



Appeal Decisions

Site visit made on 26 February 2007

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date 13th March 2007

Appeal Refs: APP/ZO923/C/06/2026214+5
11 Market Place, Egremont, Cumbria CA22 2AE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by David Prosser and Karina Pellow against an enforcement notice issued by Copeland Borough Council.
- The Council's reference is HSM/4/03/016/0F1.
- The notice was issued on 28 July 2006.
- The breach of planning control as alleged in the notice is that on 15th August 2003 planning permission was granted for the change of use and conversion of the above premises to provide domestic accommodation. It appears to the Council that condition 2 of planning permission 4/03/0916/0 has not been fully complied with. The external alterations are not in accordance with the approved plan in so far as there is no banding around the windows, there is no false doorway to the front elevation and the windows are of uPVC construction and not of timber framed construction as approved.
- The requirements of the notice are to implement the scheme of external alterations in accordance with drawing number PP/11/04/001/a received on 7th September 2005 and approved in writing by the Local Planning Authority on 7th September 2005.
- The period for compliance with the requirements is 3 months.
- Both appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f) & g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

1. Planning permission 4/03/0916/0 was for "CONVERSION OF ATTACHED VACANT SHOP TO DOMESTIC ACCOMMODATION". Condition 2 was as follows:

"Detailed plans of any proposed external alterations to the premises shall be submitted to and approved in writing by the Local Planning Authority before such development is commenced."
2. The 'VACANT SHOP' was ground floor premises facing the Market Place frontage as part of a larger 2 storey building in residential use. The precise extent of the former shop was not shown on plans within appeal documents. The representations indicated that external alterations had been carried out to the Market Place elevation prior to the submission on 7 September 2005 for approval under the condition. A completion certificate for Building Regulation purposes had been dated 2 September 2005.
3. The alterations carried out had involved infilling with smooth rendered masonry of the bulk of the former, mainly glazed, ground floor façade of the modern style shop frontage. Two windows had been inserted into this walling in positions below existing windows at first floor level. That on the southern side of the elevation was vertically proportioned and of similar dimensions to the window opening above it. The unit on the southern side was of different shape and proportions with a horizontal emphasis. Again, this was similar to the size and shape of a window unit at first floor level. Both windows were uPVC units with matching sills inserted with limited reveals into the walling.
4. By the date of my visit some further alterations had been carried out. These were said by the Appellants to have formed part of the intended scheme, and to amount to partial compliance with the enforcement notice's requirements in the installation of banding around windows and a false doorway. A raised concrete band had been added to the elevation in a central position echoing the size and shape of a doorway. Similar concrete banding had been applied around 3 sides of the newly installed windows, but not along the bottoms of the units where uPVC sills remained overhanging the wall face.

Ground (c) appeals and validity of the condition

5. It was argued on the Appellants' behalf that the condition had been fully complied with as details of proposed external alterations had been submitted to and approved in writing by the planning authority. There was no requirement for the external alterations to be carried out in accordance with the approved plans. The condition was considered therefore to fail the precision test being vague and uncertain about implementation. The Council considered that there was a reasonable expectation that works would be carried out in accordance with the approved plan, even though not explicit in the condition.
6. The terms of condition 2 would have been breached by the failure to seek approval for external alterations before their commencement. This was the case here where the works were in fact completed before the submission of a plan on 7 September 2005. The details submitted to the Council and approved by them, did not, however, have the effect of validating the position retrospectively because they were not the alterations to the premises as already carried out. They differed materially in terms of the detailed design of window units, their materials, the lack of a central 'mullion' in the northern window to impart the vertical proportions of the smaller windows in the elevation, the absence of 'banding' surrounds to windows and the absence of banding to create a false doorway effect. It could not be said that those works had at any stage received the requisite approval. Condition 2 had not been complied with. At the same time the detailed alterations shown on the approved drawing were available to be implemented after 7 September 2005 insofar as they differed from works carried out.
7. This leads me, however, to the Appellants' second line of submission which was effectively that the condition was invalid. Para 30 of *C11/95: The Use of Conditions in Planning Permission* advises that a condition requiring only that specific matters shall be submitted for the approval of a planning authority is incomplete, since if the applicant were to submit the scheme, even if it is approved, the planning authority is unlikely to be able to require the scheme to be implemented. A clause requiring that the works shall be carried out in accordance with the approved scheme would be needed. In this case a requirement to implement the approved details of "any proposed external alterations" cannot be implied by the words of the condition. Any obligation contained in a planning permission should be clearly and expressly imposed. The language employed in condition 2 is clear and unambiguous, and no extraneous words are to be implied, either to aid construction or for any other purpose.
8. On this basis condition 2 fails the tests of precision and enforceability for planning conditions, and would not achieve its intended purpose. It is therefore invalid as a condition, and the breach of the submission arrangements specified by its terms does not therefore amount to a breach of planning control. The enforcement notice alleging a breach of condition of planning permission is therefore defective.
9. From the appeal representations, it may be that the works of alteration are susceptible to enforcement action as unauthorised operational development rather than as a breach of condition. That depends upon their timing in relation to the implementation of the change of use granted by permission 4/03/0916/0.
10. In lodging the appeals, the Appellants indicated that the works were carried out after the change of use had been implemented. Subsequent representations did not enlarge upon this claim or provide evidence of when the change of use of the former shop had taken place. They indicated instead that the planning permission could have been implemented retaining the shop display window in residential accommodation, then at a later date removing and/or altering the façade using permitted development rights. That is not the same thing.
11. Cessation of one use within a mixed use unit or the creation of a dwellinghouse. That would occur only following active occupation of the floorspace of the shop for residential purposes as part of the larger unit. Only at that point could permitted development rights have been exercised. The Council indicated that there was no evidence of residential occupation at the date of issue of the enforcement notice ie some time after the carrying out of the external alterations. That would not be conclusive of the position prior to the execution of building works.
12. If the Council were satisfied that the change of use only occurred after the external alterations, those works would have required planning permission as material alterations to the external

appearance of the building. In the absence of permission there would have been a breach of planning control in these terms. I have considered the scope which might exist for me to correct the notice from one alleging breach of condition to one of unauthorised development. There is, however, limited specific evidence on the matters relevant to the making of such a correction. There must be doubt that an invitation to submit further representations in relation to such a change would sufficiently clarify the position. I must therefore conclude that the notice is both defective and incapable of correction without causing injustice, and must be quashed. It would thereafter be possible for the Council to review the available information about the sequence of events, and determine whether further enforcement action should be taken on the basis here discussed.

Formal Decision

13. I quash the enforcement notice.

Alan Upward

INSPECTOR



Appeal Decision

Hearing opened on 31 October 2006
Site visit made on 16 January 2007

by **Richard McCoy** BSc MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for
Communities and Local Government

COPELAND BOROUGH COUNCIL
DEVELOPMENT SERVICES

15 MAR 2007

RECEIVED

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Date: 14 March 2007

Appeal Ref: APP/Z0923/A/06/2006927

Part of field No. NY0720 8642, Whinnah, Lamplugh, Workington, Cumbria, CA14 4SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr & Mrs P Watson against the decision of Copeland Borough Council.
- The application Ref 4/05/2328/0, dated 3 May 2005, was refused by notice dated 20 July 2005.
- The development proposed is the erection of a single storey dwelling.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The hearing was opened on 31 October 2006 but was adjourned soon after opening because of the submission of additional evidence by the appellants. The hearing was resumed and completed on 16 January 2007.
2. This application was submitted in outline, with only the principle of the development to be determined at this stage. I have dealt with the appeal on that basis.

Main Issues

3. I consider the main issues to be whether or not the proposal would harm the character and appearance of the area and if so whether there is an overriding agricultural need or personal circumstances for the dwelling.

Planning Policy

4. The development plan includes the Copeland Local Plan 2001-2016 (LP), adopted June 2006. Policy DEV 4 establishes development boundaries for each Key Service Centre and Local Centre within which development will be permitted, by priority of re-use of existing buildings worthy of retention, re-use of previously developed land and use of undeveloped land.
5. Policies DEV6 and HSG5 preclude development outside settlement boundaries except where it is required to meet exceptional circumstances arising from local social and economic conditions. Where this relates to dwellings associated with agriculture, its implementation will be in accordance with the provisions of Annex A of Planning Policy Statement 7 (PPS7), *Sustainable Development in Rural Areas*.

Reasons

6. The appeal site is situated between a former farmstead, now converted to residential use and an agricultural building, used by the appellants for stock rearing, in an area known as Whinnah. It is not located within a development settlement as defined by Policy DEV4. The appellants' farming enterprise is centred on Streetgate Farm with a smaller part of the holding located at Whinnah.

Character and Appearance

7. The proposal, when taken in context with the adjoining converted farmstead, would increase the built up area leading to the urbanisation of this part of the open countryside. I acknowledge that the extent of the harm would be limited to one dwelling. Nevertheless, the repeated approval of small scale schemes such as the appeal proposal would cause considerable harm to the character of the countryside. On this issue I therefore conclude that the proposal would have a harmful effect in this open countryside location, contrary to Policies DEV6 and HSG5 of the LP and the advice in PPS7 which states that "new buildings in the open countryside away from settlements should be strictly controlled to protect the countryside for the sake of its intrinsic character and beauty".

Agricultural Need

8. At the Hearing the parties agreed that the appellants' holding has a need for two full time workers. The farm accounts however, were not produced in evidence. The appellants currently rent and live at Streetgate Farm which is the main part of the holding. It is situated approximately 1 mile from the appeal site where the appellants also rent a smaller parcel of land and the stock rearing shed.
9. Having someone living on the appeal site may improve security and the care which can be given to the livestock, but no convincing evidence was produced to demonstrate that these matters were causing significant concern or that the enterprise could not continue to be operated from Streetgate Farm. While I acknowledge that managing the stock rearing shed could at certain times require a 24 hour response, this functional need could be fulfilled by a person(s) living at the existing dwelling on the unit, alerted by an automated alarm or warning system. Consequently I find that, in principle, the whole of the farming enterprise could be run from the current farm house and the proposal would not meet the functional requirement for a new dwelling in Policy HSG5 and PPS7.
10. I was told it is intended that the appellants' son would take over the running of the farm with the appellants going into semi-retirement. While I can understand this preference, I do not find it demonstrates an essential agricultural need for a further dwelling at Whinnah or that an exception should be made to Policy exercising strict control over new development in the countryside. PPS7 advises in Annex A that essential need for a new house in the countryside depends on the needs of the enterprise concerned and not the personal preferences or circumstances of any of the individuals concerned.

Personal Circumstances

11. The appellants argue that the Council accepts they fulfil the local needs criteria for housing and their personal circumstances and local connections justify a grant of planning permission. They prefer the site at Whinnah because they could design a bungalow to suit

their retirement and health needs and accommodate an elderly relative. Nevertheless, no development plan policies have been drawn to my attention to demonstrate that the proposal should be allowed on the grounds of local need or personal circumstances. The appellants' circumstances are not uncommon and accepting them as sufficient justification for a new dwelling would make it difficult for the Council to resist pressure for further dwellings elsewhere to address similar concerns. Over time this would seriously harm the character and appearance of the countryside contrary to the aims of national and local planning policy. I conclude that the personal circumstances of the appellants are insufficient to justify departing from established planning policy restricting development in the open countryside.

Conclusions

12. For the reasons given above and having regard to all other matters raised, including the letters in support of the proposal, I conclude that the appeal should be dismissed.

Formal Decision

13. I dismiss the appeal.

Richard McCoy

INSPECTOR