



Appeal Decision

Site visit made on 4 March 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 March 2025

Appeal Ref: APP/W4705/C/24/3348504

**Land at Crossflatts Cricket Club, Keighley Road, Bingley, West Yorkshire
BD16 2ER**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Aire Valley Estates Ltd against an enforcement notice (notice) issued by City of Bradford Metropolitan District Council.
- The notice was issued on 20 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, the construction of new residential dwellings on the Land.
- The requirements of the notice are:
 - i. Demolish the unauthorised dwellings and all construction pads and footings/services; and
 - ii. Remove all resulting materials from the Land; and
 - iii. Return the Land to its former condition prior to the unauthorised development work commencing.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected and varied by:

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of the words "construction of new residential dwellings" and the substitution of the words "erection of buildings"; and

In section 5. WHAT YOU ARE REQUIRED TO DO, in i. delete the words "unauthorised dwellings" and substitute the words "unauthorised buildings".

2. Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

Matters Concerning the Notice

3. S336 of the Town and Country Planning Act 1990 states that "*building*" includes "*any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*". I saw at my site visit that development on the land edged red on the plan attached to the notice includes: a two-storey stone building in use as a dwellinghouse, a three-storey stone building with no doors or windows installed, a three-storey building with doors and windows installed, construction pads and footings/services.
4. I was told the former use of the two-storey stone building, in use as a dwellinghouse, was as a café. This building was not therefore erected as part of the alleged development. The Council confirmed the notice does not apply to this dwellinghouse.

5. There is no dispute that the appellant intended to erect dwellinghouses on the appeal site or that works have commenced with that aim in mind. However, none of the buildings being enforced against have kitchens or bathrooms installed. Having regard to *Gravesham*¹, the buildings do not have all the facilities required for day-to-day private domestic existence. As they stand, these buildings are not residential dwellings. The allegation shall be corrected to refer to '*the erection of buildings*'. While the corrected allegation would encompass the construction pads and footings/services, it would also exclude the building converted into a dwellinghouse.
6. The requirements set out in section 5 of the notice shall be varied to reflect the corrected allegation.
7. The correction and variation provide clarity to the matter alleged and the steps required to be taken. No injustice would therefore arise.

Preliminary Matters and Background

8. The time when enforcement action can be taken was increased from 4 years to 10 years by the Levelling-up and Regeneration Act 2023. The new 10-year period came into effect on 25 April 2024. However, operational development that was substantially complete before the 25 April 2024 continues to be subject to the 4-year period, by virtue of r5 of the Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024/452.
9. Had I not corrected the allegation, the 10-year period would apply as the "*residential dwellings*" were not substantially complete before the 25 April 2024. I will return to whether the buildings are substantially complete later.
10. A planning application for the change of use of café to form residential dwelling, construction of one pair of semi-detached houses, three terraced houses and two detached houses with associated parking, access and landscaping (application reference 20/01995/FUL) was initially granted on 23 April 2021. This grant of planning permission was subsequently quashed by the High Court. The application was redetermined and the Council refused planning permission on 18 July 2022. A subsequent appeal of that refusal was dismissed on 24 July 2023. In these circumstances there is no, and never has been, planning permission for the development proposed by application reference 20/01995/FUL.

Appeal on ground (d)

11. An appeal on this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged. It is for the appellant to show that the alleged development (as corrected) occurred 4 or more years before the date the notice was issued. The material date is therefore 20 June 2020.
12. It is the appellant's case that planning permission was granted on 23 April 2021 and, when the decision was overturned to refusal on 18 July 2022, the buildings had already been approved for over a year and had been constructed. While not explicitly confirmed, based on the appellant's assertion, it would be reasonable to conclude that the buildings were erected after 23 April 2021. The appellant's own

¹ *Gravesham BC v SSE* (1982) 47 P & CR 142

evidence therefore shows the buildings to have been erected after the material date.

13. Evidence provided by interested parties shows that building works had commenced by 28 May 2021 and that the buildings had reached their current state of construction by 12 July 2022. These dates are also after the material date and give credence to the appellant's version of events.
14. While it could be argued that the three-storey building with doors and windows installed is substantially complete, the same could not be said for the construction pads and footings/services, or the three-storey building with no doors or windows as it is not weather tight. Even if I were to accept that the as built development is substantially complete, the appellant's own evidence shows it has existed for less than 4 years.

Conclusion

15. For these reasons the appellant has failed to show, on the balance of probability, that the development is immune from enforcement action due to the passage of time. I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

M Madge

INSPECTOR