



Appeal Decision

Site visit made on 28 July 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2020

Appeal Ref: APP/K1128/C/19/3241305 & 3241979

Land at Vantage One, Sandhills Road, Salcombe, Devon TQ8 8JP

- 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 Act).
 - The appeals are made by Mr and Mrs Culley against an enforcement notice issued by South Hams District Council.
 - The enforcement notice was issued on 17 October 2019.
 - The breach of planning control as alleged in the notice is described as:
 - "i. built additions to the structure of the residential property known as Vantage One, being additions that have been added after the completion of drawing number 1284/3 dated February 2017 submitted in connection with planning application reference 3040/17/FUL; and
 - ii. the erection of a wooden boundary fence of a height above one metre where it adjoins the public highway at Sandhills Road and the A381.
 - iii. the creation of a new vehicular access at the north-eastern boundary of the Land. (the development)."
 - The requirements of the notice are:

You must:

 - (i) Revert the residential building known as Vantage One to its former condition by the removal of all unauthorised extensions. Drawing number 1284/3 dated February 2017 submitted in planning application reference 3040/17/FUL illustrates the former condition of the residential building;
 - OR
 - (ii) Remove all unauthorised extensions and implement planning permission reference 3040/17/FUL with strict compliance with all of the conditions set out in the decision notice dated 10th May 2018;
 - AND
 - (iii) remove, or reduce to one metre in height, the wooden fence along the boundary with Sandhills Road and the A381;
 - AND
 - (iv) cease the use of the vehicular access at the north-east boundary of the Land.
 - The period for compliance with the requirements are:
 - (i) Compliance in full within twelve (12) months after the date on which this notice takes effect;
 - (ii) All unauthorised operational development to be removed from the Land within eight (8) months after the date on which this notice takes effect and works to implement planning permission reference 3040/17/FUL to be commenced by 10th May 2021;
 - (iii) Two (2) months after the date on which this notice takes effect;
 - (iv) Two (2) months after the date on which this notice takes effect..
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is quashed.

Reasons

The scope of ground (a)

Allegation 3(i)

2. The property has been the subject of building works and a planning permission has been given for the "alteration and extension of existing dwelling to form two dwellings" (3040/17/FUL – the planning permission). The notice relates only to unauthorised operational development. The construction or use of the second dwelling has not been alleged.
3. As it stands, internally I saw that the building does not provide facilities to support residential occupation by 2 separate households even though there is clearly an intention to do so. It is a matter of fact and degree at what point a building would be useable as a dwelling. Actual use alone should not be decisive and it is necessary to look in the round to ask what use the building has or what use it is. At the time of my visit, the allegation seemed a fair representation of what I saw.
4. With respect to the appeal on ground (a) and the deemed planning application, I have to consider only the planning merits of the breach as alleged on the notice. Confusingly, the reasons for issuing the notice relate substantially to the reasons why a submission to vary the previously approved plans for an additional dwelling on the site (2540/19/VAR) was considered by the Council to be unacceptable. I am not considering an appeal against that refusal and it is not for me in this decision to reach a view on the planning merits of a second dwelling because that is not what has been alleged. I cannot broaden the scope of the notice to allege the construction of a dwelling to match with the Council's reasons under my powers and I return below to explain those powers.
5. It is stated that the work has been "added after the completion" of drawing '1284/3' that drawing. That plan is referred to in connection with the planning permission although it is not one of those referenced within condition 2 of that decision which lists the approved drawings. The Council has since provided a copy of plan '1284/3' which shows the "existing elevations" drawing that was provided with the planning application. Rather than the additions having been added "after completion" of that drawing, it would seem that the drawing is a survey drawing of what existed prior to the previous applications and the alleged development being undertaken.
6. The wording of this allegation would be much clearer if amended to simply state "additions to the building known as Vantage One" or "additions and extensions to the building known as Vantage One". It would then be beneficial to append the plan to the notice as it could usefully indicate what the condition of the building was prior to the unauthorised development taking place. That would also then tie in with the requirement at 5 (i).
7. To continue to deal with the ground (a) appeal I would first have to correct the notice. I would then assess the development in a very different way to how the Council appears to have considered them.

Allegation 3(iii)

8. Allegation 3 (iii) refers to a new vehicular access "at the north-eastern boundary of the land". The site is outlined on the 1:1250 base map which

includes a north arrow. However, the boundary on the eastern side of the appeal site curves around from what I would say is almost due south to due north. That boundary therefore tends towards the north-east for its entire length. At my site visit I saw a vehicular access to the side of the site which fronts onto Sandhills Road and in my opinion this is on the north-eastern boundary. Another opening further to the north which had been closed off with a fence by the time of my visit but which, according to the appellant's statement, appears to have existed prior to the issuing of the notice. That would also have been on the north-eastern boundary.

9. It is not clear on the face of the notice which of these accesses is the one that the notice is supposed to relate to or if 2 accesses have been considered the allegation would need to reflect that. From the appellant's representations they have made submissions about the most northerly of the accesses. I cannot broaden the scope of the notice. I have not been helped in my understanding of this by any representations from the Council.
10. Furthermore, the reasons for issuing the notice do not state why an access is not acceptable on the north-eastern boundary. Reference is made only to conditions on the planning permission for a dwelling rather than explicit reasons why any access is considered unacceptable.

Requirement 5 (ii)

11. Even though the appellant was the applicant for the planning permission, they say that it is not clear which versions of the relevant plans were in fact approved by it. As a matter of fact, there is a planning permission which appears to remain extant for 3 years from the date of its approval on 10 May 2018. There is some remaining time therefore to implement that permission. The outcome of this appeal does not affect the appellant's ability to implement that planning permission. In my view, the alternative requirement (ii) to implement that planning permission should normally be sufficiently clear.
12. According to the appellant, there are ambiguities regarding which versions of the plans were in fact approved. Added to this, the versions of the plans that have been provided with the appeal documentation do not indicate the full reference and version numbers. I cannot know from the submitted documents what has been approved. These matters have not been confirmed by the Council following requests from the appellant or through any representations in this appeal.
13. This requirement of the notice is therefore imprecise. It is not possible for me to accurately consider the planning merits, under ground (a) and the deemed planning application, of what has been constructed in comparison with the previous planning permission which would be a material planning consideration.

The possibility of correcting the notice

14. I have broad powers under the provisions of S176(1)(a) of the Act to correct the terms of an enforcement notice but this cannot be undertaken where it would cause injustice to the Council or the appellant. In my view, the enforcement notice is riddled with ambiguities. It is not sufficiently clear or precise in its present form and requires substantial correction.

15. It may be possible to correct some of the errors that I have outlined and to clarify some of the wording. It would cause injustice to the appellant to correct the notice making it a very different document, potentially broadening its scope in some respects, than what has been served upon him.
16. The Council could also be caused injustice if I were to consider the merits of the development as constructed. They have provided reasons for issuing the notice which relate to a second dwelling with issues raised which do not clearly all relate to the operational development that has taken place and as has been alleged.

Conclusion

17. For the reasons given above I conclude that the enforcement notice is not sufficiently clear or precise. It is not open to me to correct the errors in accordance with my powers under S176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under grounds (a) (in relation to APP/K1128/C/19/3241305), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

A Harwood

INSPECTOR