



Appeal Decision

Site visit made on 12 May 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal Ref: APP/H1515/C/20/3260873

Land known as The Bumbles, Mill Green Road, Fryerning, Ingatestone, Essex CM4 0PT

- 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 Benjamin Batchelor against an enforcement notice issued by Brentwood Borough Council.
 - The enforcement notice, numbered 20/00090/UNOPDE, was issued on 15 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised residential dwelling/building and associated hardstanding within the curtilage of The Bumbles, shown for the purposes of identification only in the approximate position hatched in black on the attached site plan (see also attached site photo of the building, marked as "Appendix 1").
 - The requirements of the notice are:
 1. Cease residential use of the building.
 2. Demolish the unauthorised building (shown for the purposes of identification only in the approximate position hatched in black on the attached site plan, see also attached site photo of the building, marked as "Appendix 1"), including its concrete base.
 3. Remove all utilities attached to the unauthorised building including but not limited to gas, water, telephone or electric services and any detritus arising from compliance with Step 2 above to a place authorised to receive such waste.
 4. Reinstate the land to its condition prior to the unauthorised development.
 - The period for compliance with the requirements is 30 days in respect of requirement (1) and three months in respect of requirements (2), (3) and (4).
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of '0000' in requirement 4;
 - the deletion of the words "dwelling/" and "and associated hardstanding" in section 3; and
 - the deletion of requirement 1 and the time for compliance with requirement 1 in section 5.
 2. It is also directed that the enforcement notice is varied by the deletion of three months and the substitution of six months as the period for compliance with steps 2, 3 and 4.
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3. Subject to these corrections and the variation, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

The Notice

4. There is an error on the notice which includes the words 'unauthorised 0000development' in requirement 4. This is a typographical error which I can correct without prejudice to either the appellant or the Council.
5. Section 3 of the notice refers to an 'associated hardstanding' which in this case is part and parcel of the building. There is no suggestion that the building is a caravan such that it would have been appropriate to describe the hardstanding as separate operational development. Therefore, it is not necessary for the hardstanding to be specified separately in the allegation or for it to be independently referenced in the requirements of the notice and the time for compliance.
6. In its submissions the Council refers to the building which has been created as being built for the sole intention of primary residential use and the creation of an independent dwelling. This makes it clear to the appellant what the allegation is but can be more simply described as a 'residential building' in the curtilage of The Bumbles which reflects the Council's reasons for issuing the notice which refer to the erection of a building.
7. Section 5 of the notice contains the requirements and includes a requirement to cease residential use of the building. This requirement is unnecessary in view of the second requirement which is to demolish the building and confusing in the light of the residential use of The Bumbles and the land associated with it.
8. I have a duty to ensure that the notice is in order and the corrections which I have referred to above are necessary in this regard. The corrections do not alter the arguments which the parties have made and the changes which I propose to make would not cause injustice to either the appellant or the Council. Therefore, I have made the corrections which are set out in my decision.
9. The appeal has not been made under ground (a) therefore the merits of the appeal scheme are not before me and I am unable to give consideration as to whether deemed planning permission (DPA) should be granted.
10. In his response to the Council's appeal statement the appellant says that it is not his intention to form another permanent dwelling on the site and that his family occupied the building on a temporary basis whilst improvement works were being carried out on The Bumbles. This amounts to an argument under ground (b). I have sought the Council's view on this 'hidden' ground of appeal and have addressed its response below. Consequently, neither party would be prejudiced if I consider the appeal on ground (b) as well as grounds (f) and (g).

Ground (b)

11. 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 appellant. The evidence must be sufficiently precise and unambiguous and the standard of proof is the balance of probabilities.

12. The appellant argues that he lived in the residential building which is the subject of the notice temporarily while he was renovating The Bumbles. On this basis the residential building was not built with the sole intention of primary residential use and the creation of an independent dwelling as alleged by the Council and the appeal would succeed on ground (b).
13. The Council says that it is not aware of any improvement works being undertaken at The Bumbles and that the residential building has been fully equipped to support permanent residential occupation as opposed to an incidental or temporary use.
14. The Council has provided no evidence to contradict the appellant's version of events. Nevertheless, whilst the appellant says that he only occupied the building as a temporary measure while works were being carried out, there is no substantive evidence to support this. Consequently, the information provided by the appellant is not precise and does not meet the required standard of proof.
15. For the reasons set out above the appeal fails under ground (b).

Ground (f)

16. 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.
17. 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 building to be demolished and materials to be removed, therefore the purpose in this case is to remedy the breach of planning permission.
18. The appellant argues that the steps required by the notice are excessive because the Council has already issued a lawful development certificate for an outbuilding for use as a car port and recreation rooms (Council Ref. 15/01323/S192) (the LDC) which is of a smaller size than the building to which the notice relates. He says that the building could be used for the incidental uses previously approved by the Council through minor internal alterations. He argues that a smaller building would have a lesser impact on the Green Belt.
19. These arguments relate to the merits of the development which may only be pursued where ground (a) has been pleaded and a fee paid for the deemed planning application (DPA). There is no ground (a) or DPA in this case. Furthermore, as there is no ground (a) and the purpose of the notice is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f).
20. In this case the test in relation to an appeal under ground (f) is not whether a lesser step is reasonable but rather whether the requirements are necessary to remedy the breach of planning control. The breach, as corrected, is the

erection of a residential building and this can only be remedied by the removal of the building.

21. Under the terms of the notice and the grounds of appeal I cannot grant planning permission for the retention of the building, therefore the imposition of a planning condition as suggested by the appellant is also not possible.
22. 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 the appeal fails on ground (f).

Ground (g)

23. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months for the requirements which relate to the removal of the building and the reinstatement of the land is too short. In his view this provides inadequate time for him to obtain quotes, select a contractor and carry out the demolition works and separately the landscaping. He also is concerned about the need for careful disconnection from utilities and in the light of the pandemic the need for social distancing.
24. In response to the appellant's arguments the Council says that it would agree to an extension of the compliance period from three months to six months. There is limited information to support the appellant's argument that additional time is required for him to comply with the notice. However, the Council is likely to have some knowledge of the local situation in terms of access to specialist contractors and on that basis, I will vary the time specified for compliance.
25. 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 appeal on ground (g) succeeds to that extent.

Conclusion

26. For the reasons given above I conclude that the appeal succeeds in part. I shall uphold the enforcement notice with corrections and a variation.

Sarah Dyer

Inspector