
Appeal Decision

Site visit made on 21 September 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/M0933/C/21/3276196

Land at Fell End Caravan Park, Hale, Milnthorpe LA7 7BS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Owen, Pure Leisure Group Ltd against an enforcement notice issued by South Lakeland District Council (the LPA).
- The enforcement notice was issued on 27 April 2021.
- The breach of planning control as alleged in the notice is, without planning permission, unauthorised operational development including the siting of four two storey residential units on the area of the Land coloured orange on the attached Plan as accommodation, which has occurred within the last four years.
- The requirements of the notice are:
 - A. Permanently remove from the Land, within the red line boundary on the attached plan, the unauthorised residential units currently situated in the area coloured orange.
 - B. Permanently remove from the Land all building materials, all rubble and associated materials arising out of compliance with A.
 - C. Comply with A and B within 13 (thirteen) weeks from the date this Notice takes effect.
- The period for compliance with the requirements is 13 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.

The Notice

1. Section 3 of the notice sets out the alleged breach of planning control as, "unauthorised operational development including the siting of four two storey residential units...". The use of the word "including" infers that there are aspects of operational development other than the four residential units included in the breach. However, no such aspects are cited in the notice. Nor does the LPA raise the inclusion of other aspects of operational development in its evidence. As a result, I can correct the notice to delete the word "including" without causing injustice to the appellant or the LPA.
2. Section 5(C) of the notice states that the recipient shall comply with parts (A) and (B) within 13 weeks. However, section 6 of the notice also sets out the time for compliance. Thus, the inclusion of section 5(c) is superfluous repetition. I can vary the notice to delete the requirement accordingly. Doing so would not result in injustice to the appellant or the LPA.

3. 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 words without injustice to the appellant or the LPA.

Appeal on ground (b)

4. An appeal on ground (b) is made on the basis that those matters stated in the enforcement notice have not occurred.
5. The appellant does not advance any specific arguments on ground (b). They do state that the units are not residential but holiday lets. Nevertheless, use of the units as holiday lets is a residential use. Residential uses are not confined to dwellinghouses. Beyond that there is no argument apparent within the appellant's evidence that the siting of four residential units has not occurred. Indeed, there is an acceptance within the appellant's evidence that the matters have occurred. Whilst the relevant date for consideration is the date the notice was issued, I was able to see from my site visit that four residential units were present on the land in the position identified on the notice.
6. As a result, the appeal on ground (b) fails.

Appeal on ground (d)

7. An appeal on ground (d) is that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of the breach of planning control constituted by the matters stated in the notice.
8. Section 171B(1) of the Act states that, where that has been a breach of planning control consisting in the carrying out without planning permission of building operations, 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.
9. The notice alleges that operational development has taken place and the appellant does not dispute that. As a result, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the four two storey residential units were substantially complete on or before 27 April 2017.
10. The appellant states that the development has been in place since 2015/2016. A photograph is provided which shows a digger and a tractor with a trailer working on a cleared area with piles of brickwork. Given the position of the existing building on the photograph, it appears when correlated with my observations on my site visit that the image shows the demolition and clearance of the previous building where the alleged residential units now stand. However, the photograph is undated.
11. Provided is an invoice from BWA Fabs Ltd to Lakeland Leisure Homes which is dated 5 October 2015. The invoice purports to provide the supply of two steel frames to accommodate two tier bespoke leisure homes. One frame to fit a wheeled chassis, the other to lift on top of frame 1 with lifting eyes on each of the four corners. The invoice indicates that four pairs of frames would be delivered on-site late January 2016. There is no indication from the invoice where 'site' is. Nor does it provide any evidence when those frames were actually delivered.

12. An order form is also submitted by the appellant from a company called Keyframe UK Ltd. The contents of the form suggest it is an order for windows for a ground floor and first floor. The form only states the name and address of the customer as Lakeland Refurbishments however and there is no date on the order.
13. Lodge specification checklists by Lakeland Leisure Homes Ltd are provided which contain information detailing the building specifications, as well as fixtures and fittings, of a lodge manufactured by the company. The checklist contains a date of 19 December 2015 and a job number. However, it does not contain any details of the customer. Moreover, whilst the attached plans show the client is Pure Leisure (Fell End), there is no indication from any of the documentation when the units were manufactured or when they were erected.
14. An image is also provided showing a crane lifting a first floor unit with a roof in place above a ground floor unit. However, the image does not appear to have been taken at the appeal site since it shows open land and a pylon, which were not features of the appeal site I observed on my site visit. Nor is there any evidence of that being the previous state of the land in question. In any case, the image is undated so does not advance the appellant's case.
15. The LPA has provided an image from Google Earth which is dated 19 July 2016 and shows the previous structure in place on the application. A Google Earth image is also provided by the LPA dated 30 June 2018 which shows the development in place at that point.
16. The appellant indicates that Google's terms and conditions are clear that image dates are approximate and that images may be composed from multiple images taken at different times. Thus, the precision of the date referred to in the image and the accuracy of what it depicts are approximate at best. However, either way, neither of these images assist in establishing the date the development was substantially complete.
17. Overall, I find the appellant's evidence is not sufficiently precise or unambiguous. I conclude, therefore, that it has not been demonstrated that, on the balance of probabilities, the four two storey residential units were substantially complete on or before 27 April 2017. Thus, enforcement action could have been taken at the date the notice was issued, because the time for taking enforcement action under section 171B(1) of the 1990 Act had not expired.
18. The appeal on ground (d) therefore fails.

Formal Decision

19. It is directed that the enforcement notice is corrected by:
 - the deletion of the word "including" from section 3.1(i) of the notice and its substitution with the word "comprising";
20. And varied by:
 - the deletion of section 5(c) of the notice in its entirety;
 - the deletion of the word "permanently" from section 5(a) and section 5(b) of the notice.

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

J Whitfield

INSPECTOR