



Appeal Decisions

Site visit made on 26 February 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26TH APRIL 2021

Appeals Ref: APP/D0121/C/20/3258014 & 3258019

Worships Farm, Row of Ashes Lane, Redhill, Bristol BS405TU

- 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 are made by Mr Andy Lane (Appeal A) and Mrs Nicola Lane (Appeal B) against an enforcement notice issued by North Somerset Council.
- The enforcement notice, numbered 2017/0176, was issued on 5 August 2020.
- The breach of planning control as alleged in the notice is: without planning permission, (1) the creation of a new access (labelled A on the attached plan¹); and (2) without planning permission the conversion of the barn to holiday accommodation not in accordance with planning approval 14/P/0012/F.
- The requirements of the notice are:
 1. Carry out works to ensure the development complies with planning approval 14/P/0012/F including the conditions and limitations thereto;
 2. Remove the conservatory and all resulting materials from the land as shown shaded in green on the attached plan; and
 3. Remove the gates and block the access created by continuing the wall at the same height, materials and finish as the existing wall as shown labelled A on the attached plan.
- The period for compliance with the requirements is six months from when the notice takes effect for steps 1 and 2, and four weeks from when the notice takes effect for step 3.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B was proceeding on the grounds set out in section 174(2) (a), (d), (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. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2) (d), (f) and (g) of the Act.

Summary Decision: The enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr Andy Lane and Mrs Nicola Lane against North Somerset Council. This application is the subject of a separate Decision.

Reasons

2. I have identified a number of defects with the enforcement notice in question, which I set out below. These defects have caused me to consider the position with regard to the validity of the notice or, indeed, whether it is a nullity. In this regard, the powers transferred to Inspectors under section 176(1)(a) of

¹ Reference in the header to "attached plan" is to the plan attached to the enforcement notice.

The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b) of the 1990 Act, to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation will not cause any injustice to the appellants or the local planning authority.

3. The enforcement notice includes the allegation: '(2) Without planning permission the conversion of the barn to holiday accommodation not in accordance with planning approval 14/P/0012/F'. The planning permission referred to in the allegation was granted on 25 February 2014 for the 'change of use of agricultural storage barn to north of site to holiday accommodation with installation of a mezzanine floor level, windows and doors and parking for three cars'. Condition 2 states that 'the development hereby permitted shall be carried out in accordance with the following approved plans: 8654/B, B1593, B1592, B1591'.
4. Part 1 of the notice alleges a breach of planning control falling under section 171A(1)(a) of the 1990 Act; that is carrying out development without the required planning permission. However, allegation (2) put as it is acknowledges that the 14/P/0012/F planning permission has been implemented, but that some element does not comply with the approved scheme. In these circumstances the breach of planning control falls under section 171A(1)(b) of the 1990 Act, which is failing to comply with any condition or limitation subject to which planning permission has been granted. In this case, the relevant condition would be condition 2.
5. As allegation (2) is not consistent with part 1 of the notice, it is open to me to correct this and refer in part 1 to an alleged breach of planning control falling under section 171A(1)(b), rather than 171A(1)(a). However, in doing so I must be satisfied that the 14/P/0012/F planning permission has been implemented and that an allegation of a breach of condition of that permission is correct. As such, I have considered the approved scheme of development and compared this with the development I observed on site.
6. With regard to the approved scheme, I note that the red line boundary on the layout plan and location plan (plan number 8654/B) has been drawn tightly around the east and north elevation of the building. It encloses a small area to the south of the building and a larger area from the west facing elevation to an access to the west that also serves the wider site.
7. The approved plan number B1592 shows windows and doors in three elevations of the building, together with a roof light in the west facing roof slope. Three parking spaces to serve the development are shown on the layout plan. The location of these is shown between the west facing elevation of the building and the site access. These are referred to in condition 5 of the permission.
8. Having considered the approved scheme, at the site visit I noted that works to the building have not been carried out in accordance with the plans referred to in condition 2 of the permission. The deviations from the approved scheme are numerous and include the following.
9. The window shown on the approved plans in the east facing elevation, the central window shown in the west facing elevation and the patio doors/windows shown on the south facing elevation of the building have not been installed. There was, however, a large opening in the east facing elevation, which is not

shown on the approved scheme. This provides access to the conservatory that has been constructed on the east facing elevation, which again does not feature as part of the approved scheme and is not mentioned in the description of the development.

10. In addition to the above, the shape of the roof is wholly out of accord with the approved scheme. Instead of a centrally ridged roof, the pitch of the roof slopes has been dramatically increased and the roof slopes meet a flat roof area, creating a Mansard type roof form. Consequently the north and south facing elevations of the building have a different shape to the corresponding elevations on plan number B1592.
11. Having regard to the above, there are, in my judgement, substantial differences between the external works undertaken to the building, and those approved by reason of the 14/P/0012/F planning permission.
12. With regard to the land enclosed and used with the building, I noted a small area in front of the west facing elevation has been enclosed with a stone wall and pedestrian access gate. Again, this enclosure is not shown on the approved plans and part of it is likely to be located across the first of the three parking spaces shown on the approved layout plan. A parking area has instead been provided on land to the east of the building, which is accessed via a second vehicular access off Row of Ashes Lane. This means of access is, of course, also the subject of the allegation in the enforcement notice. The parking area is within an enclosed parcel that is clearly land associated with the building. Indeed, the Council's photograph² shows a sitting out area and jacuzzi on this land, alongside the conservatory. This is consistent with my observations on site.
13. Having regard to the above, the area of land enclosed with the building, the parking area to serve the development and the means of vehicular access are also, in my view, a substantial deviation from the approved scheme.
14. The area of land outlined in red on the layout plan and location plan (plan number 8654/B) has the benefit of the planning permission granted. This does not include the enclosed area to the east of the building, yet this land is clearly used in association with the building and even accommodates the conservatory which forms part of the building. I have no reason to conclude that use of the building itself is analogous to the use of the building approved by reason of the 14/P/0012/F planning permission. However, the planning unit as a whole, which I consider to have been correctly identified in red on the plan attached to the enforcement notice, is substantially different in its location and layout to the planning unit approved by the 14/P/0012/F planning permission. This, combined with the physical differences between the works approved and those carried out on site, render the development so departed from the approved scheme that it cannot, in my view and as a matter of fact and degree, be considered to benefit from the 14/P/0012/F planning permission. Accordingly, the development approved by reason of the 14/P/0012/F planning permission has not been implemented. The consequence of this is important, as I will explain later in this decision.
15. The development as a whole, including the building operations and the material change of use of the land and building, has been carried out without the

² Appendix L of the Council's appeal statement.

required planning permission (a breach falling under section 171A(1)(a) of the 1990 Act), rather than there having been a failure to comply with any condition or limitation subject to which planning permission has been granted (a breach falling under section 171(1)(b) of the 1990 Act). In this regard, whilst the breach of planning control in this case is correctly identified in part 1 of the notice, I cannot say the same for the allegation described in part 3.

16. An enforcement notice must be drafted so as to tell the recipient fairly what he has done wrong and what he must do to remedy it. This principle has been considered in detail in settled caselaw. Allegation (2) includes reference to matters 'not in accordance with planning approval 14/P/0012/F'. However, as I have set out above, the development on site is substantially different from the approved scheme. In addition to the differences between the building as approved and that viewed on site, the planning unit itself, as identified outlined in red on the enforcement notice plan, does not align with that approved by the planning permission. For this reason, the breach of planning control alleged in the notice is not precise and does not accurately describe the breach that has taken place on site. In my judgement the notice does not inform the recipient with reasonable certainty what the breach of planning control is.
17. However, I do not consider the notice to be so seriously defective as to make it a nullity; it is just not worded with sufficient precision. I have, therefore, considered whether the notice could be amended to correct the allegation using the provisions under section 176(1)(a) of the 1990 Act.
18. The notice as drafted does not attack the current use of the land and buildings. Read as a whole, the notice is clearly aimed at the building operations that have been undertaken to the building, in addition to the works to create a new access. I have, therefore, considered substituting part 3(2) of the notice to allege the building operations alone as constituting the breach of planning control in this case.
19. I am mindful that, in drafting the notice as it has, the Council sought to bring the development in line with the 14/P/0012/F planning permission, including its conditions and limitations (requirement 5(1) of the notice). In doing so the Council clearly sought to maintain control of such matters as how the building is used (condition 9 of the permission). In this respect, requirement 5(1) of the notice would appear to comply with section 173(4) of the 1990 Act which sets out the purposes of the steps specified in an enforcement notice which the authority require to be taken. One of these purposes is remedying the breach by making the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.
20. However, I have concluded that the development on site is so significantly different from that approved by the 14/P/0012/F planning permission that this permission has not been implemented. The period within which the planning permission must begin has now expired and, as such, the permission cannot now be implemented. The recipient of the notice is not, therefore, able to comply with requirement 5(1).
21. Were I to replace requirement 5(1) with alternative steps to satisfy section 173(4) of the 1990 Act, I cannot be certain that this would achieve the result envisaged by the Council, in particular the control of the use of the land and

building. Accordingly, I cannot be certain that any variation of the requirements of the notice would not cause injustice.

22. I have considered substituting allegation (2) to refer to both the building works and the material change of use. However, I cannot be certain that the appellant would not have approached their grounds of appeal differently. Whilst the appeal has been made under grounds (a), (d), (f) and (g), the appellant may also have appealed on other grounds set out in section 174(2) of the 1990 Act. In these circumstances I would not be satisfied that a such a variation would not cause injustice to the appellant. In addition to this, I would still be left with the issue I have already identified with requirement 5(1).
23. In view of the defects I have identified in the notice and the consequences of resolving these, I cannot conclude that any correction or variation of the notice would not cause injustice to either party.
24. In reaching the above conclusion I have had regard to the previous appeal decisions³. In particular the decision dated 1 May 2019, relating to the notice issued on 26 July 2018. Whilst I acknowledge that the allegation in that case was similar to that in the notice subject of the appeal before me, the requirements differ. The Inspector's decision concentrates on the defect of the notice that arises from the failure to satisfy section 173 (4)(a) of the 1990 Act; that the steps should include making the development comply with the terms (including conditions and limitations) of the relevant planning permission. He finds the notice to be invalid for that simple reason and he does not venture any further. The notice that is the subject of the 23 January 2020 decision, while relating to the same site, alleges a different breach of planning control. These decisions do not, therefore, alter my conclusions above.

Conclusion

25. For the reasons given above, I conclude that the enforcement notice does not specify with reasonable certainty the alleged breach of planning control and what must be done to remedy it. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
26. In these circumstances, the appeal on the ground (a)⁴ and the appeals on grounds (d), (f) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

27. The enforcement notice is quashed.

J Moss

INSPECTOR

³ APP/D0121/C/18/3209441 dated 1 May 2019 and APP/D0121/C/19/3231438 dated 23 January 2020.

⁴ The ground (a) appeal relates only to Appeal A.