



Appeal Decision

Site visit made on 3 September 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/D3830/C/22/3307994

Land to the south-west of 2 Horncastle Cottages, Plawhatch Lane, Sharpthorne, East Grinstead RH19 4JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Penny Woolley against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 22 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building for use for domestic storage on the Land.
 - The requirements of the notice are: (1) Dismantle and remove from the Land the Unauthorised Development. (2) Remove from the Land any domestic items, waste or debris resulting from step 1 above.
 - 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), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

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

The ground (b) appeal

2. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the erection of a building for use for domestic storage, has not occurred as a matter of fact.
3. The appellant contends that a more accurate description of events is that an existing building had planning permission, but some of the planning conditions were complied with as much as possible and/or are no longer applicable.
4. However, whether or not the building has a relevant planning permission and any conditions attached to this, is not relevant for the purposes of a ground (b) appeal.
5. It is plain that a building has been erected on the land as a matter of fact and there is then very limited evidence to demonstrate on the balance of probabilities that it is not used for domestic storage.
6. The appeal on ground (b) therefore fails.

The ground (c) appeal

7. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control in respect of the erection of a building for use for domestic storage. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
8. The evidence is that planning permission was first granted for a garage building in 2011, with a further planning permission granted in 2015. It appears to be common ground that a building was subsequently erected that was then materially different to the approved plans.
9. In 2019 a planning permission was granted for the building under ref DM/18/5027 which contained four conditions. A further permission was then granted in 2019 under ref DM/19/1057 to allow a longer period to comply with one of those conditions.
10. The effect of the 2019 planning permissions were therefore to grant planning permission for the building that had been erected, subject to conditions. It was not a planning permission merely for alterations to the building, but the entirety, given it was materially different to the previously approved plans. They were then not planning permissions relating to a change of use.
11. Whilst condition 1 of the 2019 planning permissions is in my view unnecessary, even if I am wrong, the development by definition had begun before the expiration of 3 years from the date of the permission because the development related to a building that had already been erected.
12. The subsequent works to be carried out to make the building acceptable to the Council were then controlled by condition 3. It is common ground these works have not been completed. However, there is no clause within condition 3 to require the demolition of the building in the alternative. Accordingly, there would simply be a breach of this condition given the works have not been completed. There is similarly no demolition clause within conditions 2 or 4. Any enforcement action could therefore only secure compliance with the conditions by means of taking remedial steps within the parameters of those conditions, as worded.
13. Those conditions are then not conditions precedent, because they do not prohibit the commencement of development until a requirement has been met, and then have such significance that they go to the heart of the permission¹. They merely require some action to be undertaken rather than expressly prohibit any development taking place before a particular requirement has been met². This remains the case notwithstanding how significant the Council considers the works to be.
14. The Council recognises that a breach of planning control relating to the failure to comply with the requirements of a condition has at the very least occurred. Rather than attack a breach of condition/s, the Council has however taken enforcement action against the entirety in the form of an enforcement notice directed at the erection of a building for use for domestic storage. The notice

¹ *F G Whitley & Sons v SSW & Clwyd CC* [1992] JPL 856

² *R (oao Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin)

requires its complete demolition. However, as a matter of fact and degree, for the above reasons, the 2019 planning permissions granted planning permission for the building to remain, albeit subject to conditions which included making alterations.

15. Accordingly, the ground (c) appeal must succeed as the appellant has demonstrated on the balance of probabilities that planning permission has already been granted for the erection of the building for use for domestic storage, as alleged in the enforcement notice.

Overall Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the remaining pleaded grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Formal Decision

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

Paul T Hocking

INSPECTOR