

Appeal Decision

Site visit made on 24 September 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 OCTOBER 2024

Appeal Ref: APP/E2734/C/24/3342036

2 Sunnybank, Newall With Clifton, OTLEY, LS21 2HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Neil Stringwell against an enforcement notice issued by North Yorkshire Council.
 - The notice was issued on 21 February 2024.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of the land to domestic garden.
 - The requirements of the notice are to: i. Cease the use of the land as a residential garden and remove all domestic paraphernalia from the land. ii. Demolish the walls, steps and patio and permanently remove the materials from the land. iii. Take down and permanently remove from the land the 2 x lighting columns. iv. Permanently remove from the land the shepherd hut/summerhouse v. Permanently remove from the land the portaloo. vi. Permanently remove from the land the hot tub/Jacuzzi. vii. Permanently remove from the land the tables, chairs and benches. viii. Return the land back to agricultural land by grass seeding. ix. Fence off the land with at least a 1m up to 1.5m high fence, wall or other means of enclosure between the existing residential garden and the agricultural land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of 6 months and its substitution with 9 months as the time for compliance.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Ground (c)

3. An appeal under this ground is on the basis that the matters alleged in the notice do not constitute a breach of planning control. However, the appellant accepts that the alleged breach of the material change of use of the land to domestic garden has taken place, and has not provided details as to why this development did not constitute a breach (for example if had planning permission already). The appellant has not proven their case on the balance of probabilities and the appeal under this ground cannot therefore succeed.

Ground (f)

4. The purpose of the notice was to remedy the breach of planning control as it required that the material change of use of the land ceased. An appeal under ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control.
5. The requirements can be varied as long as doing so would not cause injustice to the appellant or Local Planning Authority. The parties have asked me to consider whether the requirements can be varied to allow for part of the development to remain.
6. An appeal has not been brought under ground (a) and the planning merits of the suggested variation cannot therefore be considered.
7. The agreed matters in the statement of common ground ("the SOCG") are said to establish what aspects of the development the Council deem to be acceptable on site. This deals only with elements of operational development and other works associated with the material change of use. However, the plan provided with the SOCG (Ref. M3724.03B) to illustrate the changes agreed with the Council is titled "Proposed Change of Use of Agricultural Land to Domestic Garden" and appears to indicate that part of the appeal land would remain in residential garden use. It is therefore unclear from the submissions including the SOCG whether the use of part of the appeal land would stay as garden.
8. A variation to the requirements to permit a material change of use on part of the appeal land, would cause injustice to the Local Planning Authority, as doing so would lead to under-enforcement and undermine the purpose of the notice which was to remedy the breach of planning control. The planning merits of any such material change of use would need to be considered (with appropriate consultation) and this cannot be done through this appeal.
9. Even if it was not the intention of the parties for the material change of use to be permitted (which is far from clear from the submitted drawing as explained above), the planning merits of the operational development, i.e. the cobbled hardstanding, gravel, patio and wall, should also be assessed particularly in light of their effect on the character and appearance of the area, Green Belt and National Landscape. This cannot be done in this appeal as there is no ground (a), and such a variation would cause injustice to the Local Planning Authority.
10. The appeal on ground (f) therefore fails.

Ground (g)

11. The appellant has requested 12 months in which to comply with the requirements. Some of the requirements have already been met (as outlined in the SOCG) and, whilst I accept that a longer period than the original period of 6 months would be reasonable, 9 months would be appropriate and proportionate in all of the circumstances. This would also provide sufficient time for a planning application regarding an alternative scheme to be submitted and determined if so desired.

12. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Zoë Franks

INSPECTOR