
Appeal Decisions

Site visit made on 25 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal A Ref: APP/E2001/C/20/3253552

Appeal B Ref: APP/E2001/C/20/3253553

Appeal C Ref: APP/E2001/C/20/3253554

Five Acre Lake, Mires Lane, North Cave HU15 2QP

- The appeal is 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 Jason Farr, Appeal B is made by Mrs S Hubbard and Appeal C is made by Mr J Farr Earth Mover Tyre Solutions Ltd against an enforcement notice issued by the East Riding of Yorkshire Council.
- The enforcement notice was issued on 30 April 2020.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the Land from fishing lake to a mixed use as a fishing lake and use as a sole or main residence including the stationing of a static caravan, the stationing of a cabin used for overflow accommodation, a triple bay storage unit, the stationing of domestic chattels including a dog kennels and a large shed with a roller shutter and engineering operations to create an extensive patio including seating areas, barbeque and hot tub and parking area.
- The requirements of the notice are:
 - 1) Cease the use of the Land edged red for residential use and;
 - 2) Remove all domestic chattels from the Land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeals succeed in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

FORMAL DECISION

1. It is directed that the enforcement notice is varied by:
 - (1) The deletion of requirement number 2) and its substitution with the following requirement: *2) Permanently remove the large triple bay storage unit with roller shutter doors, the large shed with the roller shutter door and the dog kennels.*
 - (2) Substituting nine (9) months for six (6) months as the period for compliance.
2. Subject to the variations above, the enforcement notice is upheld.

The enforcement notice

3. The appellants' arguments in relation to their ground (f) appeals essentially relate to whether the notice is a nullity, because it does not enable the recipient to know exactly what steps the Council require to be taken. An

enforcement notice is a nullity only if it is defective on its face, which means that it lacks some essential constituent or is incapable of being understood.

4. The government's Planning Practice Guidance (PPG) advises that an enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach. There is no dispute in respect of the first requirement to cease the residential use.
5. The appellants pointed out that the plan attached to the notice outlines only part of the site to which the alleged breach relates. Be that as it may, there is no misunderstanding about the land to which the notice relates and since the requirements of the notice relate only to the land, which is edged red, there is no injustice caused.
6. The appellants' argument is that the requirement to remove all domestic chattels from the land is ambiguous. The Council conceded in their statement that this requirement is not clear and confirmed that the chattels to be removed are the large triple bay storage unit with roller shutter doors, the large shed with the roller shutter door and the dog kennels. However, the appellants contended that the notice cannot be varied as such as these are buildings and not chattels.
7. I agree with the appellants that 'chattels' are not buildings for the purposes of the Act, they are generally something moveable, not a fixture or part of the land. In this case it seems to me that the large triple bay storage unit with roller shutter doors, the large shed with the roller shutter door and the dog kennels are buildings.
8. However, it is a well-established principle that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use.
9. The reasons for issuing the notice set out why the Council considered it expedient to take enforcement action in respect of the unauthorised residential use. It is clear from those reasons that the large triple bay storage unit with roller shutter doors, the large shed with the roller shutter door and the dog kennels, along with other works listed, are considered to facilitate the residential use. Consequently, it is not necessary for the Council to have assessed the expediency of taking action in respect of each of these developments individually.
10. The appellants have not sought to demonstrate that those buildings are not integral to or part and parcel of the residential use or that they had been erected for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
11. Additionally, it is evident which of those items identified in the reasons for issuing the notice the Council considered would be acceptable, provided they are for holiday use. It is clearly stated that the Council seeks to under enforce in respect of them.
12. As established by caselaw, the recipient of an enforcement notice is entitled to say that he must find out from within the four corners of the document what he is required to do or abstain from doing. In this case whilst the second

requirement read alone is not clear, it is possible to establish from the notice read as a whole what is required.

13. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. For the reasons given, I find that varying the requirements to refer to those specific buildings which the Council seek to be removed will not prejudice either party.

The appeals on ground (f)

14. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
15. In this case the notice requires the residential use to cease and seeks to under enforce in respect of the removal of operations and structures which facilitate the use but which the Council considered would be acceptable for holiday use. Consequently, I consider the purpose of the notice is to both remedy the breach of planning control and any injury to amenity which has been caused by the breach.
16. The appellants essentially argued that the notice does not define exactly what steps the Council require to be taken. However, I have concluded above that the notice is capable of variation in that respect. The appeals on ground (f) therefore fail.

The appeals on ground (g)

17. The appeals on ground (g) are that the period for compliance with the notice falls short of what is reasonable. The appellants stated that they require two years or a minimum of 12 months to sell the property and find a new home to buy as they cannot afford to buy a house without raising funds from the sale of the property. In support of their case the appellants referred to the circumstances associated with the Covid-19 pandemic and the affect this has had on the property market and economy.
18. The appellants provided little evidence about their family circumstances nevertheless, this is an important consideration. Whilst it is never possible to guarantee that occupiers can find somewhere new to live, it is reasonable to ensure anyone who will be deprived of their home is given a reasonable period to look for other housing.
19. Notwithstanding the effect of the pandemic on the property market and economy, there is no substantive evidence to support the appellants' request that the period for complying with the notice is extended to 12 months or two years.
20. However, I conclude that in the current exceptional circumstances and in the interests of minimising stress and disruption to the family, that even if account is taken of the need to remedy the harm, the notice does not afford the appellants reasonable time to comply with the requirements of the notice. I conclude that it is reasonable and proportionate to extend the period from six to nine months. The appeals on ground (g) succeed to that extent.

21. Additionally, I acknowledge the uncertainty regarding the current restrictions associated with the pandemic and note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.

Conclusion

22. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

Felicity Thompson

INSPECTOR