

Appeal Decision

Site visit made on 28 August 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2024

Appeal Ref: APP/Y2620/C/24/3338926

Land off A148, Gunthorpe, Holt, Norfolk

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Josh Robinson against an enforcement notice issued by North Norfolk District Council.
- The notice was issued on 12 January 2024.
- The breach of planning control as alleged in the notice is without planning permission:
 - (i) Material change of use of the land from grassland to residential.
 - (ii) Operational development consisting of the construction of a dwelling.
 - (iii) Operational development consisting of engineering works to create a parking space.
- The requirements of the notice are:
 - (i) Permanently cease the residential use of the Land (including the dwelling) and remove all residential paraphernalia associated with the unauthorised use.
 - (ii) Permanently demolish the dwelling on the Land.
 - (iii) Remove the parking space by returning the verge to its original appearance and size prior to when the breach took place.
 - (iv) Return the Land to its condition prior to when the breach took place.
 - (v) Permanently remove all waste resulting from compliance with points (ii) and (iii).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed following the variation of the enforcement notice set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the enforcement notice (Notice) in order. An appeal on ground (f) has not been made. I will therefore deal with the steps required to be taken here.
2. Compliance with an enforcement notice does not discharge the notice. S181(2) of the 1990 Act¹ confirms that any step requiring a use of land to be discontinued shall operate as a requirement that shall be discontinued permanently. The word 'Permanently' in steps (5) (i), (5) (ii) or (5) (v) is therefore superfluous and shall be deleted.
3. I saw at my site visit that the parking space referred to in step (5) (iii) was created by removing a section of the verge at the rear of the layby. The remaining verge is overgrown and unkept. Requiring the verge to be

¹ Town and Country Planning Act 1990 as amended

returned to its 'original appearance' is imprecise. The wording of step (5) (iii) shall be varied to require the verge to be returned to its prior size and condition; the appellant is best placed to know what that size and condition was. No injustice would arise for either the appellant or Council due to this variation.

4. The cessation of the residential use, removal of the building, parking space and all residential paraphernalia would remedy the breach of planning control. I therefore find step (5) (iv) to be unnecessary and it shall be deleted. The already varied step (5) (v) shall be renumbered (5) (iv) accordingly.

Preliminary Matters

5. An appeal on ground (a), that planning permission should be granted for the matters alleged, has not been made. The appellant's request to retain the building to allow him to store maintenance equipment used on the Land is not therefore before me for consideration. Furthermore, as the Notice is seeking to remedy the breach of planning control, step 5 (ii) does not go beyond what is necessary.

The appeal on ground (b)

6. An appeal on this ground is that the matters alleged have not occurred. It is for the appellant to show, on the balance of probability, that a material change of use of the land to residential, the construction of a dwelling and/or the engineering operation to create a parking space has not occurred.
7. The matters alleged do not have to be occurring at the time the notice is issued or after, only that they had occurred before the Notice was issued. In his supporting statement, the appellant states that the '*land is no longer used for residential purposes*'. This confirms that the Land had been used for residential purposes before the Notice was issued. The material change of use of the Land to residential had therefore occurred as a matter of fact.
8. The appellant also claims that '*no material belonging to the land was removed to create the parking space. The material had been dumped there illegally in recent years*' and '*included sand, shingle and tarmac*'. I saw at my site visit that the remaining verge has the appearance and physical presence of a permanent feature. Where the section has been removed, to accommodate the parking space, layered materials could be discerned in the remaining parts of the verge. There is however no evidence to show when or why these materials were brought to the Land, whether they were brought as one deposit or whether they built up over time.
9. Regardless of the origin of the verge materials, the appellant acknowledges that he removed a section of the verge, levelled the resultant area and has used it to park his vehicle. Operational development consisting of engineering works to create a parking space has therefore occurred as a matter of fact.
10. There is no dispute that a building has been erected on the Land. The appellant does not dispute that he has occupied the building for residential purposes in the past. The fact that someone has occupied a building for residential purposes does not necessarily make that building a dwelling.

11. There is no definition of a dwelling in planning terms. The courts have held that *'whether a building was or was not a "dwelling-house"...was a question of fact; that a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities for day-to-day private domestic existence...'*².
12. The building erected on the Land is modest in size, and I saw that it contains a single room. At the time of my site visit, the building contained some shelving and various items were being stored, including but not limited to gardening equipment, footwear, clothing, pans, foodstuffs and drinks. I saw that electricity is supplied to the building by a solar panel and battery storage system. I also saw that the building and Land are not served by a water supply or foul water disposal system.
13. I do not doubt that someone could sleep in the building or that food could be prepared on a camping stove or some other form of portable cooking facility within the building. There are however no washing or toilet facilities within the building or elsewhere on the Land. In the absence of washing and toilet facilities and the likely limited cooking facilities, in my judgement, the building does not contain the basic amenities to facilitate day-to-day domestic activities. As such, I find that operational development consisting of the construction of a dwelling has not occurred as a matter of fact.
14. There is no dispute that a building has been erected on the Land. S176(1) provides for me to correct any defect, error or misdescription in the Notice, providing this would not cause injustice to either the appellant or the Council. An appeal on ground (a) has not been made and this may have been because the appellant did not seek to attain planning permission for the construction of a dwelling. However, the appellant's case makes clear that he wishes to retain the building for the storage of equipment associated with the maintenance of the Land.
15. Correcting the allegation to refer to the construction of a building would deprive the appellant of the opportunity of appealing on ground (a) to retain the building. I cannot therefore correct the misdescription of the allegation as set out in s176(1) as injustice would be caused to the appellant.

Conclusion

16. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b). The enforcement notice will be varied and quashed.
17. In these circumstances, the appeals on grounds (c) and (g) do not fall to be considered.

Formal Decision

18. It is directed that the enforcement notice is varied by:

In step (5) (i), delete all the words and substitute the words 'Cease the residential use of the land and remove all residential paraphernalia associated with the residential use.'

² *Gravesham BC v SSE* (1982) 47 P & CR 142

In step (5) (iii), delete all the words and substitute the words 'Remove the parking space by returning the verge to its size and condition before the engineering works took place.'

In step (5) (iv), delete all the words and substitute the words 'Remove all waste arising from compliance with (5) (ii) and (5) (iii) from the Land.'

Delete step (5) (v).

19. Subject to the variations, the appeal is allowed, and the enforcement notice is quashed.

M Madge

INSPECTOR