



Appeal Decision

Hearing held on 1 November 2022

Site visit made on 2 November 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/E2001/C/22/3295948

107 Marton Road, Bridlington, East Riding of Yorkshire YO16 7PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Chris Graily against an enforcement notice issued by East Riding of Yorkshire Council.
- The notice was issued on 18 February 2022.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the unauthorised change of use from a single dwellinghouse to a mixed use as a single dwellinghouse, a commercial joiners premises and for commercial storage.
 2. Erection of outbuildings, exceeding 2.5 metres in height and being situated within 2 metres of a boundary.
- The requirements of the notice are:
 1. Cease the use of the land and buildings for commercial joinery and storage use.
 2. Remove all tools, plant, materials and equipment used in connection with the commercial joinery and storage use.
 3. Remove outbuildings marked A and C as shown on the diagram of 107 Marton Road.
 4. Permanently block up the windows in building B where they face onto neighbouring properties.
 5. Remove all materials and waste arising from the demolition of the buildings from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

Applications for costs

1. An application for costs was made by the East Riding of Yorkshire Council against Mr Chris Graily. This application is the subject of a separate Decision.

Preliminary Matters

2. An appeal on ground (b), that the matters alleged had not occurred, was not before me for consideration. The appellant's agent however claims that all the activities occurring at the property are incidental to its residential occupation and the material change of use to the mixed use alleged has not occurred.
3. The appellant confirms that he operates 'CG Joinery' from the premises, has his joinery workshop on site and that he has allowed friends to use storage units contained in Building B in exchange for payment. He further advised that, on

occasion, he may work off-site or use other commercial premises from time to time, the majority of his joinery business takes place at the property.

4. The appellant is best placed to know what purposes the premises have been or are being put to. The appellant claims that the commercial storage no longer occurs, and I saw that to be the case. However, for the allegation to be correct, it is enough that it describes matters that have occurred.
5. The appellant's verbal evidence therefore confirms that he lives in the dwelling and the commercial joinery premises and commercial storage has occurred at the site. These commercial uses are not incidental to the property's residential occupation. The mixed use as a single dwellinghouse, a commercial joiner's premises and commercial storage has therefore occurred as a matter of fact. I find the allegation to be correct.
6. A Noise Impact Assessment ("NIA") had been submitted in connection with a previous application and s78 appeal. A copy of the NIA was not however provided in advance of or during the Hearing. While the methodology for preparing that report had been agreed with the Council, the report's conclusions were not agreed between the main parties. I declined to accept a copy of the NIA after the Hearing had closed.
7. The appellant and Council measured the height of Buildings A and C at my site visit. It was agreed that their heights were less than 2.5 m when measured from the highest part of the sloping land. It was further agreed that Buildings A and C have been physically detached from Building B and the approved garage.

Ground (c) appeal

8. An appeal on this ground is that, while the alleged activities have occurred, they do not constitute development, or they have the benefit of express or deemed planning permission. It is for the appellant to show, on the balance of probability, that the matters alleged do not constitute a breach of planning control.
9. The appellant's case on this ground relates to the operational development. It is the appellant's contention that Buildings A and C constitute permitted development as set out in Class E, Part 1 of Schedule 2 of the GPDO¹. The appellant confirmed at the Hearing that Building A had been erected a year or so ago and Building C has been under construction for 2 or 3 years and is still not complete.
10. While there is a mixed use of the land and buildings occurring, where the individual components of that mixed use take place is fluid. The appellant and Council agree that the property is a single planning unit and I see no reason to disagree. The notice therefore correctly identifies a single planning unit, shown edged red on the site location plan attached to the notice.
11. Class E provides for the erection of buildings incidental to the enjoyment of a dwellinghouse, subject to conditions and limitations. Firstly, the building would need to be within the curtilage of a dwellinghouse. As set out above, the agreed position is that the use of the appeal site is a single planning unit in mixed use. It has not been demonstrated that the appeal site was only in use as a single dwellinghouse at the time construction began or substantial

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

completion of Buildings A and C occurred. As such, the property's use was sui generis at the time development began and therefore the permitted development rights set out in Class E could not apply.

12. Even if the appeal site had only been in use as a dwellinghouse when Buildings A and C were originally built, they were built attached to the approved garage and the authorised outbuilding respectively. Both the garage and authorised outbuilding exceeded the conditions and limitations set out in Class E. Any extension or addition to them would also fall outside the Class E conditions and limitations. Therefore, as originally erected, Buildings A and C fell outside the Class E permitted development rights. Planning permission would have been required for Buildings A and C and that planning permission was not granted.
13. The appellant agrees that Buildings A and C were unlawful as originally constructed. Buildings A and C have subsequently been detached from the garage and the authorised outbuilding. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if, in connection with an existing building, the building operations involved in the construction of that building are unlawful. The retrospective compliance with the GPDO conditions and limitations cannot therefore secure deemed planning permission for Buildings A and C.
14. The appellant has failed to show, on the balance of probability, that Buildings A and C have the benefit of deemed consent under article 3 and Class E, Part 1 of Schedule 2 of the GPDO. Buildings A and C are buildings requiring planning permission and that planning permission has not been granted. Buildings A and C therefore constitute a breach of planning control.
15. For these reasons, the appeal on ground (c) fails.

Ground (d) appeal

16. To succeed on this ground the appellant should show, on the balance of probability, that the matters alleged have achieved immunity from enforcement action. The period of immunity for a material change of use from a single dwellinghouse to a mixed use is 10 years of continuous use, without significant interruption. The period of immunity for operational development is 4 years. The material date for the operational development is 18 February 2018 and for the material change of use, it is 18 February 2012. Any 10-year period of continuous use, without significant interruption, is relevant.
17. The Council has undertaken several visits to the appeal site since 2011, when it was alleged that a business was operating out of the garage. A subsequent application to retain the garage included confirmation that a business was not operating from the garage². Planning permission was subsequently granted on 15 February 2012, which imposed a condition stating that the detached garage shall be used for domestic purposes ancillary to 107 Marton Road and not for any other purpose or commercial use³.
18. Further complaints relating to paint spraying/coating at the property were received in 2015. On 9 September 2015 Mr Graily confirmed in writing that he *"started powder coating mainly so [he] can do [his] own bikes and things for [his] vehicles...[he] would say that 80% is for [him]...and have only had 2 small*

² letters dated 25 January 2012 and 1 February 2012 from Dixon & Associates Ltd

³ Appendix C to the Council's Statement of Case - Paragraph 8.6

jobs since [the Council] visited [his] house” and “[He] is still working on [his] house and doing a small amount of joinery to keep [his] head above water financially”. The Council concluded that, based on the available evidence, a material change of use had not occurred at that point in time and there is nothing before me to reach an alternative conclusion.

19. The notice followed an investigation into complaints received in December 2018 relating to the erection of Building B and the running of a business. The appellant claims Building B was erected 5 to 6 years ago. However, the Council claims work began in the summer of 2018 and provide a Google Earth image dated July 2018. The image shows that at least half of Building B does not have its roof. Photographs taken from a neighbouring garden and dated 16 January 2019 show Building B complete. It would be reasonable to conclude that substantial completion of Building B occurred at some time between July 2018 and 16 January 2019. Both these dates are after the material date and Building B has not therefore achieved immunity from enforcement action.
20. It is set out above that Buildings A and C were erected after the material date. They have not achieved immunity from enforcement action.
21. The appellant’s own written evidence confirms that there were no commercial joiners premises at the site on or before 9 September 2015, which is after the material date. Furthermore, an application for a lawful development certificate in respect of *‘the existing use of garage as a workshop for joinery business’* was refused by the Council in April 2020 (“the LDC”). The Council concluded that, in the absence of evidence showing, for example, business accounts or other documentation relating to the operation of a commercial business from HMRC, the appellant had failed to meet the relevant burden of proof.
22. The appellant has not sought to address the Council’s reason for refusing the LDC in the evidence provided with this appeal. However, the appellant maintains that he has operated his joinery business continuously for more than 10 years. This claim contradicts the written submissions made to the Council by his agent in 2012 and by himself in 2015. While deliberate concealment was not raised as an issue, the public policy principle that no-one should benefit from their own wrong may still apply. Bearing that in mind, I give greater weight to the appellant’s written submissions, that the commercial joiners premises did not in fact exist in 2012 or 2015.
23. There is no dispute that Building B is the only place where commercial storage has taken place. Building B could only have been used for commercial storage purposes after it was erected, which was at some time between July 2018 and 16 January 2019.
24. The residential use of the dwellinghouse and the associated incidental or ancillary use of land and buildings having taken place for over 10 years is not disputed. It is however its use as a component part of the mixed use that is relevant in establishing whether immunity from enforcement action has been achieved.
25. Given that the commercial joinery use did not commence until after 9 September 2015, and the commercial storage use could not have begun before July 2018, the mixed use alleged could not have commenced before July 2018. This is significantly later than the material date of 18 February 2012.

26. For the above reasons, the appellant has failed to show, on the balance of probability, that the mixed use alleged began on or before the material date, or that Buildings A, B and C are lawful due to the passage of time.
27. The appeal on ground (d) fails.

Ground (a) appeal and the deemed planning application

28. An appeal on this ground is that planning permission should be granted for the matters alleged, namely the material change of use to a mixed use as a single dwellinghouse, a commercial joiners premises and for commercial storage, as well as for Buildings A, B and C. The **main issues** are the effect of the development on:
- Neighbouring occupiers' living conditions; and
 - The character and appearance of the locality.
29. The commercial joiners premises has previously been considered as part of a larger development proposal. That proposal was refused planning permission by the Council and it was subsequently dismissed on appeal⁴.

Living conditions

30. Marton Road maybe a busy thoroughfare, but traffic noise did not dominate during my site visit. The operation of a mixed use comprising of commercial joinery premises, commercial storage and incidental residential activities has the potential to generate noise and disturbance not just during normal working hours but throughout evenings and weekends too. These activities also have the potential to generate significant traffic movements associated with visitors, collections and deliveries.
31. While there is only one planning unit, the commercial elements of the mixed use predominantly take place in the buildings and yard area located behind the dwellinghouse. That area adjoins the private rear gardens of adjacent residential properties, which neighbouring occupiers would reasonably expect to be peaceful and quiet.
32. The commercial joiners premises generates noise and disturbance by the operation of commercial scale wood working machinery, hand tools and a forklift, as well as the potential for increased vehicular traffic associated with commercial storage. As with the previous appeal, the cumulative impacts of vehicle movements, machinery and tool operation in a distinctly residential setting have the potential to significantly harm the living conditions of neighbouring occupiers.
33. The appellant suggested that he would reduce his working hours, that all commercial work could be undertaken within the confines of the workshop, and the doors to the workshop could remain closed when powered machinery and tools are being operated. Differentiating between domestic and commercial activities and requiring the workshop doors to remain closed while machinery and power tools are being operated, particularly in the summer months, would be unreasonably onerous and practicably impossible. Suitably worded

⁴ APP/E2001/W/21/3282963 for change of use and alterations of existing garage to detached bungalow and retention of existing garage as joiners workshop and retention of outbuildings for garage and general storage – Dismissed 15 February 2022

conditions imposing the appellant's suggested limitations would not therefore be enforceable in practice.

34. The appellant's personal circumstances are such that the forklift is also used for incidental residential activities. While the cessation of the mixed use would not result in all forklift movements being ceased, there would be a significant reduction.
35. Noise and disturbance associated with maintenance and improvement works to the dwelling may well generate similar types of noise to that generated by the commercial joinery premises and commercial storage. However, the maintenance and improvement work to the dwelling would inevitably be completed and the associated noise and disturbance to neighbouring residents would cease. In comparison, a commercial joinery premises and commercial storage use would ensure that associated noise and disturbance continued indefinitely.
36. While hedgerows have been maintained to parts of the boundaries of the site, the appellant's outbuildings have been built abutting them. As the hedgerows are deciduous, the buildings are visually intrusive during winter months. The appellant offered to replace these hedgerows with evergreen species. A planting and future maintenance scheme was not however provided.
37. Buildings A, B and C incorporate flat roofs, so while their heights may have been altered to correspond with what would be permitted under Class E of the GPDO, their parapet construction increases their overall height. Buildings A, B and C are therefore visually incongruous when viewed from adjacent properties. Furthermore, these are substantial structures in terms of their length and height, which when combined with the lawful buildings, provide an unacceptable sense of enclosure to adjacent residential properties.
38. For the reasons given above, the development conflicts with Policy ENV1 B4 of the East Riding of Yorkshire Local Plan 2012 – 2029 Strategy Document (April 2016) ("the SD"), which requires development to have regard to the amenity of existing properties.

Character and appearance

39. The appeal site lies in a predominantly residential area, consisting of detached or semi-detached dwellings set in substantial landscaped gardens. Conversely, the rear of the appeal property contains several large outbuildings and areas of hard standing. This is out of keeping with the verdant suburban appearance of the surrounding area. The built form of Buildings A, B and C is out of keeping with existing buildings in and around the site which predominantly have dual pitched roofs.
40. The development results in significant harm to the character and appearance of the locality, contrary to Policy ENV1 of the SD, which seeks amongst other things to deliver high quality developments that safeguard and respect the character and appearance of the area.

Other matters

41. Once the notice has been complied with, if the use of the land and remaining buildings were returned to use as a single dwellinghouse, then permitted development rights would be reinstated. Buildings of a similar size and scale as

Buildings A and C could be permitted development, provided they are shown to be required for purposes incidental to the enjoyment of the dwellinghouse.

42. The dwellinghouse would continue to benefit from the previously approved garage (currently the joinery workshop), the authorised outbuilding, and Building B for purposes incidental to the enjoyment of the dwellinghouse. Given the extended nature of the dwellinghouse and the scope of the existing outbuildings, it is unclear what other incidental purposes further outbuildings could serve.

Conclusion on ground (a)

43. For the reasons given above, the appeal on ground (a) fails and the deemed application for planning permission shall be refused.

Ground (f) appeal

44. An appeal on this ground is that the steps required by the notice exceed what is required to remedy the breach or, as the case may be, the injury to amenity. The purpose of this notice is to remedy the breach of planning control and the injury to amenity.
45. The notice requires the appellant to '*Permanently block up the windows in Building B where they face onto neighbouring properties*'. These high level obscure glazed windows are the only means of providing natural light into the main work area in Building B. As Building B is not required to be removed, providing natural light to the main work area outweighs the Council's unsubstantiated claim that light shining outwards from these windows injures the amenity of neighbouring residents. Step 4 goes beyond what is required to remedy the breach and injury to amenity.
46. There was some debate about whether step 2 requires the appellant to remove tools, plant, materials and equipment that he uses for purposes incidental to his residential occupation of the site. Step 2 is clear in that it only relates to tools, plant, materials and equipment used in connection with the commercial joinery and storage uses. Providing step 1 is complied with, and the use of the land and buildings for commercial joinery and storage purposes ceases, then there would be no ambiguity as to any remaining tools, plant, materials and equipment being for incidental residential purposes only.
47. The appeal on ground (f) succeeds to this limited degree.

Overall conclusion

48. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

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

In section 5: WHAT YOU ARE REQUIRED TO DO, the deletion of step 4, and the renumbering of step 5 as step 4.

Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr G Britton - Dixon & Associates Ltd

Mr R Dixon - Dixon & Associates Ltd

Mr C Gaily

Mr Wrigley

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Walsh - Principal Enforcement Officer

Mrs J Marshal - Senior Planning Officer

Ms H Shewan - Environmental Health Officer

INTERESTED PARTIES:

Mr N Winn

Mr S Emson

DOCUMENTS

H1 CLE Application Site Location Plan

H2 CLE Application Plan

H3 Appeal Decision APP/K1128/X/21/3282827

H4 Appellant's Suggested Conditions