



Appeal Decisions

Inquiry Held on 8 and 9 March 2021

Site visit made on 11 March 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Appeal A Ref: APP/Y2620/C/19/3241718

Appeal B Ref: APP/Y2620/C/19/3241719

Land at The Muster, Land adjoining Robin Farm, The Street, Itteringham, Norwich NR11 7AX

- 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 Eric Goodman and Appeal B is made by Ms Penelope Blake against an enforcement notice issued by North Norfolk District Council.
 - The enforcement notice, numbered ENF/17/0006, was issued on 25 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of 'The Muster' for independent residential purposes.
 - The requirement of the notice is to cease the independent residential use at the property.
 - The period for compliance with the requirement is 9 months.
 - Both appeals are proceeding on the grounds set out in section 174(2)(d), (e), (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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Appeal C Ref: APP/Y2620/X/19/3241773

The Muster, The Street, Itteringham, Norwich NR11 7AX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Penelope Blake against the decision of North Norfolk District Council.
 - The application ref. CL/19/0756, dated 2 May 2019, was refused by notice dated 4 October 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act as amended.
 - The use for which a certificate of lawful use or development is sought is: Existing Use of single storey building known as the Muster (known formerly as The Gardeners Shed) as a Class C3 dwellinghouse.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice

and by the deletion of the description of the breach of planning control in section 3 and its substitution as follows:

‘Without planning permission the material change of use of ‘The Muster’ to use as a dwellinghouse’.

and varied by the substitution of 12 months as the period for compliance.

2. Subject to this correction and variation, Appeals A and B are dismissed and the enforcement notice is upheld.

Appeal C

3. Appeal C is dismissed.

Procedural Matters

4. The buildings to which the application for a Lawful Development Certificate (LDC) and enforcement notice relate have been known as ‘The Gardener’s Shed’ and ‘The Annex’ but is currently known as ‘The Muster’. I have referred to the site as The Muster in my decisions.
5. The application for a LDC which is the subject of Appeal C is dated 2 May 2019. However, the Council’s decision notice refers to the application date as 22 May 2019. I have taken the date shown on the application form as being the correct date.

The Notice

6. The breach of planning control as set out in the notice would be made clearer by the omission of (i) as there is only one breach cited and if ‘independent residential purposes’ is replaced with ‘dwellinghouse’ to describe the use in planning terms. These two corrections would not affect the arguments which have been made by the parties and injustice would not arise. For these reasons I shall correct the notice accordingly.
7. The appellants refer to grounds upon which they consider the notice to be a nullity in their opening comments. If an Enforcement Notice is null it is normally missing some vital element, or is hopelessly ambiguous or uncertain.
8. The appellants refer to changes which they say the Council has made to the description of the use of the property. For example, planning permission has recently been refused for change of use from holiday let to a single dwelling house (Council Ref. PF/20/1715), but the appellants dispute the description of development which the Council has used. Neither this decision by the Council nor any change in the description of the use of the property by the Council establishes its use as a holiday let or a single dwelling house and does not make the notice a nullity.
9. Whilst both are a function of the Council there is no correlation between the way in which a property is assessed for Council tax and its lawful use in planning terms. It is common for information to be shared across Council departments for the purposes of investigation, but it does not follow that a change in status for Council tax is relevant to the terms of a planning enforcement notice. Again, the notice is not a nullity on this point.

10. I have addressed the issue of the planning history of the site and the evidence provided in relation to Council tax in my consideration of grounds (b) and (d).
11. Turning to the appellants second nullity point, they argue that the Council has not shown that it would be able to address their needs if they were made homeless. Again this is not an argument based on a key part of the notice being missing and whilst it raises a point on the merits of the development which cannot be addressed in the absence of ground (a), it is relevant to the ground (g) appeal and I have addressed it below.
12. The Council has made a judgement about which parties the notice was served on. The fact that the appellants consider that this judgement was wrong is a matter for the appeals on ground (e). It does not point to a problem with the notice itself.
13. The appellants also consider that an inaccuracy in the plan which accompanies the notice renders the notice a nullity. The boundary of the site was discussed at the Inquiry and the Council agreed that some of the land associated with The Muster had not been included. An amended site plan has been provided which the parties have agreed. Although the amended site is larger than the site identified in the notice it does not affect the arguments which have been made by the parties and neither party would be prejudiced by a substitution of the amended plan for the one attached to the notice. On this basis I will make that correction to the notice.
14. An inaccuracy in the original site plan does not make the notice a nullity because a site plan was attached, notwithstanding that it was inaccurate. Even without the site plan the notice is clear on its face regarding the location of the buildings and land to which it relates. The site plan can be corrected without injustice.

Ground (e)

15. An appeal on ground (e) is that copies of the notice were not served as required by s172 of the Act. Section 176(5) provides that the Secretary of State may disregard any failure to serve in accordance with s172 if the failure to serve has not caused substantial prejudice to the appellant or that person who should have been served.
16. Section 172(2) of the Town and Country Planning Act 1990 (as amended) requires that a copy of an enforcement notice be served (a) on the owner and on the occupier of the land to which it relates and (b) on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
17. The appellants say that two parties who should have been served with the notice were not, these being their son who was living at The Muster and the occupiers of Robin Farmhouse who access their property via land which is identified on the enforcement notice site plan.
18. During his evidence in chief the Council's witness agreed that on the basis of the evidence that had been heard at the Inquiry it appeared that the appellants' son was residing at the property when the notice was served. On the question of whether the failure to serve the notice on the appellants' son amounted to injustice, the Council argues that the appellant's son was aware of

the notice and had had the opportunity to raise all the points he wanted to at the Inquiry.

19. It is apparent from the responses under cross examination that the appellants' son who was residing at the property was aware of the notice being served before it came into effect. Whilst he said that he did not understand the gravity of the situation he agreed that he could have made further investigations about the notice at that time. He also took the opportunity to give evidence to the Inquiry in the form of written submissions and as a witness. Thus, even though the appellants' son who was living at the property should have been served with a copy of the notice, as an occupier of the land, I do not find that he has been substantially prejudiced.
20. Turning to the neighbours, the couple reside at Robin Farmhouse and they share use of part of the vehicular access to the appeal site. This access is included in the land identified in the notice.
21. One of the neighbours attended the Inquiry and he made it clear that he was aware of the appeal and that his key concern was in relation to the effect of the outcome of the appeal on the access to his property. The requirement of the notice is to cease the independent residential use at the property and this does not impinge on the neighbour's rights of access over the land, should any exist, which are civil matters as was clarified by the Council at the Inquiry. On this basis the neighbours' interest is not materially affected by the notice and he was not required to be served with it.
22. For the reasons set out above, the appeals under ground (e) fail.

Ground (b)

23. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities. In this case the appellants are arguing that the material change of use of The Muster to use for independent residential purposes has not occurred because it was built and occupied as a dwelling, therefore no change of use has taken place.
24. One of the appellants said that he was working on and living in what is now known as The Muster in November 2007. At that time there was no plumbing at the building and window openings were unglazed. He was reliant upon a camping stove for cooking and there was electricity so he could heat water in a kettle for washing. At this point his partner and one son were living in Robin Farmhouse.
25. Robin Farmhouse is a few steps from The Muster. Bearing in mind that it was occupied by his partner, who the appellant said he co-ordinated with on all things, and provided full bathroom facilities, unlike The Muster, it is reasonable to assume that there was a degree of coming and going between the two buildings. Whilst the appellant said that he was immersed in his self-build project he also confirmed that he used the bathroom facilities in Robin Farmhouse. These circumstances alone lead me to conclude that The Muster was in use as an annexe to Robin Farmhouse during the appellants occupation in 2007/2008.
26. Given that there is no dispute that The Muster is now in use as a dwellinghouse it follows that at some point since 2007 a change of use as described in the

notice (as amended) has occurred. This is the matter to which the notice relates, and I conclude on this basis that the appeals fail under ground (b).

Ground (d) and Appeal C

Ground (d)

27. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is also a legal ground of appeal and the onus of proof again lies with the appellants. The standard of proof is the balance of probabilities.
28. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action, having subsisted for a four-year period in the case of change of use to a dwelling house. The Council says that the appellants would be disentitled from relying on the four-year period in the event that there has been positive deception and an attempt to avoid enforcement action through concealment. However, this will only fall to be considered if I find that the appellants can demonstrate that The Muster has been in use as a dwellinghouse for the four year period.
29. I have reached the view, based on the evidence considered under the ground (b) appeals that The Muster was in use as an annexe to Robin Farmhouse in November 2007. By August 2008 both of the appellants and their son were living in The Muster. However, they still owned Robin Farmhouse which continued to be owned by them until it was sold on 21 July 2016.
30. Upon the sale of Robin Farmhouse, it is clear that The Muster was then separately occupied by the appellants. The Council served the notice on 25 October 2019, at which point The Muster had been occupied as a separate dwelling on the basis of the sale of Robin Farmhouse for just over 3 years.
31. If this were the only time during which The Muster was occupied as a dwellinghouse, the four year period has not been demonstrated and the appeal under ground (d) fails. Thus, it is the use of The Muster prior to the sale that is important in terms of the four year period.
32. The appellants' say that Robin Farmhouse was available for let from 2009 and have provided evidence to support this. The letter from their accountant states that they received an income from lettings but does not set out what level of income this was. The appellants' have provided documents relating to lettings in 2009 and 2010 which were of a very limited duration. There is also evidence of a longer let of around 5 months in 2012/13. Under cross examination one of the appellants said that there was another longer let in 2014 but there is no substantive evidence to support this.
33. The appellants also provided a calendar for the letting of Robin Farmhouse which was marked up with 'good and bad' dates. However, under cross examination the appellant said she could not recall what this distinction meant.
34. The appellants' representative said that the information which had been provided was a cross-section of what was available to him. However, I can only base my decision on the evidence which has been submitted.

35. The evidence of the very limited letting of Robin Farmhouse and the lack of any argument in relation to another use or occupation shows that the property was available for use by the appellants most of the year. A number of witnesses spoke to their Statutory Declarations (SD) about visits to The Muster and they said that the appellants were using The Muster as their home. However, generally those visits were infrequent and for the day only. They do not provide evidence of continuous occupation of The Muster all year round in preference to the use of all or part of Robin Farmhouse.
36. During their occupation of The Muster there have been times when repairs have been necessary to the roof of the building. One of the appellants says that he stayed in the building throughout the works but that the other appellant and their son occupied Robin Farmhouse. The duration of these works in 2013 was said to be around four to five weeks.
37. The appellants refer to an SD by a post man who they say delivered post to The Muster for 20 years. However, his SD does not refer to postal deliveries and confirms only that he has visited the appellants many times over ten years at The Muster. The appellants have provided SDs which state that The Muster has been used by them as their principal private residence for ten years and eleven years respectively.
38. Neither their witnesses nor their documentary evidence fully corroborates these statements. However, if there is no evidence to contradict the appellants' version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted
39. On the basis of the answers provided by one of the appellants during cross examination it is clear that he understood the terms of the planning permission which was granted for the retention of The Muster as an annexe (Council Ref. PF/10/0543).
40. He argued that there was no one who would be likely to complain about an independent use of The Muster and that he had been advised that use as an annexe was a 'fairly grey' area of planning regulation. However, he also said that when an application was made in 2013 for change of use of the annexe to a holiday let (Council Ref. PF/13/1218) (the 2013 application), the description as an annexe was correct because it was part of the property known as Robin Farmhouse.
41. Prior to the 2013 application being submitted, an application was made by a planning agent (Council Ref. PF/11/1183) (the 2011 application). The 2011 application sought planning permission for use of The Muster as a separate dwelling. The appellant said that the agent made a mess of the application and that he was dismissed. Nevertheless, the agent provided a comprehensive description of the use of The Muster and Robin Farmhouse at the time when the application was made which conflicts with the appellants' assertion that The Muster was their principal private residence at that time.
42. Following the refusal of the 2011 application the Council initiated an investigation into how The Muster was being used. That investigation was closed following the assurance of a different agent that the use of The Muster was as an annexe. Again, the appellant argues that he does not know why the agent advised the Council in that way and he also said that the agent was not formally engaged to represent the appellants.

43. For both of the agents, who would have appeared to the Council at least to be acting in a professional capacity, to describe the use of The Muster as an annexe casts doubt on the appellants' evidence, irrespective of the nature of their business relationship. On the basis of the descriptions provided by the agents, the Council would not have been able to take enforcement action against the use of The Muster as a dwellinghouse when these applications were under consideration.
44. I conclude that the Council's evidence contradicts the appellants, particularly in relation to the submissions made by the appellants or on their behalf for planning permission and in response to the Council's investigations.
45. Furthermore, the records which were provided by the appellants clearly show that for Council Tax purposes The Muster (then known as The Gardeners Shed) was regarded as an annexe from 2 July 2013 to 31 March 2014 and between 1 April 2016 and 20 July 2017. Again, this is inconsistent with the appellants' description of The Muster as their primary home.
46. The appellants' son thought that the appellant who was cross examined about Council Tax records did not understand the history of the site with regard to the Council Tax records and so was unable to engage in the discussion about them at the Inquiry. However, there is no alternative explanation before me to suggest that the records are incorrect or evidence that when the appellants received the Council Tax bill, they queried the reference to The Muster as an annexe.
47. Drawing together the evidence provided by both parties in respect of the use of The Muster, the appellants' statements regarding their use of The Muster have been shown to be an unreliable basis upon which to conclude that The Muster has been used as dwellinghouse for a continuous period of four years. During the period from when the building was constructed in November 2007 to 21 July 2016 when Robin Farmhouse was sold it is more probable than not that the appellants both regarded The Muster as an annexe to Robin Farmhouse and that for long periods of time there was no impediment to their occupation of either or both properties.
48. In this case the fact that The Muster was used for independent residential use for just over 3 years after the sale of Robin Farmhouse, before the notice was issued is an insufficient period to demonstrate that no enforcement action could be taken in respect of the breach of planning control and the appeals on ground (d) fail.

Appeal C

49. Appeal C relates to a certificate of lawful use (LDC) and the onus is on the appellant to demonstrate that the development for which the certificate is sought was lawful at the date when the application for the certificate was made. The main issue is whether the Council's decision to refuse the application for the LDC was well-founded.
50. The application was made on 2 May 2019. This does not define the end date of the relevant four year period, but the appellant must demonstrate that the use has been carried out for a continuous period of four years in order to show that the time for enforcement action has expired. I have concluded in relation to the ground (d) appeal against the enforcement notice that on the balance of

probability The Muster was an annexe to Robin Farmhouse during the period November 2007 to July 2016. Therefore, continuous use of The Muster amounted to less than four years at the time when the application for the LDC was made.

51. It follows that the appellant, who relies on the same evidence in relation to Appeal C, has also not demonstrated the existing use of The Muster as a Class C3 dwellinghouse for the relevant period required for the issue of an LDC. On this basis the Council's decision to refuse the application for an LDC was well-founded and Appeal C should fail.

Conclusion- Ground (d) and Appeal C

52. For the reasons set out above I conclude that Appeals A and B fail on ground (d) and that Appeal C also fails. In relation to Appeal C, I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Ground (f)

53. An appeal under ground (f) is on the basis 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.
54. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the cessation of the independent residential use at the property, I consider the purpose is to remedy the breach of planning control.
55. The appellants have not suggested any lesser step, however, in any event as there is no appeal under ground (a) and the purpose of the notice is to remedy a breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The appellants argue that the Council should not have taken enforcement action in the first place as the matter could have been resolved through the submission and approval of a planning application. This is, however, not relevant to a ground (f) appeal.
56. It has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons both appeals fail on ground (f).

Ground (g)

57. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.
58. The appellants consider that the compliance period of nine months is too short because they are not confident that the Council would be able to help meet their housing needs. They also argue that they are vulnerable elderly people who have an established way of life and consider that moving would have a detrimental effect on their mental health and physical health in the light of the Covid-19 pandemic. In their view this would be an infringement of their human rights.

59. The Council is agreeable to an extension of the compliance period to 12 months and it also notes that it has the power to extend the period further if necessary.
60. The main issue is therefore whether the compliance period is reasonable and proportionate.
61. In response to cross examination on ground (f), the appellants explained that they submitted a planning application to the Council for the change of use of The Muster to a C3 dwellinghouse (Council Ref. PF/20/1715) (the 2020 application) and that they did not pursue appeals under ground (a) because they wanted to engage with the Council on that application. They said that they wanted to resolve matters with the Council without the need for enforcement action. This argument is not relevant to ground (f) but the provision of additional time to allow a planning application to be determined can be considered under ground (g).
62. The 2020 application has been refused by the Council and it is the subject of a planning appeal. An extended 12 month compliance period would be appropriate to enable that appeal to be determined.
63. Whilst there is some very limited unsubstantiated evidence from the Council's Housing officer via the appellants, it has not been demonstrated that the appellants housing needs could not be met within 9 months as set out on the notice or an extended 12 month compliance period. Furthermore, any potential delay could be dealt with through an extension of the compliance period at the discretion of the Council.
64. The long term implications of the Covid-19 pandemic are unclear but there is no substantive evidence before me to demonstrate that the appellants would be more exposed to the virus if they had to move from The Muster. Similarly, whilst I appreciate the long term connection between the appellants and the site, there is no evidence to show that their mental or physical health would be compromised by any move away from it.
65. As the building is occupied as residential accommodation, upholding the notice would cause the loss of the appellants' home which would be interference with the appellants' rights under the Human Rights Act 1998.
66. The reasons for serving the notice include the planning policy objective which is to limit development in the countryside to that which requires a rural location and is listed in Policy SS2 of the North Norfolk Local Development Framework Core Strategy incorporating Development Control Policies (2008).
67. Full compliance with the requirements of the notice is necessary in order to remedy the breach of planning control, as I have concluded in respect of the appeal under ground (f), and to accord with the planning policy objective. This cannot be achieved by means which interfere to a lesser extent with the appellants' human rights.
68. I can vary the period for compliance to 12 months as suggested by the Council and there is no substantive evidence before me to show that the appellants' would be unable to find appropriate alternative accommodation within such a time period. Furthermore, the Council has acknowledged that it has the power to grant a further extension of time if appropriate and required. On this basis

varying the length of the compliance period to 12 months would be a proportionate response to the issues raised by the appellants under ground (g).

69. 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.

Conclusion

70. For the reasons given above, Appeals A and B succeed in part and the enforcement notice is upheld with a correction and a variation set out in the Decision and Appeal C is dismissed.

Sarah Dyer

Inspector

APPEARANCES

FOR THE APPELLANTS:

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|------------------------|-------------------------------------|
| Mr Joff Goodman | Representing the appellants/witness |
| Mr Eric Goodman | Appellant/Witness |
| Ms Penelope Blake | Appellant/Witness |
| Mr Rufus Blake Goodman | Witness |
| Mr Simeon Goodman | Witness |
| Ms Hester Taylor | Witness |
| Mr Robert Wells | Witness |
| Ms Deborah Jones | Witness |
| Mr Adam Martin | Witness |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr Ben Du Feu | Counsel, instructed by Noel Duran of North Norfolk District Council (NNDC) |
| Mr Kevin Peacock | Planning Enforcement Officer NNDC |

INTERESTED PERSONS:

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| Mr John Kitson | Resident |
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Documents submitted in advance of the Inquiry

1. Decision Notice for Council Ref PF/20/1715
2. Letter to Karen Sly dated 2 December 2016 (Appendix 2(b) of appellants submissions)
3. Council Tax records July 2016 to March 2021 (marked as Appendix 26 of the appellants submissions)

Documents submitted during the Inquiry

1. Topographical survey by Anglia Land Surveys
(Drawing numbers ALS8629/1000/01, 02 and 03 dated November 2019)
2. Revised site plan dated 9 March 2021