
Appeal Decision

Hearing Held on 10 October 2023

Site visit made on 10 October 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/M5450/C/22/3294681

Land at Farmland at Hive Farm, Hive Road, Bushey, Herts WD23 1JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andrew Murphy against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 7 February 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised construction of a new dwelling.
 - The requirements of the notice are:
 - 1) Cease the use of the Unauthorised Development.
 - 2) Remove all kitchens from the Unauthorised Development.
 - 3) Remove all bathrooms from the Unauthorised Development.
 - 4) Demolish the Unauthorised Development.
 - 5) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is six (6) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (e), (f) and (g) of the 1990 Act as amended. Since an appeal has been brought on ground (a) and the requisite fee has been paid, an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
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Summary Decision: the appeal is allowed and the enforcement notice is quashed

Applications for costs

1. At the Hearing an application for costs was made by the Council of the London Borough of Harrow against Mr Andrew Murphy. An application for costs was also made by Mr Andrew Murphy against the Council of the London Borough of Harrow. These applications are the subject of separate Decisions.

Procedural Matters

2. The appellant initially contended that the enforcement notice was a nullity. However, at the Hearing the appellant accepted that the notice was not a nullity but was defective in one respect. The appellant accepted that the notice could be corrected in that respect without causing injustice. I deal with that matter below.
3. The appellant had also initially made an appeal on ground (e): namely that copies of the enforcement notice were not served as required by Section 172 of the 1990 Act. The essence of the appellant's case on this ground of appeal was

that the notice had been served on person(s) having no interest in the land, and had not been served on person(s) that did have an interest in the land. The latter included the Council itself and the Conservators of Harrow Weald Common. However, it was agreed at the Hearing that this ground of appeal could be addressed by the submission of an amended plan to be attached to the notice, the red line of which included only land in the appellant's ownership. The Council provided a suitable plan at the Hearing.

4. In other circumstances, I would have corrected the notice by substituting the original plan attached to the notice with the amended plan provided by the Council. I am satisfied that no injustice would have been caused by doing so, and that this would have dispensed with the appellant's appeal on ground (e). However, given that the notice will be quashed and will not now take effect, there is no merit in correcting it.

The Enforcement Notice

5. The breach of planning control alleged in the notice is, without planning permission, the unauthorised construction of a new dwelling. In that context, the Council accepted at the Hearing that the first requirement to comply with the notice, specifically to cease the use of the Unauthorised Development, was not directly related to the breach of planning control alleged. The Council also accepted that the second and third requirements to comply with the notice, specifically to remove all kitchens and bathrooms from the Unauthorised Development, were not necessary given that the fourth requirement is to demolish the Unauthorised Development.
6. In my Agenda for the Hearing, I questioned whether the word 'unauthorised' in paragraph 2 of the notice was superfluous, and whether it would be more precise to substitute the words 'unauthorised development' with the words 'new dwelling' to better reflect the breach of planning control that is alleged. At the Hearing, the Council explained its rationale for using the word 'unauthorised' in the breach of planning control alleged which, as I understood it, was to facilitate the later use of the phrase 'unauthorised development' in the requirements to comply with the notice. I am not persuaded that is technically the correct approach and would have been minded to vary the notice so that the requirements more closely reflected the breach of planning control alleged.
7. The defect in the notice referred to above is that the date given for the National Planning Policy Statement in paragraph 3(2) of the notice is incorrect: there is no dispute that correct date (at time the notice was issued) should be 2021 rather than 2019.
8. I am satisfied that no injustice would have been caused by correcting and varying the notice in these respects. However, given that the notice will be quashed, there is again no merit in correcting and varying it.

The appeal on ground (d)

9. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the development had been substantially complete on a date four years prior to the date on which the notice was issued:

the relevant date in this case is therefore 7 February 2018. The test in this regard is the balance of probability and the burden of proof is on the appellant.

10. It was held in *Sage v SSETR & Maidstone BC* [2003] UKHL 22 that a holistic approach should be taken to substantial completion in which the whole of the building operation should be taken into account. It follows from *Sage* that a building could not be regarded as being substantially complete for the purposes of Section 171B(1) of the 1990 Act even if the outstanding works affected only the interior.
11. It was subsequently held in *Devine v SSLUHC* [2023] 1 WLR 983 that the approach is to first focus on “what the structure really is” and the “physical and design features” of what the “building is”. The second step is to consider whether, as a matter of fact and degree, whether that building substantially complete or not.
12. In this case, the breach of planning control alleged is the construction of a new dwelling. It was held in *Gravesham BC v SSE & O’Brien* [1983] JPL that the characteristic of a dwelling is to provide for those who use it the facilities required for day-to-day private domestic existence. Adopting the approach set out in *Sage* and *Devine*, it is necessary to consider whether there was a substantially complete dwellinghouse on the land, insofar as it provided the facilities required for day-to-day private domestic existence both internally and externally, on or before 7 February 2018.
13. In this respect, the evidence provided by the appellant in relation to the early stages of construction are of little value: the clearance of the land, the laying of the concrete slab and the installation of the septic tank clearly pre-date any possible substantial completion of the dwelling. Similarly, the signed statements from Mr Pankhurst and Mr Clargo both relate to the very early stages of construction and provide no evidence as to whether the dwelling was ultimately capable of providing the facilities required for day-to-day private domestic existence on or before 7 February 2018. The Statutory Declaration dated 10 March 2022 made by Mr Ian Murphy relates to a period long after the relevant date and is of no assistance in relation whether the building was substantially complete on that date.
14. The chronologically first piece of evidence that is directly relevant is the photograph of the building taken on 11 August 2017. The building shown in that photograph has four walls and a fully formed roof (irrespective of whether the roof was constructed of black shingles or green shingles). It has doors and windows. I am therefore satisfied that, *as a structure*, the building was complete on that date. Furthermore, having visited the site, I am satisfied that the building shown in that photograph is the same building referred to in the enforcement notice and existing on site at the time of my site visit.
15. I recognise that the building shown in that photograph has a different roof to that on the building at the time of my site visit. I understand that the existing roof was added at some point in or around May 2019 because the original roof had a fault/was damaged and had developed a leak. However, it is apparent that the new roof is laid on top of the original roof and that the structure was effectively weatherproof from first construction, notwithstanding that the roof subsequently developed a leak. I therefore consider that the existing roof is an addition to or modification of the original roof, and that the building was structurally complete before it was added.

16. Having established on the balance of probability that the building existed as a weatherproof structure on 11 August 2017, it is then necessary to determine whether the building provided the facilities required for day-to-day private domestic existence internally on or before 7 February 2018. The principal evidence in that respect is the appellant's Statutory Declaration dated 8 March 2022. There is no dispute that the Statutory Declaration is properly made, and I accordingly afford it due weight.
17. In his Statutory Declaration, the appellant confirms that the family completed moving in during mid-August 2017. He associates that date as being immediately before setting off with his family for their summer holiday. That association with a specific event adds further credence to that evidence. Reference is also made in the appellant's Statutory Declaration to the use of a generator to provide electricity pending a mains supply becoming available. The generator in question was pointed out to me at the site visit, and this adds further credibility to the version of events outlined in the appellant's Statutory Declaration.
18. The appellant also provided, amongst other evidence submitted with the initial appeal, a receipt from the furniture store IKEA setting out a list of fittings and furnishings that the appellant claimed were intended to be used in the building. That receipt is dated 1 July 2017 and therefore shortly before, on his account, the appellant and his family first occupied the dwelling. In isolation, that evidence was not compelling but at the site visit I was shown items fitted in the kitchen as existing in the building that correlate with the description on the receipt dated 1 July 2017. On that basis, it is more likely than not that the items listed on that receipt were intended for and ultimately fitted in the building.
19. As part of the evidence submitted at the Hearing, the appellant provided a photograph showing members of his family in the building on Christmas Day 2017. Having been inside the building during my site visit, I am satisfied that this photograph was taken there and on that date. The corollary is that on the balance of probability the building was being occupied as a dwelling by that date, which in turn is consistent with the appellant's Statutory Declaration.
20. There is therefore compelling evidence to show that the building provided the facilities required for day-to-day private domestic existence by mid-August 2017 or at least by the end of that year. Both of those dates are prior to the relevant date of 7 February 2018. Against that evidence, the Council effectively relies on one aerial photograph. That photograph is dated May 2018. The Council maintains that if the dwelling had been substantially complete by mid-August 2017 as the appellant states it would be visible in that photograph.
21. The aerial photograph dated May 2018 is taken at an oblique angle. Comparison with later aerial photographs reveals that where the building would be located is in strong shadow. It is not possible, in my judgment, to conclude with any degree of certainty from that photograph that no substantially completed building was on the site at that time.
22. Furthermore, there is a rectangular structure partly visible in that photograph beyond the area in shadow. This is described by the Council as possibly being setting out works. However, comparison with later aerial photographs in which the whole building is clearly visible suggests that, more likely than not, the

rectangular structure is the patio erected by the appellant a year or so after first occupying the dwelling. This would be consistent with the date of the photo of May 2018 and tends to support the appellant's version of events.

23. The aerial photograph taken in May 2108 on which the Council primarily relies is open to interpretation and is far from being conclusive. The Council has no other evidence relating to the period prior to the relevant date. The Council therefore has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's clear, consistent and unambiguous evidence is sufficiently precise to counter the evidence produced by the Council. For that reason, the appellant's evidence is to be preferred. The appellant has discharged the burden of proof that falls upon him.
24. I conclude that, as a matter of fact and degree and on the balance of probability, the construction of the new dwelling was substantially complete on a date four years prior to the date on which the notice was issued, such that it provided the facilities required for day-to-day private domestic existence on or before 7 February 2018.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

26. The appeal is allowed and the enforcement notice is quashed.

Paul Freer
INSPECTOR

APPEARANCES

For the appellant

Mr Andrew Murphy	Appellant
Mrs Michelle Murphy	
Mr Roger Pidgeon Dip TP MRTPI	Lamont Planning Associates

For the Local Planning Authority

Mr Michael Rhimes	Of Counsel
Mr Mongezi Ndlela MA MRTPI	Principal Planning Officer
Mr Mark Olding AssocRTPI	Senior Planning Enforcement Officer
Mr Muhammad Sheikh	Planning Enforcement Officer

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Legal Points Taken by the Local Planning Authority
- 2/ Amended plan for the Enforcement Notice
- 3/ Photographs submitted by the appellant.
- 4/ Conditions favoured by the Council in the event that planning permission is granted.

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1/ Email dated 1 May 2019 relating to the roof of the building.