



Appeal Decision

Hearing Held on 29 April 2021

Site visit made on 5 May 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/X0360/C/20/3252493

Barkham Manor Farm, Barkham Road, Barkham RG41 4DQ

- 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 Roy Maslin against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 14 April 2020.
 - The breach of planning control alleged in the notice is failure to comply with condition No 8 of a planning permission Ref F/2011/2071 granted on 17 June 2013.
 - The development to which the permission relates is the erection of an agricultural workers dwelling and garage. The condition in question is No 8 which states that: *Within one month of occupation of the permanent dwelling hereby permitted the existing mobile home shown to be removed on the approved plan shall be removed/demolished and all resultant materials shall be removed from site.* The notice alleges that the condition has not been complied with in that without planning permission there is the retention on site of a structure in breach of condition 8.
 - The requirements of the notice are to:
 - i) Remove the structure shown hatched on the plan from "the Land" or demolish it and remove all the resultant materials.
 - ii) Disconnect and remove any utility connections from the structure.
 - iii) Demolish and remove the timber balcony/platform around the structure from "the Land".
 - iv) Break up any hard surfacing on which the structure is positioned and completely remove from "the Land" all resulting materials
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be:
 - corrected by substituting "1 July 2013" for "17 June 2013" in paragraph 3; and
 - varied by substituting "Twelve months" for "Six months" in paragraph 6, due to the appeal succeeding under ground (g).
2. Subject to this correction and variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Wokingham Borough Council against Mr Roy Maslin. This application is the subject of a separate Decision.

Procedural matter

4. There is an error in the enforcement notice, in that the allegation in paragraph 3 states that 17 June 2013 was the date of the planning permission granted on appeal in respect of application F/2011/2071. The error seems to have been made by the Council mistakenly citing the date of the Inspector's site visit rather than the date of his Decision, but this mistake is not repeated in paragraph 4 ('reasons for issuing the notice') where the correct date of 1 July 2013 is cited.
5. The error is clearly an administrative one which does not make the notice unclear in its overall meaning and which does not affect the substance of arguments put forward by the parties. I am therefore correcting the notice without any injustice to any party.

Ground (b)

6. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred.
7. The main parties are in agreement that the structure present on the site at the time the notice was issued (the log cabin building including its timber balcony/platform) is the same structure as when the Inspector granted planning permission on 1 July 2013 for the permanent agricultural workers dwelling and garage. I have no reason to take a different view. Therefore, I find as a matter of fact that the structure has been retained on site.
8. Accordingly, the appeal under ground (b) does not succeed.

Ground (c)

9. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.

The interpretation of Condition 8 (F/2011/2071)

10. The appellant's principal argument under ground (c) is that the structure is not a mobile home, as accepted by the Council on receipt of an expert report¹, and that accordingly the relevant condition has not been breached. Much of the appellant's written submissions seek to establish the structure as a building that has been constructed, rather than stationed and/or assembled from no more than 2 sections as would a mobile home, and I am in agreement with the main parties that this is the case.
11. Notwithstanding the structure's status as a building, the proposals for its development referred to it as a mobile home in the 2008² and 2009³ application documents. I acknowledge the appellant's point that the Council added to the wording of the description of development, as set out in the application forms, to clarify that a mobile home was to be sited. However, I do not find this to be remarkable as both sets of plans referred to a mobile home

¹ Report on Construction by Stephen Kerr

² F/2008/1267 granted on 24 September 2008

³ F/2009/1184 granted on 29 July 2009

- and the Planning, Design & Access Statement (DAS)⁴ referred to the application as being one for the proposed erection of a mobile home. Indeed, the DAS begins by saying that *"the proposed mobile home will be constructed in the style of a log cabin, but built in accordance with mobile home regulations"*.
12. The appellant says that the Council should have picked up from the applications that a building was to be erected/constructed and also therefore it should have known the structure to be a building at the time it suggested conditions to the Inspector determining F/2011/2071 on appeal (notwithstanding that it appears from paragraph 10 of the Decision Letter that the appellant was willing to accept all of the Council's suggested conditions, including condition 8 referring to the structure as a mobile home). However, this is a weak argument that I do not find persuasive: the DAS (written by a planning consultancy) explicitly said that the structure for which approval was sought was a mobile home and for the avoidance of doubt implied it would meet that definition under statute. However, the appellant did not carry out the development as so stated.
13. Further, the application for F/2011/2071 continued in the same vein as the earlier applications in referring to a mobile home. The approved plans highlighted the 'mobile home to be removed' (shown complete with balcony/platform) and the DAS⁵ for that application said that *"it is proposed that the existing temporary mobile home will be removed from the site once the proposed dwelling is occupied"*. It is therefore unsurprising that the Council and significantly, the Inspector, regarded the structure to be a mobile home when condition 8 was imposed on the planning permission granted on 1 July 2013. While the Inspector conducted a site visit in that appeal, the structure's size and shape does not mark it out as notably unlike a mobile home. In any respect its status as a mobile home or building was not in dispute in that appeal, with the Inspector's consideration of it centred on the impact of it on the countryside as a second dwelling were it to be retained together with the permanent dwelling to be built⁶ (hence condition 8).
14. That point brings me to the crux of the matter: whether condition 8 in these circumstances should be interpreted so as to have no effect on the retained structure, it being a mobile home in fact.
15. A planning permission is a public document which, as it enures for the benefit of the land, may be relied upon by parties unrelated to those originally involved. It should stand by itself and the meaning should be clear within the four corners of the document, particularly as there may be criminal sanctions flowing from a breach of planning control. So, although the main parties may know that the structure on site today is what was referred to in condition 8 as *"the existing mobile home shown to be removed on the approved plan"*, would an uninformed reader of the planning permission who is otherwise unaware of the past intentions of the parties⁷ understand that the requirements of that condition apply to the log cabin building in the same position as indicated on the approved plan as the 'mobile home to be removed'?
16. In interpreting the condition, I must consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the

⁴ Prepared by DLP Planning, 9 June 2009

⁵ Prepared by Willis & Co. on 27 September 2011

⁶ As is clear from paragraph 11 of the Decision Letter (suggested condition 9 becoming condition 8 in the schedule)

⁷ UBB Waste Essex Ltd v. Essex County Council [2019] EWHC 1924 (Admin)

planning permission and with common sense⁸. A condition is to be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood. And where a condition is imposed on appeal it is possible to construe it in the context of the Decision Letter as a whole⁹.

17. Further to what I have said above in paragraph 13, it is apparent to a reasonable reader of the planning permission (including the approved plans) and the Decision Letter as a whole, applying common-sense, that the purpose was to conditionally approve a permanent agricultural workers dwelling (and garage) but with a requirement to remove the existing temporary agricultural workers dwelling on the site so that there would not be harm to the countryside from 2 dwellings on the site. Within this context, a reasonable reader would understand from the Decision Letter that it was not significant that condition 8 referred to a mobile home to be removed/demolished, only that the requirement related to the existing temporary dwelling. Further, the reader in applying common-sense would understand that the log cabin building on the site was the structure identified as 'mobile home to be removed' on the approved plan through its appreciably consistent location, size and shape (including the marked-out shape of the balcony/platform) when compared to the plan. In this regard, paragraph 3 of the Decision Letter also informs the reader that the 'mobile home' was allowed under the 2009 temporary permission (F/2009/1184). Therefore the reader would be able to see that the structure on site is similar (notwithstanding some differences as regards doors and windows) to that approved in the publicly-available plans for that permission and reasonably conclude it to be the subject of condition 8 of F/2011/2071. Even without the benefit of those plans, I consider that a reasonable reader seeing the structure (and uninformed as to how the appellant had gone about its construction, or a knowledge of mobile homes legislation) would conclude it was the subject of condition 8 as its size and shape does not mark it out as notably unlike a mobile home to a layman. Indeed, the appellant's statement acknowledges that the distinction between a mobile home and a permanent structure "is actually quite complex" (p13) and that the appellant believed himself what he had constructed to be a mobile home (p20).
18. Conditions should be construed in a common-sense way, with a sensible meaning if possible. Consistent with that, a condition should not be construed narrowly or strictly - as would be the case were I to adopt the appellant's preferred interpretation. Conditions should be interpreted "benevolently"¹⁰. The only sensible and benevolent meaning to give condition 8, which would meet the clear purpose of minimising harm to the countryside as stated by the Inspector as the reason for imposing the condition, would be to interpret the permission to require the removal/demolition of the structure with all resultant materials removed from the site.
19. Notwithstanding the timber balcony/platform being constructed at a later time to the completion of the log cabin, it is part and parcel of the structure and it is not at all likely to serve any independent function. Given this, and the fact that it is marked in the approved plan in association with the 'mobile home to be removed', I find that a reasonable reader applying common-sense would

⁸ Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74

⁹ Hulme v SSCLG [2011] EWCA Civ 638

¹⁰ Carter Commercial Development v SSE [2002] EWHC 1200 (Admin)

sensibly construe the condition as requiring it as part of the dwelling to be removed or demolished.

20. Also, and for the avoidance of doubt, I find that the condition was imposed for a clear planning purpose, was fairly and reasonably related to the development, and not so unreasonable that no reasonable planning authority could have imposed it. It therefore meets the legal tests for the imposition of a condition¹¹. It is also enforceable, for the reasons I have given above.
21. The appellant has asked me to consider appeal decisions¹² where the Council issued an enforcement notice as regards the construction of a timber building at White Heart Grove. However, these appeal decisions do not affect my decision or the reasons for it as they do not relate to a breach of condition which I have interpreted to require the removal of a temporary dwelling (of whatever status) to make the construction of a permanent dwelling acceptable in planning terms.

The 2015 enforcement notice (reference 26/15)

22. The appellant makes an alternative argument that, in 'under-enforcing' in respect of this earlier enforcement notice, unconditional planning permission was granted under Section 173(11) of the Act for the permanent agricultural workers dwelling under construction within the red line of the enforcement plan.
23. The relevant provision of the Act applies where a notice could have required any buildings or works to be removed or any activity to cease, but does not do so. However, the permanent agricultural workers dwelling was being lawfully constructed under conditional permission granted under F/2011/2071 and so the notice could not have made requirements in respect of it. Further, there was no breach of Condition 8 of that permission at the time of the 2015 enforcement notice since the requirement for removal/demolition of the temporary dwelling was 1 month after occupation of the permanent dwelling which was yet to be completed.
24. Accordingly, the 2015 enforcement notice has no relevance to the breach of planning control in the appeal before me.
25. For all of the above reasons, I am not satisfied on the balance of probabilities that the matters stated in the enforcement notice (2020) do not constitute a breach of planning control. The appeal under ground (c) therefore fails.

Ground (f)

26. For an appeal to succeed under this ground, I must be satisfied that the steps required by the notice exceed what is necessary to achieve its purpose.
27. It is clear to me from the way that the notice is drafted that its purpose is to remedy the breach of planning control, as opposed to any injury to amenity, by making the development approved under F/2011/2071 comply with its conditions, and specifically Condition 8. The notice does this by requiring works resulting in the removal of the structure and including the timber balcony/platform, utility connections and hardstanding upon which it sits.

¹¹ Newbury DC v SSE & Others [1980] 2 WLR 379

¹² APP/X0360/C/19/3221552 and 3221553

28. Further to my comments under ground (c) I consider the timber balcony/platform to be part and parcel of the dwelling subject to removal under Condition 8, as are the utility connections and hardstanding for the same reasons. It is therefore not excessive for the notice to require their removal.
29. I note that initial arguments were made under this ground in the appeal papers which were not pursued at the hearing. These earlier arguments, which were in any respect more suited to an appeal under ground (d), concerned immunity periods starting from when the temporary dwelling was substantially completed and ready for occupation. For the avoidance of doubt, even had these arguments been more actively pursued, I would not have found them successful as the removal of the temporary dwelling was a condition of the planning permission F/2011/2071 granted on 1 July 2013 for the permanent dwelling. The immunity period for a breach of condition is 10 years from the date of the breach¹³, and so the Council was clearly in time to take action in respect to it.
30. For these reasons, the appeal under ground (f) does not succeed.

Ground (g)

31. For an appeal to succeed under this ground, I must be satisfied that the period of 6 months specified in the notice falls short of what reasonably should be allowed.
32. The works to demolish and remove the dwelling should in my judgement, and having heard what was said at the hearing, take no more than 2 months. I am however conscious that the dwelling is occupied by the appellant's daughter – who is a NHS keyworker – together with her husband and young children. They will need time in advance of the demolition to look for alternative accommodation, and it is unlikely in my view that the permanent dwelling is of a sufficient size to reasonably accommodate the occupants of both dwellings. I am also mindful of the pressures placed upon NHS keyworkers at this time of the current pandemic and that this, together with the need to find alternative accommodation with suitable access to appropriate childcare/educational facilities, is likely to make re-location activities exceedingly stressful and more difficult to undertake within a short timescale than would otherwise be the case. It would therefore be reasonable and proportionate in all the circumstances to allow 12 months for compliance with the notice, and accordingly I am varying the notice to this effect.
33. For these reasons, the appeal under ground (g) succeeds.

Conclusion

34. For the reasons given above I conclude that the appeal should not succeed except to the limited extent under ground (g). I shall uphold the enforcement notice with a correction and a variation.

Andrew Walker

INSPECTOR

¹³ Section 171B(3) of the Act

APPEARANCES

FOR THE APPELLANT:

Scott Stemp (Barrister)
Jill Scrivener (Agent)
Sarah Armstrong (Planning
Consultant)

FOR THE LOCAL PLANNING AUTHORITY (LPA):

Cain Ormondroyd (Barrister)
Mark O'Leary (Planning
Enforcement Specialist)

INTERESTED PERSONS:

None wishing to speak

DOCUMENTS

- 1 LPA costs application
- 2 Appellant costs response
- 3 LPA closing submissions
- 4 Appellant closing submissions