



Appeal Decision

Site visit made on 8 September 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/U2235/C/20/3249148

Land at Crossington Farm, Fields Farm North, Bell Lane, Boxley, Maidstone, Kent ME14 3EG

- 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 E Moore against an enforcement notice issued by Maidstone Borough Council.
 - The enforcement notice, numbered 16/500477, was issued on 19 February 2020.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a detached building, contrary to both national guidance and the local development policies.
 - The requirements of the notice are:
 - (i) Demolish the building as indicated in the approximate hatched area L shaped block within the red outline of the attached plan.
 - (ii) Removal of utility service connections serving the building.
 - (iii) Removal of the resultant materials from complying with requirement steps (i) and (ii).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of three months and the substitution of six months as the time for compliance. Subject to the variation, the enforcement notice is upheld.

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act, and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the building is demolished, the utility connections are removed, and the resultant materials removed from the Land. Accordingly, the purpose of the notice is to remedy the breach of planning control.
3. It is the crux of the appellant's case, that the removal of the utility service connections are unnecessary, and would not serve any useful purpose, given that they are not visible, being sited underground.

4. It is well established in case law that the notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating unauthorised development. I have been provided with no evidence that these services have been provided for any purpose, other than to facilitate this unauthorised building.
5. It is acknowledged that the Council in their statement do not object to the lesser steps that have been suggested by the appellant. However, the reasons put forward by the appellant relate to the merits of retaining this part of the unauthorised works, due to the lack of visual or other impacts on the character of the area, or any other identified harm. Planning merits can only be considered where ground (a) has been pleaded and the appropriate fee paid they cannot be introduced under ground (f).
6. Drawing the above points together, I find that the remedial nature of the notice can only be achieved by demolishing the building and the removal of all facilitating works, including the utility service connections provided to facilitate the unauthorised building. Consequently, the requirements are not excessive and the appeal on ground (f) fails.

The appeal on ground (g)

7. For an appeal under ground (g) it is necessary to consider whether the compliance period, of three months, is too short.
8. The appellant has suggested that a period of six months should be given to allow for the required notice to be given, prior to demolition of the building and necessary arrangements to be made. The Council consider that as no appeal was made under ground (a) then appropriate arrangements could have been made during the course of the appeal.
9. Although it is acknowledged that the notice may have been issued some time ago, the appellant is entitled to assume success and to a reasonable period for compliance after the notice takes effect. It is further recognised that the works will require arrangements to be made with external undertakers to disconnect the services. This can take some time and be largely outside the appellant's control. I am also mindful of the uncertain situation that still exists with regard to COVID-19 and the potential impact this may have on the various external contractors.
10. For the above reasons, I consider that a period of 6 months would be a more reasonable timescale for any arrangements to be made, and all of the requirements of the notice to be complied with. The appeal on ground (g) therefore succeeds in this regard.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR