The Planning Inspectorate

Appeal Decisions

Inquiry held on 17 October 2023

Site visit made on 17 October 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Appeal A Ref: APP/K2420/C/22/3304677
Appeal B Ref: APP/K2420/C/22/3304678
Land at The Old Cottage, Main Street, Shackerstone, Leicestershire CV13 6NR

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Helen Judges (Appeal A) and Mrs Anne Crane (Appeal B) against an enforcement notice issued by Hinckley and Bosworth Borough Council.
- The notice, numbered 21/00203/UNBLDS, was issued on 6 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding as shown in the photograph under appendix 1 of this notice.
- The requirements of the notice are to: remove the outbuilding, and all materials associated with the outbuilding from the land.
- The period for compliance with the requirement is: twelve months from the date this notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decisions

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

    - the deletion of the words "remove the outbuilding, and all materials associated with the outbuilding from the land" and the substitution of the words "remove the outbuilding, all materials associated with the outbuilding from the land and return the land to its previous condition" in paragraph 5.

2. Subject to the correction, the appeals are dismissed, and the enforcement notice is upheld.

The Enforcement Notice

3. I have a duty to ensure that the enforcement notice is in order. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice.

4. The main parties agreed that the notice's requirement should be amended so that the land is returned to its previous condition once the outbuilding and all associated materials with the outbuilding are removed from the land. No injustice would be caused by this, a matter both parties agreed on.

Reasons

5. Ground (d) is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters.

6. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.

7. Having regard Sage v SSETR & Maidstone BC [2003] UKHL 22, for the appeals to succeed on ground (d) the outbuilding must have been 'substantially completed' inside and out four years prior to the enforcement notice being issued. Both parties agreed that the four year period dating back from when the enforcement notice was issued is 5 July 2018. It is this date when the outbuilding must have been substantially completed by, for the appeals to succeed on ground (d).

8. The outbuilding was erected to create living accommodation whilst renovations were carried out to the dwelling, so that Mrs Crane could continue to live at her home and receive the care and support that she needs by her family, instead of moving to a residential home and potentially selling the property.

9. The appellants say that the outbuilding was erected over a six-month period starting in September 2017. However, photographs taken by the Council during a site visit to the property in relation to another matter on 17 January 2018 show that the outbuilding had not been erected on the land at this point. It may well be that works to install drainage provision to serve it had commenced at this point, but the outbuilding had not been substantially completed then as there were no walls or roof, for example.

10. The precise chronology of events after January 2018 is unclear based on the evidence before me. There are also periods when Council officers have not visited the site, made any notes or taken any photographs. However, on 15 July 2020, the Council wrote to the owner/occupier of the property about an alleged breach of planning control concerning the erection of an outbuilding. This is the outbuilding subject of the notice.

11. According to the Council's Inspection Report, the appellants said that they started constructing the outbuilding in September 2018. Based on Mrs Judges evidence at the Inquiry about the time it took to build the outer part of the building, the weather conditions at the time and who worked on the outbuilding this date seems plausible.

12. However, even if I take her earlier date of September 2017 as when works started on the building to be true, alongside the date when the occupant of 44 Main Street says that Mrs Judges was staining the "finished wooden structure of the cabin around April 2018" and assumed that the outside was substantially completed by 5 July 2018, Mrs Judges accepts that the internal works were not substantially completed by 5 July 2018. They are still yet to be substantially completed. This is confirmed by the Council's photographs, dated 6 October 2021, but also my observations on my site visit.

13. The inside of the outbuilding was not fully boarded out and the walls were not fully insulated. There is no ceiling for parts of the building. There is no kitchen. Electric sockets and switches are partly complete. There is a toilet and wash basin but no shower or bath facility. Overall, there were not the facilities to support day to day domestic existence, the very purpose behind the erection of the outbuilding by 5 July 2018. That point remains true now.

14. Therefore, on the balance of probabilities, a substantially completed outbuilding

has not been on the land for four years or more, and so it is not immune from enforcement action. For the reasons set out above, the appeals on ground (d) do not succeed.

Other Matters

15. I note the points made about the effect of the outbuilding on the character and appearance of the area and the appellants' personal circumstances. But, given the ground of appeal in this case, I am unable to consider the planning merits of the development.

16. I understand the appellants' frustrations about the consistency and timeliness of the Council's advice and the bearing they say that has had on knowing whether to proceed or not with works to the outbuilding. Whilst those points do not alter or outweigh my finding on these appeals, if there are concerns about the Council's approach then those should be raised with the Council in the first instance. Furthermore, it is also open to the appellants to propose a solution to the Council.

Conclusions

17. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Judges
Robert Judges

FOR THE LOCAL PLANNING AUTHORITY:

Sioned Davies of Counsel
Christine Zacharia, Team Leader, Planning Enforcement