



Appeal Decision

Site visit made on 23 August 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 25 August 2021

Appeal Ref: APP/T2350/C/21/3269012

Brotherton Barn, Bolton by Bowland, Clitheroe BB7 4PQ

- 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 Act).
 - The appeal is made by Mr Stephen Holmes against an enforcement notice issued by Ribble Valley District Council.
 - The enforcement notice was issued on 14 January 2021.
 - The breach of planning control as alleged in the notice is failure to comply with a condition attached to a planning permission.
 - The requirements of the notice are cease permanent residential use of the units and use of the units other than for holiday use in accordance with the approved condition.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is varied by the deletion of 'three months' in section 6 and the substitution instead of 'six months'. The appeal is otherwise dismissed, the notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The ground (d) appeal

2. The planning permission referred to in the breach of planning control is planning permission 3/2008/0104 granted on 16 July 2008 for 'demolition of a range of modern agricultural buildings and the erection of five holiday cottages in three separate stonebuilt buildings, a storage building and the formation of parking and turning areas'. The condition referred to is condition 3 which states, principally, that 'The units of accommodation shall not be let to or occupied by any one person or group of persons for a continuous period of longer than 3 months in any one year and in any event shall not be used as a permanent accommodation'.

3. Only one of the three buildings of the range of modern agricultural buildings has been demolished, and only one of the three separate stonebuilt buildings, designed to be two cottages, has been built on the site. In his Statement of Truth, the Appellant states that construction work commenced in June 2011, that the smaller of the two cottages was partly used as office space for his business from October 2013, that he and his family began using the larger cottage for residential purposes in 2014, and that "...we remain living in the house". He also claims that the building was not built in accordance with the approved plans.

4. That the building has not been built in accordance with the plans is not relevant. The Council could have taken enforcement action for this breach of planning control, within four years under the provisions of Section 171B(1) of the Act, but did not do so. The Appellant makes no claim that the conditions of the permission do not apply to the semi-detached cottages that have been built. One, on the Appellant's own evidence, has been occupied by his family on a permanent basis and the other, whether partly or wholly, is used as an office to support his business. In this regard, no change of use has occurred and Section 171B(2), contrary to the Appellant's claim, is not therefore relevant.

5. Section 171B(3) states that "In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach". The breach of planning control in this case is the failure to comply with a condition of the planning permission and the Section 171B(3) 'ten year rule' is applicable. The cottages were first occupied and used less than ten years before the date of issue of the enforcement notice. The breach of planning control alleged in the notice first occurred less than ten years before the notice was issued and the ground (d) appeal thus fails.

The ground (a) appeal

6. Though not expressly stated the Appellant is seeking the deletion of condition 3 or its substitution by a condition that would limit occupation of the dwelling to a person employed in his business and his dependants. The Appellant's business, Ribble Valley 4x4, occupies the remaining buildings that were to be demolished and he is seeking to remain living in the larger cottage with his family. The future status of the smaller cottage is unclear because the business's office is located in its downstairs room and this office use of the building is not a use for which planning permission has been granted. The ground (a) appeal, in this regard, can only relate to residential occupation of the larger cottage.

7. Brotherton Barn is located in a countryside area and the reason for condition 3, as stated on the decision notice, is 'The building is located in an area where the Local Planning Authority would not normally be minded to grant the use of (the) building for a permanent residential accommodation'. Policies referred to in the reason for the condition have been superseded by policies in the Council's adopted Core Strategy (CS). CS policy DMH3 states, amongst other things, that the creation of a permanent dwelling by the removal of any condition that restricts the occupation of the dwellings to tourism/visitor use or for holiday use will be refused on the basis of unsustainability.

8. The main issue is whether deletion or variation of condition 3 of planning permission 3/2008/0104 would result in an unsustainable form of development.

9. There are no bus services along Holden Lane that passes in front of the appeal site and Brotherton Barn is not within walking or cycling distance of any shops or schools or local services. Residents of the cottage are, and would be, wholly reliant on use of a motor car for access to all required services and facilities. Deletion or variation of condition 3 to permit permanent residential use of the larger cottage would result in an unsustainable form of development and would conflict with the provisions of CS policy DMH3.

10. The building not having been built in accordance with approved plans is not relevant to a ground (a) appeal, and the lawfulness of the use of the building has been addressed under ground (d). The Appellant has not explained the relevance

of the desire by people for longer holidays to his desire to remain living permanently in the larger cottage with his family. A comment by a Planning Officer in an email in November 2018 was an informal view and must be considered alongside the Council's refusal, on two occasions, to vary condition 3. These are the matters mentioned by the Appellant in support of his ground (a) appeal and do not alter the conclusion reached on the main issue.

11. Deletion or variation of condition 3 of planning permission 3/2008/0104 would result in an unsustainable form of development. The ground (a) appeal thus fails and planning permission is refused for the variation/deletion of the condition.

The ground (g) appeal

12. Breaches of planning control should be remedied as soon as is reasonably possible. The Appellant maintains that a compliance period of three months is unreasonable and is seeking "...a period of at least 12 months". The Covid-19 situation has now largely diminished in its effect on both private and business affairs so a compliance period of 12 months would be excessive. However, three months is insufficient time for the Appellant to secure alternative accommodation for his family and to carry out their relocation. Six months strikes a balance between providing adequate time and securing a remedy to the breach of planning control as soon as is reasonably possible. The ground (g) appeal thus succeeds and the compliance period in the enforcement notice has been varied accordingly.

John Braithwaite

Inspector