



Appeal Decision

Inquiry held on 23 August 2022

Site visit made on 23 August 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Appeal Ref: APP/T3725/C/21/3287949

Nova Equestrian, Glasshouse Lane, Lapworth B94 6PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Talib Khan against an enforcement notice issued by Warwick District Council.
- The notice was issued on 19 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a new single-storey dwelling in the approximate position marked with a Blue outline on Plan 1 attached and shown in the photographs at Appendix A.
- The requirements of the notice are:
 - [i] Permanently demolish the dwelling (as identified in Appendix A annexed to this notice) from the land.
 - [ii] Remove all waste and materials from the land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed following correction of the notice in terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant had initially claimed that the notice was a nullity or invalid. The arguments in support of this claim were withdrawn at the inquiry.
2. It is incumbent upon me to put the notice in order, if necessary. There is a typographical error in the allegation. The word 'story' should be 'storey'. Also, the words 'from the land' in step [i] of the requirements are superfluous and should be deleted. My correction of these errors will not cause injustice and I shall proceed on the basis of the corrected notice.

Background

3. A stable block was erected shortly after planning permission¹ had been granted for it in September 2005, the 2005 PP. Following the appellant's purchase of the land, planning permission² was granted for the erection of a replacement stable block, the 2013 PP. Prior to implementing the 2013 PP, planning permission³ was granted for the construction of a manège, change of use of land and stable to riding school, the 2014 PP. The stable referred to in the 2014 PP was that identified in the 2005 PP. As the purpose to which the land was to be put had changed, a non-material amendment to the 2013 PP was submitted and granted in December 2014, the NMA.

¹ Council reference: W/05/1299

² Council reference: W13/0916 granted in September 2013

³ Council reference: W/13/1484 granted in January 2014

4. The differences between the 2013 PP and the NMA include: changing what was shown as a hay store into a waiting and changing room, changing what was shown as Stable 1 into a reception and office, the replacement of the double doors to the hay store with a single pedestrian access door, the provision of a window to the gable end of the waiting and changing room and the provision of 2 windows in the reception and office room. The other 3 stables and tack room with toilet were to remain as approved.
5. In his oral and written evidence, Mr Murphy conceded that the building that has been erected, to replace the original stable block, has not been erected in accordance with either the original 2013 PP or the NMA. However, it is the appellant's contention that the deviations from the 2013 PP and NMA are also non-material and remain within the scope of the 2013 PP as amended. Conversely, the Council claim that the changes are significant and fall outside the scope of the 2013 PP, as a dwelling has been erected.
6. There was considerable discussion regarding the differences between the 2 sets of approved plans and the building that has been erected. That discussion will be addressed later, under the ground (d) appeal, if necessary.

The appeal on ground (b)

7. The matter alleged is the erection of a dwelling and to succeed on this ground the appellant needs to show, as a matter of fact, that he has not erected a dwelling. As there is no ground (c) appeal, the appellant does not have to show that what has been erected has the benefit of planning permission or that it does not constitute development.
8. There is no definition of a dwelling within the 1990 Act. However, the matter has been the subject of litigation and I was directed to the *Gravesham*⁴ judgement. To be a dwelling-house, a building has to have the necessary facilities required for day-to-day private domestic existence. However, not all buildings containing cooking, washing and toilet facilities are a dwelling, for example offices, hotels and leisure centres can contain such facilities but are not dwellings.
9. The building was inspected by the Council on 6 December 2018. The Council knew that the building being erected was not that granted by the 2013 PP or the NMA because its foundations had been constructed in the wrong place⁵. Photographs taken on 6 December 2018 show that the building had walls, roofs, one window, with several other window openings boarded over, and 4 doors, 2 of which were stable style doors. Internally, the shorter wing had painted plastered walls and ceilings, and a ceiling light fitting and a boiler were installed. Building works were clearly still on going and the building was not externally or internally complete.
10. The photographs taken at the site visit conducted by the Council on 11 April 2019 showed the building to have been provided with a tiled shower room in part of the longer wing, and kitchen appliances and a sofa were present in the shorter wing. While the accommodation in the shorter wing and the shower room are internally accessible, the remaining part of the longer wing can only be accessed externally. Photographs of the remaining part of the longer wing show it divided into 3 sections, 2 of which have stable door access. These 3

⁴ *Gravesham BC v Secretary of State for the Environment* (1982) 47 P & CR 142

⁵ Photographs and the Council's site visit on 13 June 2016

sections had bare block outer walls and boarded dividing walls. They also have gaps in the dividing walls and loose wiring is evident, they are clearly unfinished. This part of the building has the appearance of 2 stables and a tack room, like those shown on the NMA approved plan. The photographs show this part of the building being used primarily to store building materials and machinery, although a table, chairs and some other potentially domestic items are visible. Given the provision of 2 stable doors, the interior finishes and the layout, it is however more than likely that this part of the building was erected as stables and tack room and would be put to that use once the building was complete.

11. The photographs taken at the site visit conducted by the Council on 29 December 2020 show that there had been little in the way of changes to the exterior of the building in the preceding 20 months. The stables and tack room remained in the same form as at the previous site visit, although there were fewer building materials and more domestic looking paraphernalia present, including pet cage, pet carrier and a child's bicycle.
12. Photographs of the other part of the building, show a fitted kitchen had been installed along with a range cooker, large fridge freezer and other kitchen appliances. The various worktops and other surfaces exhibit numerous items, including pans, crockery, kitchen utensils, a vase of flowers, potted plants, fruit bowl, hand and tea towels. A chopping board was being used to prepare onions. The sink contains crockery and cutlery. The fridge contains a variety of food stuffs. On the floor, a printer, several pet cages, and a vacuum cleaner can be seen. This room has 2 large windows installed but both remain boarded over on the outside.
13. Photographs of the adjoining room show windows have now been installed in 2 of the 3 other openings in the external walls, although one remains boarded over on the outside, as does the third opening. This room contains furniture, including 2 sofas with several throws, occasional table, chest of drawers, a television, a monitor displaying security camera footage. While there are no beds present, there are 2 sprung metal frames with blankets, covers, a pillow, various items of clothing and a laundry basket on them. Underneath these sprung metal frames are 2 suitcases and a pair of high heeled sandals. There are also various ornaments and more potted plants on the windowsills.
14. Photographs of the corridor leading into the longer wing show a shoe rack containing multiple pairs of footwear, a clothes rail with numerous coats, and other garments strewn on the floor. Photographs taken of the shower room show things such as towels, vanity mirror, numerous hygiene products and toothbrushes.
15. A business, such as a riding school, could reasonably be expected to provide accommodation within which staff and customers could change clothing, relax, prepare food and drink and bathe. However, it is the Council's position that the quality and scale of the fixtures, fittings and appliances provided go beyond what would likely be found in a business setting. Instead, the Council claims they are residential in quality and scale.
16. It is the appellant's contention that he has erected a replacement stable building incorporating the waiting, changing, reception and office space, previously approved by the NMA. He also contends that he has no need for a dwelling on the site as he and his family live a short distance away and can walk to the premises rather than driving if they wish. During the Covid

pandemic he acknowledges that his family spent significant amounts of time here and that he took the opportunity to refurbish his home, which necessitated storing some domestic paraphernalia within the building. The property is registered for commercial rates and an envelope is addressed '...T/A Nova Equestrian', which is 'trading as', implying a business trades from the site.

17. While the building erected is not that approved by the 2013 PP or the NMA, it has replaced the stable building erected under the terms of the 2005 PP. The building's appearance and internal layout is also like that shown in the NMA. The building has 2 distinct parts, the part designed and laid out to be used to accommodate people and the part designed and laid out as stables and tack room.
18. While one section of the building provides cooking, bathing and toilet facilities, there is a distinct lack of bedroom facilities. It would be possible for the sofas or the sprung metal frames to be slept on. However, such sleeping facilities would be tantamount to 'camping out' in the building. An office that provides kitchen, bathing and toilet facilities for staff could arguably provide sleeping accommodation through the provision of large sofas or camp style beds in waiting or rest rooms. That would not however make that office a dwelling. Similarly, part of this building may be capable of residential use, but it does not provide all the facilities for day-to-day private domestic existence.
19. Even if I had found that all the facilities required for day-to-day private domestic existence has been provided, the 2 furnished rooms, corridor and shower room only form part of the building that has been erected. Part of the building was erected as stables and tack room, which are not elements of accommodation normally found in a dwelling. As such the allegation would be incorrect as the building would be more than just a dwelling.
20. S176(1)(a) of the 1990 Act provides for the correction of any defect, error or misdescription in the enforcement notice if that correction would not cause injustice to the appellant or local planning authority. An appeal on ground (a) was not made because the appellant did not wish to seek planning permission for a dwelling. Had the notice alleged the erection of a building and its mixed use for residential and equestrian purposes, for example, it is more than likely that a ground (a) appeal would have been made to regularise the breach of planning control. If I were to correct the notice, as suggested above, the appellant would be deprived of the opportunity to appeal on ground (a) and injustice would arise. The allegation cannot therefore be corrected without causing injustice.
21. S174B(4)(b) provides for taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the local planning authority have taken or purported to enforcement action in respect of that breach. The Council could therefore exercise the 'second bite' provision, if they consider it expedient to do so.
22. For these reasons, as a matter of fact, I find that while a building has clearly been erected, the appellant did not erect a dwelling.

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
24. In these circumstances, the appeals on grounds (d) and (f) do not fall to be considered.

Formal Decision

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

*In **section 3: THE BREACH OF PLANNING CONTROL ALLEGED**, the deletion of the words 'single-story' and the substitution of the words 'single-storey'; and*

In section 5: WHAT YOU ARE REQUIRED TO DO, in [i] delete the words 'from the land'.

Subject to these corrections, the appeal is allowed, and the enforcement notice is quashed.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Christian Howley of Counsel

He called: Mr Talib Khan

Mr Steve Porter

Mr Andy Moakes

Miss Ellie Wallace

FOR THE LOCAL PLANNING AUTHORITY:

Mr Alex Williams of Counsel

He called: Mr Neill Whittaker

INTERESTED PARTIES:

Mr Bashir

Mr Robert Carter

Mr Aamir Khan

Miss Karen Girling

Mrs Sheila Cooper

Mr Alan Palmer

DOCUMENTS

ID1 Site notice