



Appeal Decision

Site visit made on 11 October 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Appeal Ref: APP/T2350/C/23/3318384

Land at Garth Cottage, Clitheroe Road, Mitton, Clitheroe BB7 9PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
- The appeal is made by Ms Gwen Skillings against an enforcement notice issued by Ribbles Valley Borough Council.
- The enforcement notice was issued on 8 February 2023.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref 3/2012/0135 granted on 5 April 2012.
- The development to which the permission relates is the demolition of existing cottage and replacement with a new dwelling.
- The condition in question is No 2 which states that: The permission shall relate to the development as shown on Drawing Nos: REN/01 Dwg 02B – PROPOSED PLANS AND ELEVATIONS
- The notice alleges that the condition has not been complied with in that: the building has not been constructed in accordance with the approved drawing.
- The requirements of the notice are to: You must take all necessary steps to alter the property so that it physically complies with the drawing, including but not limited to removal of the kitchen and all units, sinks, cookers and food preparation areas at the south end of the property, creation of the utility room and separate lounge at the south end of the property, removal of the staircase passing from the dining hall to the first floor, creation of the landing, study and bedrooms on the first floor in accordance with the drawing, and remove any dividing wall or walls separating the unauthorised separate dwellings and instal any doorways and doors in compliance with the drawing.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990, as amended.

Decision

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

Reasons

2. The ground (f) appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Town and Country Planning Act 1990 (the Act) and are to remedy the breach of planning control (s173 (4) (a)) or to remedy injury to amenity (s173 (4) (b)). The Act sets out that the breach may be remedied by making the development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
3. In this case, with regard to the unauthorised development, the objectives of the notice are to seek compliance with Condition 2 of planning permission ref.

3/2012/0135, which specifies the approved drawings for that consent. It follows that the purpose of the notice is to remedy the breach of planning control.

4. From the information before me it is apparent that the development was the subject of a recent unsuccessful appeal¹ that sought permission for 'change of use of one dwelling into two' as per the existing layout. The development does not therefore benefit from planning permission. Given that the purpose of the notice is to remedy the breach of planning control, this can only therefore be achieved by compliance with the terms of planning permission ref. 3/2012/0135. To require this would not, therefore, exceed what is necessary to remedy the breach of planning control.
5. I acknowledge that the works required to comply with the requirements of the notice would be extensive, requiring a wholesale reconfiguration of the internal layout of the property. This would likely result in considerable expense for the appellant and could render the property uninhabitable whilst the works were completed. Nevertheless, it would appear that the works required by the notice are necessary to remedy the breach of planning control, therefore, they cannot be considered excessive.
6. The appellant's case is that the Council's concerns can be overcome by creating physical internal connectivity between the two properties by simply creating two doorways, one at ground floor and one at first floor. Given that the appellant occupies one half of the property with her friend and the other half is occupied by her mother and stepfather, this would enable the occupants to lead semi-independent lifestyles with the property operating as a single dwelling with annex. Furthermore, as the appellant's mother and stepfather are both of an advancing age, this would enable the appellant to provide ongoing care whilst maintaining independent cooking, bathing and showering facilities.
7. To this end, I have been provided with an alternative plan for the internal layout of the property that would largely retain the layout as existing, but with the addition of two doorways as discussed. The appellant contends that this would achieve the Council's fundamental aim of ensuring the property functions as a single dwelling.
8. However, the appellant is not pursuing a ground (a) appeal, that is to say that planning permission should be granted for the development, including for the alternative internal layout proposed. Therefore, the scope of an appeal made solely in relation to ground (f) is limited and does not allow me to consider the merits of the development, including the external appearance of the property or the significance of single central heating and utility supplies. Consequently, these considerations do not weigh in favour of the appeal, and any lesser step that would not remedy the breach cannot be accepted through ground (f).
9. Indeed, if I were to accept the appellant's suggested solution this would result in the retention of the unauthorised development, tantamount to granting planning permission, and it would not remedy the breach of planning control. Therefore, this course of action is not open to me as it clearly falls beyond the scope of a ground (f) appeal.

¹ Appeal ref APP/T2350/W/22/3300027 – dated 7 November 2022.

10. I have given consideration as to whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me.
11. For these reasons, I conclude that the requirements of the notice are not excessive, and so the appeal on ground (f) must fail.

Other matters

12. The building subject to the enforcement notice is currently occupied by two separate households, notwithstanding the fact that they are closely related. Therefore, I recognise that the requirements of the notice could interfere with the occupants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
13. In this case, I have found that the requirements of the notice are necessary and proportional to remedy the breach of planning control. In this regard, I note that the planning system and its enforcement regime operate to promote and protect public interests. Accordingly, the degree of interference would be insufficient to give rise to a violation under Article 8 and therefore would not result in a disproportionate burden.

Conclusion

14. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control that has occurred. Therefore, the appeal is dismissed and the enforcement notice is upheld.

J M Tweddle

INSPECTOR