



Appeal Decision

Site visit made on 31 May 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/A2280/C/20/3254753

Land at Walnut Tree Farm, 155 Lower Rainham Road, Rainham, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Antonio Rocco against an enforcement notice issued by The Medway Council.
 - The enforcement notice was issued on 19 May 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the operational development consisting of the erection of a building and surrounding structure.
 - The requirements of the notice are:
 - (i) Demolish the building and surrounding brick structure.
 - (ii) Remove all debris and associated materials from the Property.
 - The period for compliance with the requirements are:
 - (a) Paragraph 5(i) within three calendar months from the date the notice takes effect.
 - (b) Paragraph 5(ii) within four calendar months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and a variation as set out in the Formal Decision below

Procedural matters

1. It is the convention in enforcement notices to identify the address to which the notice relates with the prefix 'Land at'. The enforcement notice in this case does not follow that convention and, in deference to the normal convention, I will correct the notice to refer to 'Land at'.
2. The requirement a paragraph 5(ii) of the notice is to remove all debris and associated materials from the property. Although the appellant has clearly understood that this requirement relates only to debris and associated materials resulting from the demolition of the building and surrounding brick structure required by paragraph 5(i), the notice as worded is somewhat ambiguous in that regard. Accordingly, I will vary the requirement at paragraph 5(ii) that make that clear.
3. The power under section 176(1) of the 1990 Act provides that a notice may be corrected and varied provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting and varying the notice in the above respects.

4. A number of representations have been received objecting to the retention of the building subject to the notice. In the absence of an appeal on ground (a), namely that planning permission ought to be granted for the matters stated in the notice, I am not able to consider the planning merits of the development. I will, however, take those objections into account in my consideration of the appeal on ground (g) below.

The appeal on ground (f)

5. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to demolish the building and to remove the resultant debris from the land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
6. The appellant's case on the ground of appeal is that the requirements are excessive because the building is a steel framed structure that is bolted together. It could therefore be unbolted and removed from the property rather than being demolished. The brickwork, or more correctly thermal blocks, can be demolished. The appellant therefore accepts that the building could be dismantled in part and, where this is not possible, demolished. The appellant accepts that this would sufficiently remedy the alleged harm.
7. This is simply a matter of semantics. In order to achieve the purpose of the notice, the building must be removed. Whether that removal is achieved by demolition or by dismantling the structure is entirely academic. However, in the interests of clarity, I will vary the requirement at paragraph 5(i) of the notice to specifically encompass both the demolition and the dismantling of the building.
8. Accordingly, the appeal on ground (f) succeeds to that limited extent.

The appeal on ground (g)

9. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months for the removal of the building itself, and four months for the removal of the resultant debris.
10. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must assume that the building subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice. Indeed, evidence that the harm caused is perceived by local residents is to be found in the representations that have been received.
11. The appellant considers that the demolition of the building requires safety equipment and the services of a specialist contractor. In addition, the appellant advises that there is no hard-surfaced road that leads to the building,

such that the weather could therefore impede the ability to work quickly. The appellant considers that this, and the restrictions imposed by the coronavirus pandemic, push back timescales. The appellant therefore considers that a period of at least 6 months would be more appropriate to comply with the requirement set out at paragraph 5(i) of the notice, with a further month to comply with paragraph 5(ii) of the notice.

12. However, none of the appellant's claims in these respects have been substantiated with evidence. There is nothing before me to indicate that the building is of a size and method of construction that requires safety equipment beyond that normally employed or the services of a specialist contractor. Indeed, the appellant's appeal on ground (f), in which it is explained that the steel framed structure can be simply unbolted, suggests that removing the building (or at least substantial parts of it) could be achieved relatively quickly and without specialist knowledge, skills or equipment.
13. In the absence of any evidence from the appellant to the contrary, it is reasonable to conclude that the building was constructed in situ. The corollary is that the site must have been accessed by vehicles delivering the materials from which the building is constructed, and/or to facilitate the construction of the building. There is therefore no reason in principle why vehicles could not similarly gain access in order to facilitate the demolition/dismantling of the building, and/or the removal of the resulting material from the land.
14. I noted at my site visit that there is a surfaced track that leads down from Lower Rainham Road to the vicinity of the building, but that access to the building itself is over an area of grass. It seems to me that it is only the latter, relatively short, section that would pose any potential difficulty in terms of unsuitable ground conditions. However, as a result of the timetable that this appeal has followed, the three-month period for demolishing/dismantling the building will now fall substantively in the summer and early autumn months, when ground conditions may reasonably be expected to be generally favourable. Consequently, whilst I accept that ground conditions may not be suitable for heavy vehicles at all times, I am not persuaded that ground conditions would prevent compliance with the required time periods.
15. An easing of the restrictions imposed in response to the coronavirus pandemic came into effect at the end of January 2022. I therefore have no reason to believe there would be any reason for delay in appointing contractors to remove the building, or for that work to be carried out.
16. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am, therefore, not persuaded that there is need to extend the period for compliance with the notice and am satisfied the period(s) of compliance of stated in the notice is a proportionate response to the breach of planning control that has occurred.
17. Accordingly, the appeal on ground (g) fails.

Conclusion

18. For the reasons given above, I conclude that the requirements of the notice (as I propose to vary them) are not excessive to remedy the breach of planning

control that has occurred and that the period for compliance with the notice does not falls short of what is reasonable. In the interests of clarity, I shall correct and vary the enforcement notice prior to upholding it.

Formal Decision

19. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, insert the words 'Land at' before the words 'Walnut Tree Farm'

20. It is directed that the enforcement notice is varied by:

- in paragraph 5(i) of the notice, insert after the word 'Demolish' the words 'and/or dismantle as appropriate'.
- in paragraph 5(ii) of the notice, insert after the word 'Property' the words 'arising from compliance with the requirement at paragraph 5(i) of the notice'.

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

Paul Freer

INSPECTOR