



Appeal Decision

Site visit made on 10 May 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/Q9495/C/21/3270487

Land at Low Shepherds Yeat, Crook, Kendal LA8 8LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Edward Smethurst, Prosperity Law LLP against an enforcement notice issued by Lake District National Park Authority (the Authority).
- The enforcement notice was issued on 12 January 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use to a dwellinghouse used for holiday letting accommodation.
- The requirements of the notice are permanently cease to use the building as a dwellinghouse.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

The Notice

1. For clarity, the alleged breach of planning control should refer to the land to which the notice relates. I can therefore correct the allegation to refer to the material change of use *of the land* to a dwellinghouse. Such a correction would not result in injustice to the appellant or the Authority.
2. The use of the word permanently within the requirements of the notice is unnecessary, having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be varied to delete the word without injustice to the appellant or the Authority. Likewise, the wording of the requirement can be varied to "cease the use of the land as a dwellinghouse" to ensure it is grammatically correct and refers to the land to which the notice relates. Such a variation would not result in injustice to the appellant or the Authority.

Appeal on ground (d)

3. An appeal on ground (d) is made on the basis that, at the date 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 stated in the notice. The standard of proof is the balance of probabilities and the onus of proof rests with the appellant.
4. Section 171B of the 1990 Act sets out the relevant time limits for enforcement action to be taken. Section 171B(1) sets out that no enforcement action may

be taken against building operations after the end of a period of 4 years from which the operations were substantially complete. Section 171B(2) states that where a breach of planning control consists of a change of use of any building to use as a single dwellinghouse, the time limit is also 4 years. Section 171B(3) sets out that in the case of any other breach of planning control, no enforcement action can be taken after a period of 10 years. The relevant time period specified in the notice is 4 years on the basis that the alleged breach falls under section 171B(2).

5. Planning permission was granted by the Authority on 9 November 2011 for the extension to the existing house and double garage at Low Shepherds Yeat¹. Planning permission was subsequently granted on 13 December 2012 under section 73 of the 1990 Act for a revised garage which was 90cm larger in length than that approved under the 2011 permission².
6. The appellant states that the approved garage building was completed and brought into use in July 2012. It is said that it was originally built as a garage and storage area, although no vehicle was ever parked within it. It was said to be initially used thereafter for ancillary purposes in connection with the farmhouse as a games room with snooker table, dart board, table football and other games, soon thereafter becoming ancillary living accommodation.
7. A certificate of lawfulness (LDC) was granted on 14 December 2017 which indicated that at the date the application was made on 16 October 2017, the Authority were satisfied that the use of the building as ancillary accommodation to the main house was lawful³.
8. For the appeal on ground (d) to succeed, it is necessary to show that a material change of use of the building to a separate dwellinghouse occurred on or before 12 January 2017 in order to be immune under section 171B(2) of the 1990 Act. However, the evidence of the appellant indicates that the first record of the building being used as a separate unit of residential accommodation was for the 16-17 March 2018.
9. Indeed, whilst the statutory declaration of the appellant indicates that the booking records for the building and the adjacent farmhouse have been provided as attached documents, no such records are before me. The only evidence provided in respect of the dates in which the building was occupied is the list within paragraph 16 of the appellants statutory declaration. Moreover, the appellant explicitly states that the building has been used independently of the farm house since 16 March 2018. Furthermore, it is apparent that the building was not advertised as a separate holiday let until March 2018.
10. In addition, the Authority has provided excerpts from a lettings website in which it is stated that the building was "converted in Spring 2018 to offer ground floor accommodation for four guests". Moreover, the earliest review on an internet review platform for the letting accommodation is 8 May 2018 for a confirmed stay on 7 May 2018. A social media advertisement page for the property also states in a post from 22 March 2018 that the property was "newly refurbished". The appellant's suggestion that the building was used by

¹ LPA Ref: 7/2011/5423

² LPA Ref: 7/2012/5586

³ LPA Ref: 7/2017/5719

them and their family, friends and work colleagues as a separate dwelling prior to March 2018 is not supported by any documentary evidence.

11. In support of their case, the appellant refers to the submissions of a close neighbour who states that the building was used as an independent dwelling from the outset. This is clearly contradictory to the appellant's evidence that the building was in use as ancillary accommodation for the five years prior to the date of the LDC. The LDC was granted on the basis the Authority were satisfied that the use of the building as residential accommodation ancillary to the main dwelling was lawful, because the use had continued for a period of four or more years and was therefore immune from enforcement action.
12. Moreover, if the building had been used as an independent dwelling from the outset as suggested by the neighbour, then the relevant time for the use to be immune from enforcement action would be 10 years under section 171B(3) of the 1990 Act in accordance with the findings of the Supreme Court in *Welwyn Hatfield BC v SSCLG and Beesley [2011] UKSC 15*. Since the building was not substantially complete until 2012, 10 years continuous use could not be demonstrated.
13. The appellant states that the LDC was determined on the basis of a mixed-use of ancillary and independent occupation. However, the LDC application sought confirmation that the lawful use of the building was for additional living and sleeping accommodation in connection with adjacent dwelling house, not an independent dwelling or indeed the mixed-use alleged.
14. This results in an overlapping period from January 2017 to October 2017 when the appellant says the use of the building was predominately as ancillary accommodation to the main house but also as an independent dwellinghouse. The appellant states that it is comprehensible from a planning perspective to be able to take into consideration different 'relevant periods' that happen to include a similar time frame, without predetermining or automatically assuming one takes precedence or standing over the other. However, that is not the case because the sole primary use of the building cannot have concurrently been for ancillary accommodation and a separate dwelling. At some point, the use of the property would have materially changed from one to the other. Indeed, the appellant acknowledges that where they state the evidence at the date of the LDC tipped the balance of the use of the building to an ancillary use.
15. Thus, if the use at the time of the LDC application was ancillary accommodation and a material change of use did not occur until after October 2017, then the four years continuous use as a dwelling prior to the issue of the enforcement notice cannot be demonstrated.
16. On the other hand, if the use of the building had materially changed from ancillary accommodation to an independent dwelling prior to January 2017 as the appellant seems to suggest in other parts of their evidence, then the use of the building as ancillary accommodation would not have been lawful at the date the LDC was made because there would have been an intervening material change of use, and the continuous four year period interrupted. Indeed, the appellant makes a subsequent contradictory statement that during the overlapping period of January 2017 to October 2017, the use of the building was as an independent dwelling.

17. Taking all of the above into account, I find the evidence is insufficiently precise and unambiguous and it has not been demonstrated, on the balance of probabilities, that at the date the notice was issued, enforcement action could not be taken in respect of the matters stated in the notice as constituting a breach of planning control.

18. The appeal on ground (d) therefore fails.

Formal Decision

19. It is directed that the enforcement notice is corrected by:

- inserting the words "of the land" between the words "use" and "to" in section 3 of the notice; and,

20. And varied by:

- deleting the words "permanently cease to use the building as a dwellinghouse" and inserting the words "cease the use of the land as a dwellinghouse" in section 5 of the notice.

21. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR