



Appeal Decisions

Site visit made on 7 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal A Ref: APP/W4223/C/21/3269419

Appeal B Ref: APP/W4223/C/21/3269420

10 Sycamore Cottages, Treetops Close, Dobcross, Oldham OL3 5BT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Susan Bowden against an enforcement notice issued by Oldham Metropolitan Borough Council. Appeal B is made by Mr Brian Bowden.
- The enforcement notice was issued on 26 January 2021.
- The breach of planning control as alleged in the notice is the continued use of the log cabin adjacent to the dwelling on the Land as a holiday let despite the refusal of planning permission for the use.
- The requirements of the notice are:
 1. Permanently cease the use of the log cabin on the Land as a holiday let;
 2. Remove the advert for the cabin from www.airbnb.co.uk.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (d) of the 1990 Act amended.

Summary of Decision: The enforcement notice is quashed.

Preliminary Matters

1. For the avoidance of doubt, the planning merits of the use are not relevant as there is no ground (a) appeal and associated deemed planning application. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

The Enforcement Notice

2. The notice is directed to No 10 Sycamore Cottages. The accompanying plan includes the house, and part of its garden, within the red line ("The Land" for the purposes of the notice). The breach of planning control concerns a material change of use of an outbuilding, located adjacent to the dwelling, to use as a holiday let, but this is not entirely clear from the allegation as it has been worded. Crucially, the allegation does not properly describe the use of the main house as a dwellinghouse. Due to the inclusion of the main house within the Land identified by the notice, the alleged use would be a mixed use. In mixed use cases, the allegation should refer to all components of the mixed use, even if only one is required to cease.
3. Therefore, the correct allegation would have been "the material change of use of the land from a dwellinghouse to a mixed use as a dwellinghouse and self-contained holiday accommodation". Alternatively, the plan could identify the outbuilding only and allege "the material change of use of an outbuilding to self-contained holiday accommodation".

4. The inaccuracy continues in that the reasons for issuing the notice state that the breach of planning control has occurred within the last four years. Section 171B of the 1990 Act concerns the time limits for taking enforcement action. S171B(1) states that "*where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*". The evidence before me does not suggest that the Council considers the outbuilding was erected for the sole purpose of being holiday accommodation. Hence, s171B(1) is not relevant since the breach does not relate to the construction of the outbuilding, only its subsequent change of use.
5. S171B(2) continues "*where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*". This does not apply as the breach does not concern a change of use to a single dwellinghouse.
6. S171B(3) states that "*in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*". The breach in this case is a material change of use to which s171B(3) applies. As such the time limit for taking enforcement action would be 10 years, which should have been stated in section 4.
7. I have considered whether I could use my powers of correction under section 176(1)(a) of the 1990 Act. However, I am not satisfied that I could correct both the allegation and the time limits without injustice to the appellants. The grounds of appeal are such that the arguments may have been different or further evidence would have been supplied. This is particularly the case with the ground (d) appeal, which concerns the time limits for taking enforcement action.
8. In the circumstances, I find the notice to be invalid and not capable of correction. The local planning authority may use their 'second bite' powers under section 171B(4) to re-issue the notice.

Conclusion

9. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under grounds (b), (c) and (d) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

10. The enforcement notice is quashed.

Debbie Moore

Inspector