



Appeal Decision

Site visit made on 3 October 2023

by **Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/P1045/C/23/3318697

Racecourse Retreat/ Gorsey Bank Fields Farm, Hey Lane, Wirksworth, Derbyshire DE4 4AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr B Britland against an enforcement notice issued by Derbyshire Dales District Council.
 - The notice, numbered ENF/21/00127, was issued on 8 February 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of a general purpose agricultural building for use as a general workshop/store facility.
 - The requirements of the notice are to: Permanently cease the use of the building (shown in blue on the attached plan) for storage and workshop purposes unconnected with agriculture.
 - The period for compliance with the requirement is: 3 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 corrected by: the deletion of the words '*unauthorised change of use*' from Section 3 and their replacement with '*unauthorised material change of use*'.
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. At my site visit it was evident that part of the building subject to the notice is now in residential use. Having sought clarification on this matter from the parties, it is common ground that the residential use had not commenced at the time that the notice was served, even though it would appear that works had begun to facilitate this. Accordingly, it is not necessary to correct the notice to make reference to residential use.

The Notice

4. I have varied the notice in order to add the word 'material' into the allegation. This is necessary to provide clarity and in order to reflect s55 of the Town and Country Planning Act 1990 (as amended) (The Act), which identifies that the making of a material change in the use of any buildings or other land is development. I am satisfied that no injustice would be caused to any party as a result of this minor change.

Reasons

Ground (c)

5. Appeals under s174(2)(c) of The Act are made on the ground that the matters stated in the notice do not constitute a breach of planning control. In this instance, the appeal on ground (c) is made on the basis that the building was not being used as a general workshop/store facility, other than ancillary to the lawful use of the site. As such, the appellant's contention is that there has been no material change of use and no breach of planning control. The burden of proof in an appeal on ground (c) falls on the appellant and the standard of proof is the balance of probability.
6. The evidence available, including photographs attached to the notice and those in the Council's Statement of Case which are dated 18 January 2022, appear to show the building being used for the storage of non-agricultural equipment such as domestic items and roof tiles. The same submissions also suggest the partial use of the building as a workshop, with a large timber framed structure being under construction.
7. The appellant advises that what was identified by the Council was in part in conjunction with the conversion of the building to residential use and in part ancillary to agricultural use. However, this is disputed by the Council and the burden of proof falls on the appellant. While some items shown on the photographs available might well have been domestic items stored in anticipation of the residential conversion, others such as tools and workshop facilities are also consistent with the allegation in the notice. Moreover, it is difficult to understand, and has not been explained, how the construction of the large timber-framed structure related to the uses the appellant claims. Thus, it has not been shown, on the balance of probability, that the matters stated do not constitute a breach of planning control.
8. Overall, it has not been shown, on the balance of probability, that the matters stated in the notice were ancillary to the lawful use of the building or lawful for any other reason. Consequently, the appeal under ground (c) does not succeed.

Ground (f)

9. Section 173(4) of the Act sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the ceasing of the unauthorised use. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).
10. Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive. The case for this set out by the appellant is that it may be, in due course, that the lawful use of the building will include activity to create a dwelling within the building. They therefore seek an amendment to the requirement to substitute reference to 'agriculture' with the words 'lawful use of the building'.
11. There is nothing before me to suggest that moves have been made to regularise the current residential use or to obtain planning permission for a

residential conversion of the building either in whole or part. There is also no dispute that the lawful use of the building is for agriculture. Even if a lawful residential use were to take place at some point in the future, that does not suggest to me any need to change the requirements relating to workshop and storage uses.

12. Accordingly, the requirement to cease the use for storage and workshop purposes unconnected with agriculture is not excessive and is necessary to remedy the breach of planning control. I have noted the appellant's revised wording, but since I regard the wording in the notice as satisfactory, no change is necessary. As a result, the appeal on ground (f) fails.

Ground (g)

13. An extension to the period of time to comply with the requirement of the notice is sought, to allow a period of 6 months instead of 3 months. This is made on the basis that it is not clear how long it will take to secure a new permission for residential use. However, the requirement of the notice itself could be achieved within a period of 3 months, and it is not reasonable to extend the compliance period in anticipation of a future use that may or may not materialise. The appeal on ground (g) therefore fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Graham Wraight

INSPECTOR