
Appeal Decisions

Site visit made on 30 July 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Refs: APP/P1615/C/19/3243296 and 3243297
12A Coalway Road, Coalway, Coleford, Gloucestershire GL16 7HL

- 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 Craig Minister, and Appeal B is made by Mrs Tina Minister, both being against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice was issued on 17 November 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, a material change of use from a residential dwelling house to a mixed use of residential and a timber/fencing business.
 - The requirements of the notice are:
 - 1) *Cease using the land outlined red on the site location plan for business purposes.*
 - 2) *Remove from the land all associated vehicles, tools, equipment, materials and products generated by the business activities.*
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. It is directed that the enforcement notice be varied by the substitution in requirement 1 of the words "business purposes" with the words "timber/fencing business" and in requirement 2 the substitution of the words "business activities" with the words "timber/fencing business", together with the addition at the end of the sentence of the words "with the exception of a single van, not exceeding a gross vehicle weight of 3.5 tonnes". Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

Procedural matters

2. It is clear from the appellants' representations that there is a "hidden" appeal on ground (f), that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. I have sought the Council's views on this hidden ground. I shall deal with this below.

Reasons

Ground (d) – that the time for taking enforcement action has passed

3. The time for taking enforcement action against a breach of planning control consisting of a material change of use (not involving the change of use to a dwellinghouse) is 10 years beginning with the date of the breach.
4. The advice in the Planning Practice Guidance in relation to applications for lawful development certificates is that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. I consider that this guidance is of equal relevance to the consideration of a ground (d) appeal.
5. Using a home for business and residential purposes may not always amount to a breach of planning control. It is only when the scale and nature of the business use materially affects the overall character of the property and its use, that a breach of planning control may occur. Thus, it is a matter of fact and degree as to when a breach may be said to occur.
6. In this case, the appellants argue that the breach commenced shortly after they moved to the house in November 2006, carrying on a business which Mr Minister had previously operated in Oldham. It is claimed that the fencing business was run from the appeal premises, with fence panels constructed on site, and delivered to the customers' premises. This has continued since then, but in 2013 the business diversified by constructing field shelters and similar, with the buildings being constructed at the appellants' home, and then the panels and other components being transported as flat items on a flat-bed van, to be assembled at customers' sites.
7. The Council alleges that the material change of use took place some time after 19 November 2009, probably in 2013, when the field-shelter building aspect of the business started to expand. It claims that the scale of any timber or fencing business initially was so small that it did not amount to a material change of use of the land. Thus, the initial question is when did the scale and nature of the timber and fencing business change the character of the use of the dwelling and its curtilage? The onus of proof on this ground of appeal lies with the appellants.
8. I have been provided with copies of advertisements from the Forest of Dean and Wye Valley review, which advertises services offered by Mr Minister. The earliest advertisement dates from February 2007, and the copies run through to May 2015. The advertisements vary in content. Some advertise only fencing, whilst others also refer to landscaping, rubbish clearance, gardening, the supply of sand and aggregate, and the manufacture of field shelters and timber buildings. The advertisements show only that Mr Minister was advertising that he was available to carry out fencing work, as well as work such as gardening and landscaping which would be carried out elsewhere; they show nothing about how the property was used, and so little can be drawn from these.

9. Details supplied by Mr Minister to HMRC in 2007 say that he “did a bit of work in February and March 2007”, but no more recent tax information has been provided which explains how much work of what type was carried out. I have also been supplied with some invoices which detail fencing materials which were delivered to the appeal site. I consider that these invoices have a high evidentiary value, in that they demonstrate that fencing materials were delivered to the property, and I consider that it is likely that fencing panels were assembled there. However, the number of invoices is small; there are two dating from March 2007, totalling a value of £420 worth of fencing materials delivered to the site. The only other invoice which refers to materials delivered to the site is dated February 2011 and is for a value of only £75. The other invoice, one dated February 2008, is for fencing materials worth £340. This invoice does not mention the appeal site, but as it was for fencing parts, I consider that it is likely that the fences were assembled at the appeal site.
10. Whilst these invoices are useful, they are too few to demonstrate that a material change of use of the site occurred prior to 17 November 2009. The number of deliveries is too few, and the quantity of fence materials is too small to show that the character of the use of the site as a dwellinghouse changed to a material degree to that of the mixed use now alleged. The appellants accept that there were periods in 2009/2010 when there was little work available, and thus no materials were seen in the Google Streetview photograph in 2009.
11. The neighbour who has made representations on the appeal, asserts that the timber/fencing business consisted only of the odd delivery after he moved in, in 2017, and at that time, all fabrication work took place elsewhere. I am aware of the allegations of discord between the two parties. Even so, as the appellants’ versions of events have been contradicted, the evidence needs to be clear and precise. I find that on the balance of probabilities, there is insufficient evidence for me to conclude that it was more likely than not that the time for taking enforcement action has passed. The appeal on ground (d) therefore fails.

Ground (f) – the steps required are excessive

12. I have a duty to get the notice in order, if I can do so without injustice to the parties. The notice requires that the use for all business purposes should cease. This goes further than remedying the breach of planning control, which is confined to the change of use to a mixed use of residential and a timber/fencing business, and could prevent business uses which may not be a material change in the use of the premises. I shall therefore vary the notice by restricting the requirements to address only the timber/fencing business.
13. The appellants argue that the requirement to remove permanently all vehicles associated with the business would be excessive. They say it would deprive Mr Minister of his ability to carry out fencing activities elsewhere, and it would hamper Mrs Minister’s charitable activities to transport feed for horses.
14. It is commonplace for people to drive work vans to and from their place of work and to keep them overnight at home. The parking of a van within the curtilage of a dwellinghouse in such circumstances is unlikely to involve a material change of use of the dwellinghouse. So long as the timber/fencing business use of the premises ceases, preventing the appellants from bringing home a work vehicle would exceed what is necessary to remedy the breach. I shall therefore vary the requirement to add an exception to a single van, not

exceeding a gross vehicle weight of 3.5 tonnes. Domestic cars which may be used in connection with the timber and fencing business carried out elsewhere, but are used to travel to and from work, would not be caught by the prohibition as their use would be incidental to the use as a dwelling house.

15. Accordingly, the appeal on ground (f) succeeds to the limited extent I have indicated above.

Other matters

16. A neighbour has made representations about the impact of the use being enforced against on living conditions. However, as there is no appeal made on ground (a), there is no deemed planning application for me to consider, and therefore I am unable to consider the planning merits of the development or take them into account in my decision.

Overall conclusion

17. For the reasons given above, I conclude that the appeals should fail except to the extent indicated above and that, subject to variation, the notice should be upheld.

JP Roberts

INSPECTOR