



Appeal Decision

Site visit made on 23 February 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 30th March 2022

Appeal Ref: APP/T2405/C/21/3285370

Mill Bank House, Leicester Road, Sapcote, Leicestershire, LE9 4JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Mac against an enforcement notice issued by Blaby District Council.
 - The notice on 23 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the unauthorised erection of a structure (shown in blue in the approximate position on the attached plan)
 - The requirements of the notice are to :
Remove from the land the entirety of the unauthorised structure including the concrete foundations, blockwork and brickwork and reinstate the Land to its previous land levels with topsoil and reseed with grass seed
 - The period for compliance with the requirement is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (the Act) as amended.
-

Decision

1. It is directed that the enforcement notice is varied by the deletion of 2 *months* and the substitution of 8 *months* as the period for compliance.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

An appeal under ground (f)

3. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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. An appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary to remedy the breach or remedy any injury to amenity. It is therefore necessary to establish whether the purpose of the notice is to remedy the breach or remedy any injury to amenity.
4. The requirements of the notice are to remove the structure itself which at the time of my visit consisted of around 4 courses of brickwork, the foundations and blockwork and to restore the land to its previous condition. The purpose of the notice is therefore to remedy the breach.
5. The appellant states that the requirements of the notice are excessive. Whilst no alternative requirements are suggested, the appellant states that the

majority of works are in accordance with the approved plans. Planning permission¹ was granted for a replacement dwelling at the appeal site on the 22 November 2019 for “the construction of new replacement dwelling and formation of new vehicle access” (the previous permission). Although the appellant submitted an application to vary condition 4 and the approved plans condition in December 2021 that application has not been registered and has now been returned. The appellant considers that the permission was extant and an application to vary conditions could be submitted.

6. Section 173(4) of the Act does state that the purpose of a notice may include making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land. However, an alternative requirement to comply with the conditions of a previous planning permission is only appropriate where the relevant planning permission is extant. The parties are not in agreement as to the status of the previous permission.
7. The Council considers that condition 4 which relates to the demolition of the original dwelling is a true condition precedent which cannot be complied with retrospectively. There are a number of conditions and some conditions have not yet been complied with although if extant, the previous permission would not expire until November 2022.
8. The appellant had sought to vary the condition 4 to allow the original dwelling to remain for a longer period whereas the Council considers that the removal of the original dwelling goes to the heart of the planning permission as retaining that dwelling whilst constructing the replacement dwelling was never envisaged. The appellant has stated that there is no harm arising due to the extent of works undertaken on site as there is not a proliferation of dwellings within the countryside which was the reason for the condition. However, whether or not there is currently harm is not an indication of whether or not the previous permission with 17 conditions is extant and specifically whether the wording of condition 4 is a true condition precedent having particular regard to the relevant case law.
9. On the basis of the limited information before me, I am unable to reach a view that the previous permission is extant and the existing requirement is therefore not excessive as the purpose of the notice is to remedy the breach. The appeal under ground (f) therefore fails.

The appeal under ground (g)

10. An appeal under ground (g) is that the period for compliance is too short. The time for compliance with the notice is 2 months whereas the appellant considers that 12 months is more appropriate. The Council has however now indicated that it would have no objection to a compliance period of 4 months.
11. The appellant refers to the effects of the Covid 19 pandemic and a shortage of labour. However, in the absence of current restrictions, the labour and equipment situation is likely to be improving. Whilst the appellant had referred to allowing time for an appeal in the event of a refusal to vary conditions, the appellant’s application to vary conditions 2 and 4 that was submitted in December 2021 was returned to the appellant in February 2022.

¹ 18/1092/FUL

12. Nevertheless, following the return of the variation application, the appellant will need to discuss his options with the Council and make any further applications that he considers to be appropriate. I note the comments from third parties about time limits but I do need to specifically consider this appeal rather than any activities on other sites.
13. In the circumstances, I do consider that a period of 8 months achieves a balance between the public interest in achieving compliance whilst giving the appellant sufficient time to consider his options following the recent return of the variation application. The appeal under ground (g) therefore succeeds to that limited extent.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall vary the notice to allow for the partial success on ground (g) prior to uphold the enforcement notice.

E Griffin

INSPECTOR