



Appeal Decision

Site visit made on 10 October 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Appeal Ref: APP/F2415/C/21/3281539

Land at 62 Welland Avenue, Gartree, LE16 7RW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Sharp against an enforcement notice issued by Harborough District Council.
 - The notice, numbered EN637, was issued on 30 July 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the outbuilding marked "A" on the Plan, to a self-contained residential unit, as shown in photographs Figure 1, 2 and 3 attached to this notice.
 - The requirements of the notice are to: a) Cease the use of the outbuilding "A" as a self-contained residential unit; b) Remove from the outbuilding "A" all fixtures and fittings associated with the self-contained residential unit. For the avoidance of doubt this includes all kitchen fittings and appliances, along with bathroom facilities.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (d)

2. This ground is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matter stated in the notice. The onus is on the appellant to demonstrate that the use as a self-contained residential unit commenced prior to 30 July 2017 and continued for four years. The relevant test is the balance of probability.
3. The appeal relates to the rearmost part of what was originally the back garden of no.62 Welland Avenue. The appellant formerly lived at no.76 Welland Avenue, whose garden abuts the area of garden in question. He states that he bought the land in 2012 and erected the present outbuildings, including the one marked "A", in 2014.
4. The appellant states in his response to the Planning Contravention Notice (PCN) of 8 March 2021 that the building has been his permanent residence since 2014 and that this can be confirmed by the inspections by the Council's enforcement officers in 2015 and 2019.
5. The Council indicates that, on 5 May 2015, it received a complaint about the erection of the outbuildings and their alleged use for car repairs. Following a site visit on 13 May, no evidence of a business use for car repairs was found and it was decided to take no enforcement action against the erection of the

- outbuildings. There is no record of any residential use and it appears to me that, on such a small site, such a use would almost certainly have been noticed during a site inspection, had it been present.
6. In October 2019, the Council received a new complaint (ref: 19/00401/COUS) relating to the use of the outbuilding(s) as independent units of residential accommodation and as a car repair business. At a site visit by planning enforcement officers on 22 October 2019, it was noted that building "A" was in use as a self-contained unit of living accommodation. The site visit notes indicate that the appellant claimed to have been living in the building for two years; such a claim would have placed the commencement of his residential occupation after the relevant date of 30 July 2017. Furthermore, it was also noted that the kitchen facilities were brand new and unused. The Council states that there was discussion about the removal of these facilities such that the use of the outbuilding might be deemed 'ancillary' to the use of the main dwelling house.
 7. This enforcement case was reviewed by enforcement officers in June 2020. The appellant was then advised that the building itself was immune from enforcement action but that the use as a dwelling would remain under review and that enforcement action would be considered should this unauthorised use continue. The Council indicates that matters were then held in abeyance due to the pandemic and Covid restrictions.
 8. The appellant submits that an excerpt from freedom of information documents received from the Council states in relation to the above 2019 complaint:- *"Alleged creation of independent living accommodation in rear garden. Also possible car repair business - Case closed 24.06.2021. Reason: Breach immune from formal action."* However, a file record such as this does not appear to me to have any formal status in respect of lawfulness. Moreover, the likelihood is that the file note *"immune from formal action"* was only intended to apply to the erection of the building as indicated in para.7 above. The reason for this interpretation is that, some 9 months earlier in September 2020, the Council was already pursuing a new and separate investigation into the use (ref: 20/00407/COUS), during which a further site visit was undertaken and which led to the issue of the present enforcement notice.
 9. Other than his simple assertion in his PCN response, there is little before me to support the appellant's claim to have resided in the building marked "A" prior to the relevant date of 30 July 2017. The Council's site visit records, upon which the appellant appears to rely, are not consistent with his version of events. Furthermore, there is no witness statement or other independent corroboration of the appellant's case. Even if there were legal difficulties, as indicated by the appellant, it is a fact that the property was not registered for Council Tax.
 10. To my mind, the appellant has failed to demonstrate his case, on the balance of probability, and the appeal on ground (d) must fail. There are no other grounds of appeal and therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B S Rogers

INSPECTOR