



Appeal Decision

Site visit made on 19 August 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 September 2024

Appeal Ref: APP/P2745/C/23/3331184

Cow Close, Thirlby, THIRSK, YO7 2DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Graham Bird against an enforcement notice issued by North Yorkshire Council.
- The notice was issued on 11 September 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of a stable building to a residential dwelling*.
- The requirements of the notice are to cease the use of the building for residential use.
- The period for compliance with the requirements is 18 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: the appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

1. Although the appeal is brought only on ground (c), it was evident from the parties' cases that the correctness of the allegation of use of 'a residential dwelling' is a live issue in the case. Thus I also consider the appeal on ground (b), which is to say that I shall first consider whether or not the allegation in the notice is correct, before considering (if it is necessary to do so) whether the allegation discloses a breach of planning control pursuant to the appeal on ground (c).
2. The notice's requirement to cease any residential use of the building whatsoever struck me as potentially excessive, given the building's history as an ancillary outbuilding lying within the curtilage and planning unit of an existing C3 dwellinghouse. Thus if necessary I shall also consider an appeal on ground (f).
3. My intention to consider these additional grounds of appeal was raised in correspondence with the parties who were given the opportunity to comment. Only the appellant did so.

Main Issues

4. Having reviewed the parties' cases, the first main issue to arise is whether the allegation set out in the notice is correct: has the stable building been converted into an independent residential dwellinghouse, as alleged by the notice, or is it in the same use as that of the main house and remaining within the same planning unit? This is to deal with the appeal on ground (b).
5. The next main issue will be whether, if I find the use of the building differs from the Council's allegation, the notice could be corrected without causing any injustice to either party. If the notice survives, whether or not corrected, the

next main issue is to determine whether the allegation discloses a breach of planning control. This is to determine the appeal on ground (c).

6. The next main issue, if the notice survives, is to determine whether the steps required to be taken by the notice exceed what is reasonably needed in order to bring the breach of planning control to an end, and whether those requirements should be varied.

Reasons

Ground (b): is the allegation correct?

7. The appeal site comprises an existing dwellinghouse, the former stables building that is the subject of the present appeal, some caravans both static and touring, and some agricultural buildings. The wider site includes fields and is set in open countryside on the edge of the small settlement of Thirlby.
8. A single driveway leads from the single track road around to the existing dwellinghouse and surrounding buildings. A postbox is located near the entrance to the driveway, and the appellant explains that this is the receptacle for post to all the occupants of the appeal site. A single electricity supply is received, and ditto for water. There are two septic tanks. Thus there are shared utilities throughout the site. Parking of cars and other vehicles takes place in a shared area close to the existing dwellinghouse. The grounds are largely laid to gravel, with no demarcation of any separate gardens or other outside areas.
9. The appellant moved onto the site some years ago and obtained permission for the stables building in August 2010. The building was constructed and used as such, and has subsequently been converted into residential accommodation. The Council have said in their reports that the stable building lies within the curtilage of the existing dwellinghouse, and a planning condition attached to the permission for it requires that it be used for domestic purposes ancillary to that of the existing dwellinghouse. I see no reason to depart from the Council's conclusion as to the curtilage.
10. The question arising under the appeal on ground (b) is whether the building is being used as an independent dwellinghouse, as the Council allege, or if it is merely overspill accommodation as part of a single planning unit based around the C3 use of the existing dwellinghouse. The appellant explains that his extended family all occupy the appeal site. The appeal building undoubtedly carries all the facilities required for use as a single independent dwellinghouse. However it is necessary to consider whether it is actually used as such. Because of the factors explained above, concerning the interdependent utility provision, lack of separate garden or parking areas, and the fact that the site is occupied only by the appellant's family, I conclude that in reality this is a single large family set-up, living interdependently in the different units of accommodation comprising a single residential planning unit. There has been no subdivision of the planning unit into a separate dwellinghouse. Therefore the appeal on ground (b) succeeds, because the matters alleged by the Council have not occurred.

The appeal on ground (c)

11. I therefore consider whether it would be appropriate to correct the allegation in the notice, to say that the matters alleged constitute the conversion of the stables building into overspill residential accommodation or similar. If I were to

do so, it would then be necessary to consider under ground (c) whether such a conversion requires planning permission. Section 55(2)(d) of the Town and Country Planning Act 1990 provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not to be taken to involve development of land. Where an outbuilding within the same planning unit as the dwellinghouse is used for the provision of additional living space, however, it will not be in an incidental use. It will be in the same residential use as the house. Even if the outbuilding itself is described as 'ancillary' to the house, its use will not be. The outbuilding will either be used for residential purposes that are integral to the residential use of the house, or there will have been a material change of use through subdivision of the planning unit and the creation of a separate dwelling.

12. As I have explained under ground (b), I find the former to have occurred here. Using an existing outbuilding for the same purpose as the existing C3 residential use of the site would not require planning permission, because no material change of use has taken place. Thus if I did correct the notice, the appeal on ground (c) would also succeed. Nonetheless the building remains constrained by the condition originally imposed on its construction that prohibits its use for any purpose other than as a domestic adjunct.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under any other grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered, although as indicated the appeal would also have succeeded on ground (c) had I corrected the allegation.

Formal Decision

14. The appeal is allowed, and the enforcement notice is quashed.

Laura Renaudon

INSPECTOR