



Appeal Decision

Site visits made on 5 January 2023 and 8 March 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/Y2620/C/22/3293384

Field View Alby Hill, Alby, Norwich NR11 7PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Karl Barrett against an enforcement notice issued by North Norfolk District Council.
 - The notice, numbered ENF/20/0066, was issued on 24 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission:
 - (i) Operational development consisting of the erection of a self-contained residential dwelling
 - (ii) Operational development consisting of the erection of a garage
 - (iii) The material change of use of the land from agriculture to residential use.
 - The requirements of the notice are to:
 - (i) Permanently demolish the residential building on the Land (marked A on the attached plan)
 - (ii) Permanently demolish the garage on the Land (marked B on the attached plan)
 - (iii) Restore the Land to its condition before the breach took place including ensuring all hard landscaping is removed from the Land.
 - (iv) Remove all demolition material from the Land.
 - (v) Permanently remove all residential paraphernalia from the Land
 - The periods for compliance with the requirements are:
 - (i) 6 months from the date when the notice comes into effect.
 - (ii) 6 months from the date when the notice comes into effect
 - (iii) 8 months from the date when the notice comes into effect
 - (iv) 9 months from the date when the notice comes into effect
 - (v) 9 months from the date when the notice comes into effect
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The site visit was arranged as an Accompanied Site Visit and the Council attended at the specified time on 5 January 2023, however the appellant was not present. I was unable to access the site and the building, and the site visit was rearranged for 8 March 2023 when both parties were in attendance.
3. The appeal has not been made under ground (a) therefore the merits of the appeal scheme are not before me, and I am unable to give consideration as to whether deemed planning permission should be granted. Therefore, the appellants comments regarding compliance with local planning policies and the impact of the development on the character of the site context, do not carry any weight in my consideration of the appeal.

The Notice

4. An Enforcement Notice must meet the specifications set out in section 173 of the Town and Country Planning Act 1990 (the Act) which sets out the contents and effect of a notice. Defects which make a notice invalid generally fall into two categories, either the notice is null because it is defective on its face, or it is flawed in some way.
5. In this case the notice is not defective on its face and consequently it is not a nullity. However, the notice is flawed because the requirements of the notice do not flow logically from the allegation. Section 176 of the Act allows the correction or variation of a notice in such circumstances subject to the test that such changes to the notice will not cause injustice to the appellant or the local planning authority.
6. The allegation as set out in the notice relates to operational development and a material change of use (MCU). However, the requirements do not require the cessation of use of the land for residential purposes. I have sought the views of the parties as to whether the requirements of the notice could be corrected to include the cessation of the use. The Council has no objection to the correction of the notice in this way, but the appellant considers that it would give rise to injustice.
7. The appellant has made submissions on grounds (b) and (f) in relation to the operational development as set out in the notice but clearly only ground (b) in respect of the MCU. If I to correct the notice to include the cessation of the MCU in the requirements injustice would arise because the appellant has not had the opportunity to make an appeal on ground (f) if he considers that such a requirement is excessive.
8. Alternatively, if I do not make a correction to the notice to refer to cessation of the MCU in the requirements and the appellant fully complies with the notice then planning permission would be treated as granted for the MCU from agricultural to residential use. This is because, in this case, S173(11) of the Act provides that where a notice could have required a use to cease but did not and all the requirements of the notice have been complied with, then planning permission would be deemed to have been granted for the use.
9. It is clear from the submissions by the Council that it intended to attack the MCU through the service of the notice and that it does not intend to 'under-enforce' to allow the alleged use to continue. Thus, if I do not make the correction there would be injustice to the Council.
10. I also note that in response to my question regarding the potential for the correction of the notice the Council agrees that the notice does not fully target the alleged breach. Thus, the Council accepts that the notice requires correction.

Conclusion

11. For the reasons given above, I conclude that the requirements of the notice do not flow logically from the allegation. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

12. In these circumstances, the appeal on the grounds set out in section 174(2) (b) and (f) of the 1990 Act as amended does not fall to be considered.

Sarah Dyer

Inspector