
Appeal Decision

Hearing held on 11 January 2022

Site visit made on 11 January 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/V2635/C/19/3232062

Land at the rear of St Germans House, 14 Lynn Road, Wiggshall St. Germans, King's Lynn, PE34 3DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr James Lee against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice, numbered 18/00463/UNAUTU, was issued on 14 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey brick built structure having the appearance of two semi-detached dwellings; a single storey wooden structure with UPVC door and windows and having the appearance of a detached dwelling; and associated parking and turning area.
 - The requirements of the notice are:
 - (a) Demolish the single storey brick built structure having the appearance of two semi-detached dwellings.
 - (b) Demolish the single storey wooden structure with UPVC door and windows and having the appearance of detached dwelling.
 - (c) Permanently remove the parking and turning area.
 - (d) Permanently remove all rubble, wood, plastic and other waste materials resulting from the demolition of these structures from the Land.
 - (e) Restore the Land to its previous condition.
 - The period for compliance with the requirements is three calendar months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the allegation in section 3 and substituting:

“Without planning permission, the construction of a single storey brick built structure; and a single storey wooden structure with UPVC door and windows.”
2. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a single storey brick built structure; and a single storey wooden structure with UPVC door and windows at land at the rear of St Germans House, 14 Lynn Road, Wiggshall St. Germans, King's Lynn, PE34 3DW as shown on the plan attached to the notice and subject to the following condition:

- 1) The use of the single storey brick built structure and single storey wooden structure shall be restricted to use as outbuildings for storage and garaging, incidental to the enjoyment of numbers 14 and 14a Lynn Road, Wiggshall St. Germans, King's Lynn, and such use shall not include use as primary living accommodation, business, or commercial purposes.

Applications for costs

3. An application for costs was made by Mr James Lee against the King's Lynn and West Norfolk Borough Council.

Preliminary matters and background

4. Given restrictions relating to the Covid-19 pandemic, the hearing proceeded mainly in a virtual format, but discussions continued On site, when I adjourned for the site visit.
5. The appeal previously included ground (d) in relation to the parking and turning area. However, having regard to evidence submitted during the appeal concerning the existence and use of the parking and turning area for more than 10 years, the Council no longer objects to its retention. It was agreed that I should correct the enforcement notice by deleting reference to that area. I shall do so, being satisfied that no injustice will result. However, there is no need to vary the corresponding requirement, as the notice is being quashed.
6. The Council confirmed at the hearing that its intention had been to take enforcement action in respect of 3 dwellings. However, this was based on the appearance of the buildings as dwellings and a concern that they had the potential to be used as such. Nevertheless, the notice merely alleges the construction of structures "having the appearance of" dwellings.
7. The appellant indicated in his written evidence that neither the single storey brick structure, nor the single storey timber building comprised dwellings and neither had drainage, water, heating, or other utility installations, save that the brick building was supplied with electricity. The appellant confirmed that he never intended to construct dwellings; he merely wanted these buildings to be available to the occupants of 14 and 14a Lynn Road to store household belongings, such as bicycles and garden equipment. The Council confirmed that, if the buildings were not dwellings and were not to be used as primary living accommodation, it had no objection to their remaining.
8. I saw the buildings during the site visit, including their interiors. As far as the wooden structure is concerned, notwithstanding that its northern and eastern walls comprise previously existing brick walls, and there are UPVC windows and a door in the southern elevation, the remainder of the structure is built with timber with profiled sheeting on the mono-pitched roof. This building has no utilities and does not afford the facilities necessary for day-to-day domestic existence; it is just a shed, not a dwelling.
9. The other single storey structure is more substantial. The appellant explained that his original intention had been to renovate the old brick outbuilding on the same footprint. However, it proved necessary to remove much more of the original structure than had been intended. The new building has been constructed with a pan tile roof, outer brick skin and inner blockwork to form cavity walls. It is divided into 2, each section having a single undivided room,

served by a door and 2 windows, though the window openings are currently boarded up. The walls were unfished internally at the time of my visit, though there were plasterboard ceilings, with hatches providing access to the pitched roof void, and the floors are concrete.

10. It could be said that this brick structure has the appearance of 2 small, semi-detached dwellings, but equally it looks like 2 semi-detached brick outbuildings. In any event, it has no utilities apart from electricity and, like the wooden structure, it does not afford the facilities necessary for day-to-day domestic existence and is not a dwelling.
11. I note that a Planning Contravention Notice was served on the appellant on 9 October 2018. His response dated 31 October 2018 included that the wooden building was to be used as a shed and the works in relation to the brick building amounted to repairs to an existing shed.
12. The Council confirmed at the site visit that there was no objection to the buildings remaining, and conditional planning permission should be granted. On this basis, the appellant was content not to pursue his appeals on grounds (b) and (c), but rather to rely on his now uncontested ground (a) appeal.
13. Given that the terms of the deemed application are dictated by the allegation, the parties agreed that references to the structures having the appearance of dwellings should be deleted, as this would cause confusion if included in a grant of planning permission. Being satisfied that no injustice will result, I will make that correction. As the notice is being quashed, it is not necessary to vary the corresponding requirements.

The appeal on ground (a)/the deemed application for planning permission

14. The Council's reason for issuing the notice was solely that the site lies within Flood Zone 3 and, on the basis that the development included dwellings, it was more vulnerable to flood risk. In this context, the Council considered there was no justification for the development in terms of Policy CS08 of the Kings Lynn and West Norfolk Borough Council Local Development Framework - Core Strategy, adopted July 2011 and the National Planning Policy Framework (the Framework).
15. However, on the basis that the development does not comprise dwellings and its use as primary living accommodation or for business/commercial purposes can be prevented by condition, the Council confirmed that it had no objection to the development, which does not conflict with the development plan or the Framework. I see no reason to take a different view, and therefore planning permission should be granted.

Conditions

16. A change of use of any of the buildings to use as dwellings would require planning permission. However, given the flood risk, it is also necessary and reasonable to prevent their use as primary living accommodation, even if they did not constitute separate dwellings.
17. Furthermore, the buildings are accessed via a narrow lane, which also separates them from Nos 14 and 14(a) Lynne Road. Their use by anyone other than the occupiers of those properties, or their use for business or commercial purposes could also have implications for the amenity of the area and

neighbours' living conditions. It is reasonable and necessary to prevent this. Based on suggestions put forward by both parties at the hearing, I will attach a condition to provide the necessary control.

Conclusion

18. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
19. The appeal on ground (f) does not therefore fall to be considered.

JA Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Eales solicitor, of Kenneth Bush Solicitors

James Lee, appellant

FOR THE LOCAL PLANNING AUTHORITY:

Keith Wilkinson, Senior Planning Officer for the Council

Matthew Clarey, Enforcement Team Leader for the Council

Mick Bates, Enforcement Officer for the Council