



Appeal Decision

Site visit made on 31 January 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/V2635/C/22/3312973

Land at Twelve Acre Farm, Moor Drove (East), Hockwold cum Wilton, Thetford

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeal is made by Mr B Rutterford against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice was issued on 15 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the first floor of an agricultural building to a residential dwelling.
 - The requirements of the notice are to:
 1. Cease the use of the first floor of the agricultural building for residential purposes.
 2. Restore the first floor of the agricultural building to its conditions before the unauthorised material change of use took place.
 - The period for compliance with the requirements is: four months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Act. 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.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. Section 171A(1)(a) of the Act states that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173(1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The breach identifies the unauthorised material change of use of the first floor of an agricultural building to a residential dwelling. However, within their Statement of Case, the appellant states they have used part of the ground floor and the first floor of the building as a self-contained dwelling. During my visit, I saw that residential accommodation was laid out over two floors, with bedrooms, a shower room and two living areas on the first floor and a kitchen on the ground floor. There was also a toilet, shower and sink on the ground floor and a covered porch area with a dog kennel. The remainder of the ground floor was used as a 'tack shop' and a sewing room.

4. Following my visit, I raised with the parties whether it is necessary to correct the notice, given the difference between the allegation, i.e., the material change of use of the first floor of the building to a residential dwelling and what has occurred, i.e., the material change of use of part of the ground floor and the first floor to a residential dwelling. However, there is dispute between the parties regarding the layout of the building at the time of the enforcement notice.
5. The appellant suggests that there *'was always a ground floor section of the dwelling so that the current layout is as it was at the time of enforcement'*. Conversely, the Council states that its records suggest that there wasn't a residential use of the ground floor at the time of the enforcement notice. The Council goes on to say that *'it is feasible that the ground floor layout may (my emphasis) have changed since the service of the notice although we consider if it has, it is within the inspectors powers to amend the allegation without causing injustice to either party'*.
6. I find the Council's response regarding the layout of the property to be ambiguous. Whilst the Council's evidence refers to visits to the property and internal observations on the 25 February 2021 (the "2021 Visit") and 25 July 2022 (the "2022 Visit"), the inclusion of the words 'may have changed' is suggestive of some uncertainty. In addition, no layout plans, drawings or contemporaneous notes of the 2021 Visit and 2022 Visit have been provided by the Council as part of this appeal.
7. The Council's officer refers to the first floor being in residential use at the time of each visit, however, no detailed information has been provided to explain how this view was reached, nor any comprehensive description of the layout of the building including the position of any cooking and washing facilities therein. The submitted photograph shows a room containing a number of sofas and a television. However, it does not identify which part of the building the photograph was taken within, nor does it provide any assistance in understanding the layout and use of the building at the time it was taken in February 2021.
8. Whilst the Council states that the ground floor was in use for the storage of agricultural items at the 2021 Visit, it is also said that access to the first floor was gained via a lean-to structure. A toilet and sink were also noted to be present on the ground floor, albeit in poor condition and a flight of stairs led up to the first floor. To this extent, the Council's observations regarding part of the layout of the ground floor is partly consistent with the layout observed at the time of my site visit.
9. However, no detailed explanation has been submitted to explain whether agricultural items were being stored throughout the entire ground floor, or if not, which parts of the ground floor were used to store agricultural items, what the space between the access and the stairs included or what it was being used for, nor how the first floor unit of accommodation was physically separated and independent from the ground floor such that the ground floor did not form part of the residential unit. Significantly, the appellant is stated as advising the Council officer during the 2021 Visit that work was in progress to convert the first floor to residential accommodation. The Council's officer noted the first floor to be *'very new'* and *'work was not yet complete'* and so what the officer

observed during that visit may not have reflected the layout of the dwelling once it had been completed.

10. I have had regard to the planning history of the site, which includes an application for planning permission described as a 'retrospective change of use of first floor agricultural building to residential dwelling'¹ made in 2021, together with an application in 2022 for prior approval for the 'change of use of ground floor of an agricultural building to Class E (now R of the GPDO 2015) Class E commercial, service and business use'². However, no documents forming part of those applications have been presented to me as part of the appeal.
11. Similarly, I have had regard to a recent appeal decision³ at the site, however there is limited information contained within the decision letter concerning the layout of the appeal building as observed by the Inspector in that appeal at that time. The submitted lease agreements and rental statements also provide little further clarity on the precise layout and uses of the ground and first floors.
12. A written statement of the appellant dated 19 August 2022 explains that the appellant purchased the property in 2014, setting out the upstairs of the building as a residential flat and renting it out thereafter. Refurbishment works are stated to have been carried out, including the installation of a new kitchen, bathroom and decoration. No specific dates for these works are provided, albeit they are said to have taken place after a tenancy ending in January 2020.
13. In my experience, the installation of a fitted kitchen is likely to be a costly and time-consuming task. To my mind, given the short period of time between the Council's visit in July 2022 and the notice being issued in November of the same year and having observed the kitchen in existence at the site visit, I consider that it would be unlikely that a kitchen would have been installed on the first floor and then removed and re-fitted within the ground floor.
14. I consider that it is more likely that once the kitchen works had been completed, the position of the kitchen on the ground floor would have been the layout at the time the enforcement notice was issued, such that the self-contained unit of accommodation comprised the first floor and part of the ground floor of the building. In these circumstances, the allegation within the notice would need to be corrected to allege a material change of use to residential accommodation of part of the ground floor and the first floor.
15. The steps require the cessation of the use of the first floor of the agricultural building for residential purposes and the restoration of the first floor to its condition before the unauthorised material change of use took place. As such, were I to correct the allegation as suggested above, the requirements of the notice would also need to be corrected to reflect this change.
16. The Council has invited me to correct the notice. However, no explanation has been given to explain how the notice could be corrected without any injustice being caused to the appellant. Given that the current notice does not require cessation of the use of the ground floor for residential purposes, introducing

¹ Planning Reference: 21/01127/F

² Planning Reference: 22/01301/PT3CLR

³ Appeal Reference: APP/V2635/W/22/3302958

such a requirement would make the notice more onerous to comply with and would therefore cause injustice to the appellant.

17. Furthermore, it is not clear from the evidence, or my observations on site, whether the ground floor shower room and porch are used as part of the dwelling or whether they are shared with, or used exclusively by the users of the tack shop and sewing room. Were I to correct the notice to include reference to part of the ground floor in the allegation and requirements, I am concerned that the appellant may be unclear as to what they have to do.
18. Although it may be possible to indicate on the plan which parts of the ground floor are attacked by the notice, correcting it to include the shower room and porch may also affect how the appellant would have advanced their arguments under ground (f). This would also cause injustice to the appellant.
19. I therefore conclude that the notice is invalid beyond correction and it should therefore be quashed.

Conclusion

20. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
21. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (d) and (g) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

E Brownless

INSPECTOR