a single dwelling house, the time limit is 4 years. In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
4. The appeals concern a mobile home which, the appellants state, was brought onto the land to provide residential accommodation during the setting up of their business. The appellants advise that a substantial extension to the side of the caravan was built to house their incubators and brooders (agricultural equipment) and after a year it was converted to additional residential accommodation. An application to regularise the building was refused and an enforcement notice was issued. The appellants appealed the Council's decisions and in February 2008 planning permission was granted on appeal, subject to conditions¹.
 5. It is not disputed that the appeal concerns a building, a fact which the previous Inspector clearly agreed with, having granted planning permission for the erection of a building and its use as a dwellinghouse. What is in dispute is whether the ten year or the four year rule should apply. S171B(1) refers to operational development, and states that no enforcement action may be taken after the end of the period of four years beginning with the date on which operations were substantially completed. The continuation of a use after the expiry of a temporary planning permission granted for a limited period is not operational development and so S171B(1) does not apply.
 6. S171B(2) states that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Where a condition requires the cessation of a use and for related actions to be carried out, the condition must be able to be enforced after the time limit set by the planning permission to which it relates. The breach of condition has not resulted in the creation of a separate dwelling and the building was already in use as a single dwelling house. Consequently, there has been no change of use to use as a single dwelling house and S171B(2) does not apply.
 7. S171(3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Since sections 171B(1) and (2) do not apply here, the breach is subject to the 10 year rule. Since the enforcement notice was issued on 28 January 2020, to succeed on ground (d), the appellants must prove on the balance of probability that the breach of condition began on or before 28 January 2010. Case law has established that it is for the appellant to make their case on the balance of probabilities.
 8. The planning permission was granted, on appeal, on 14 February 2008. The permission was granted on a temporary basis to allow time for the completion of a dwelling house that was being built at the front of the plot. The permission was time limited by condition and the chalet building should have been removed by 14 February 2010. The breach of the planning condition did not begin until after 14 February 2010 and, since the notice was issued before 14 February 2020, the notice was issued within the 10 year period falling under s.171B(3). Consequently, the appeals on ground must (d) fail.

¹ APP/M9496/C/07/2039362 + 2039363

Other Matters

9. The appellants assert that there are numerous similar dwellings elsewhere and that concerns regarding the appearance of the building could be remedied by cladding. However, the appellants have not appealed under ground (a) so I cannot consider planning merits.

Conclusion

10. For the reasons given above, I consider the appeals should not succeed. Accordingly, I dismiss the appeals and uphold the enforcement notice.

M Savage

INSPECTOR