



Appeal Decision

Site visit made on 28 March 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal Ref: APP/Y2620/C/21/3285881

Land at 1 Millfield Road, NORTH WALSHAM, NR28 0EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Scammell against an enforcement notice issued by North Norfolk District Council.
 - The notice was issued on 24 September 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, operational development consisting of erection of detached single storey garden annex building.
 - The requirement of the notice is to: (i) remove the detached single storey garden annex building.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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. The enforcement notice is quashed.

Reasons

The allegation

2. The allegation in the enforcement notice refers to operational development – that is the “erection of a detached single storey garden annex building.” However, at the time of my site visit I saw that the single storey building erected had all the facilities for day to day living including a kitchen, shower room, bedroom and lounge. In addition, a fence had been erected parallel to the building which appeared to separate the building from the main house thereby creating a separate planning unit. From the appellant’s submissions it would appear that communication with the Council regarding the use of the building had previously taken place and the appellant refers to the building as “a home for his daughter.”
3. From all I have seen and read, it seems to me that the matter which appears to constitute a breach of planning control is the erection of a single storey detached dwelling. The enforcement notice relates to operational development only. I have considered whether I could correct the allegation in the notice to address the matter that has occurred which would include a material change of use, but I could only do so if no injustice to either party arose.

4. Having been invited by the Planning Inspectorate, the Council subsequently agree that the allegation should be changed because the building is being used for residential purposes and confirm that the fence has been erected since the enforcement notice was issued. Also, the Council consider no injustice would be caused were I to alter the allegation.
5. In this respect, although no appeal on ground (c) has been brought, the appellant suggests that the allegation in the notice should remain because the definition of an annex does not preclude its use as a separate self-sufficient dwelling. Moreover, the appellant considers the building is permitted development by virtue of its size.
6. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out that the provision within the curtilage of the dwellinghouse of "any building... required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development subject to the requirements of paragraphs E.1. of Class E of the GPDO.
7. Whether the building was permitted by Class E of the GPDO would depend upon the building being required for purposes incidental to the enjoyment of the dwelling and it meeting the limitations set out in that class. Although both parties have alluded to the GPDO neither have addressed this ground specifically and had they done so their arguments might have been different or more comprehensive. Moreover, in relation to the appeal on ground (a), the planning considerations in assessing a garden annex would be different to those relating to a separate dwelling and so are likely to have been presented differently.
8. The Council consider no injustice would be caused were I to correct the notice but offer no explanation. In my view, to change the allegation to accurately reflect these matters would significantly alter the notice. Furthermore, any such change may have implications as suggested by the appellant. I conclude that it would not be possible to correct the notice without injustice. I cannot be sure what each party's case would be in the face of such a correction.

Conclusion

9. For the reasons given above I conclude that the allegation in the enforcement notice should be corrected, but I am unable to correct the notice without injustice and thus the notice should be quashed. In these circumstances the appeal under ground (a) of section 174(2) to the 1990 Act as amended and the concerns of residents do not fall to be considered.

Elizabeth Jones

INSPECTOR