



Appeal Decisions

Site visit made on 7 July 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27TH AUGUST 2020

Appeal A: APP/V2723/C/20/3248287

Appeal B: APP/V2723/C/20/3248288

The Old Barn, St Martins, Richmond, DL10 4SJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals A and B are made by Kyera Shandel and Michael Wainwright respectively against an enforcement notice issued by Richmondshire District Council.
 - The enforcement notice, reference 20/00003/ENFNOT, was issued on 25 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection on the Land of a self-contained dwelling ("the Building").
 - The requirements of the notice are: (1) Cease to use the Building for residential purposes; (2) Remove all domestic fittings from the Building; (3) Demolish the extension to the north gable of the Building as shown edged red on the attached photograph at annex 1; and (4) Construct the internal layout of the Building so that it complies with the approved plans of the planning permission 14/00245/FULL granted on the 7th July 2014.
 - The period for compliance with the requirements is within: 1 month for requirement (1); within 4 months for requirement (2); within 6 months for requirement (3); and within 9 months for requirement (4).
 - The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
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Decision

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

Grounds (b) and (c)

2. The breach of planning control alleged in the notice is the operational development of the erection of a self-contained dwelling. The appellants are claiming that the building has planning permission and the current use of the building, rather than the building itself is the breach. The appellants are therefore arguing hidden grounds (b) and (c); that that matters stated in the notice (the erection of a dwelling) have not occurred and/or that they do not constitute a breach of planning control.
3. On the evidence submitted by the appellants the building was erected as a dwelling and has only been used as such. The building was built and completed in its current form and has been used since 2016 by Mr Wainwright as a self-contained dwelling. The building was built as a dwelling, it contains a bedroom, living area with kitchen and bathroom facilities including hot and cold running water, and has only been used for this purpose. It could not be used as

a stable block due to its built form which is of a dwelling-house. The hidden ground (b) argument does not therefore succeed.

4. The appellants have also argued that the building was erected in accordance with the planning permission for a stable block and ménage area reference 14/00245/FULL ("the Original Permission"). The main building has the same footprint as that for which the permission was granted but was not constructed in accordance with the approved plans due to: the addition of a small extension on the north gable to house the boiler and external toilet; the substitution of the stable doors at the rear of the building with 2 windows; the provision of 3 sets of glazed doors to the front instead of 1 set of glazed doors and 2 sets of wooden doors; and the erection of internal wall to form hall and shower room. The building as constructed was therefore substantially different from the permission granted, and was not built as stable, haybarn and studio as it could not have been used as such. Applying the principle from the Sage case¹ the building operation was not carried out, both externally and internally, fully in accordance with the permission and the whole operation is unlawful.
5. The appellants claim that the building was completed in late 2015 and that it has been in use as a separate dwelling since an unspecified date in 2016 (by Mr Wainwright and also rented as an Airbnb). This is potentially a hidden ground (d) argument as the appellants are effectively claiming that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. This ground has not been formally argued. No documentary or sworn evidence has been submitted and the evidence is not so precise and unambiguous to justify accepting this argument on its face. The burden of proof is on the appellants and they have not proven on a balance of probabilities that this ground should succeed.

Ground (f)

6. To succeed on this ground the appellants must show 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 the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by such a breach. It is clear from the terms of the notice that its purpose is to remedy the breach.
7. The notice does not require the building to be demolished and removed. The Original Permission granted for the stable, barn and studio was not implemented and has now expired so permission for the resulting building will arise only if there is compliance with the notice in accordance with section 173(11) of the 1990 Act². The notice is therefore under-enforcing as it is not fully remedying the breach of planning control by requiring the removal of the unauthorised building but instead preventing the use as a self-contained dwelling.

¹ Sage v SSETR [2003] 1 WLR 983

² "Where – (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then so far as the notice did not require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities."

8. The reasons on the notice cover a range of planning considerations caused by the residential use such as the effect on heritage assets, location within a Flood Zone and effect on the character and appearance of the locality.
9. In a case such as this, in the absence of an appeal on ground (a)³ it is not permissible to consider the planning merits under ground (f). The appellants' case is that the residential use of the building does not have an adverse impact on the character of the landscape or any of the listed buildings in the vicinity, that it is not at risk of flooding (due in part to measures already implemented) and that there is a need for key worker accommodation and the ability to self-isolate. These arguments require consideration of issues which are matters of planning merit and which fit squarely within the realm of planning policy and planning judgement. Given the limited scope of this ground of appeal these are not matters that I am able to consider.
10. The appellants have suggested the alternative steps of keeping the building but removing the kitchen and using it ancillary to the main dwelling as a studio, home gym with shower room and desk/home office space. They would also wish to retain the external boiler house and WC. These alternative steps would not end the residential use of the building. The requirements of the notice do not exceed what is necessary to remedy the breach, hence the appeal on ground (f) cannot succeed.

Conclusion

11. For the reasons given above I consider that the appeals should not succeed.

Zoë Frank

INSPECTOR

³ An appeal may be brought under Section 174(2)(a) of the TCPA: "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted..."