The Planning Inspectorate

Appeal Decision

Site Inspection on 23 July 2015

by Graham Self MA MSc FRTPI

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

Decision date: 6 August 2015

Appeal Reference: APP/R3325/C/14/3000142
Site at: Westend Stores (also known as "Westland Bungalow" and as "Legg's Stores"), West Street, Stoke sub Hamdon, Somerset TA14 6QL

- The appeal is made by Mr Michael Legg under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by South Somerset District Council.
- The notice is dated 9 October 2014.
- The breach of planning control alleged in the notice is:

  "On the 30th April 2002 planning permission with reference number 02/00453/COU was granted for the use of the land and buildings for residential and retail purposes. This planning permission was subject to a condition stating as follows:

  'The use hereby permitted (other than that allowed on appeal on 6th October 1954) shall be for a limited period expiring on 1 March 2007 and by the end of such period the use shall cease and any buildings, works or structures comprised in the said development shall be removed and the land restored to its former condition'.

  It appears to the Council that the latter condition has not been complied with because the retail use of the land has continued since the 1st March 2007 and is still continuing and the buildings, works or structures comprised in and/or forming part of the said retail use have not been removed from the land, nor has the land been restored to its former condition."
- The requirements of the notice are:
  - (i) Cease the use of the Land for the display and/or storage of all windows, doors, garden sundries, fencing and other non-domestic items;
  - (ii) Clear and remove from the Land the said doors, windows, garden sundries, fencing, other non-domestic items, debris and rubbish (including in such removal all structures and non-domestic paraphernalia connected with such use); and
  - (iii) Restore the land to its condition before the breach of planning control took place.
- The period for compliance is specified as:
  - (a) From a line forward of the principle *[sic]* elevation of the residential dwelling toward West Street: by 31st December 2014
  - (b) As regards the remainder of the Land: by 31st March 2015.
- The appeal was made on grounds (a), (c), (f) and (g) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed for legal reasons, without consideration of the grounds of appeal pleaded.

"The Land" as Defined in the Enforcement Notice

1. For reasons which will become apparent later in this decision, I record here that "the Land" as defined on the enforcement notice plan excluded some areas hatched blue. These areas appear to coincide with the location of various outbuildings in the rear part of the site occupied by the appellant.

Procedural Matters

2. After my site inspection I arranged for a message to be sent from the Planning Inspectorate to both main parties, because I considered it necessary to invite comments on certain matters before reaching a decision. I have delayed my decision to allow for this procedure and I have taken into account the representations submitted in response.

The Enforcement Notice and Legal Issues

3. One of the reasons for the procedure just described is that from what I saw at the site and from reading the case papers, the allegation in the enforcement notice as drafted by the council appeared to be flawed. As I pointed out in the message to the parties, what has happened at the appeal site has been unauthorised development consisting of a material change of use to use for mixed storage and residential purposes. Apart from a sign at the front, the appeal site does not have the character of a retail (or mixed residential and retail) use, and the available evidence suggests that any retail activity which may occur is nominal, ancillary or *de minimis*. Indeed, both the council and the appellant seem to have the same view - the council's statement says that "the LPA is of the view that there is currently an….unauthorised use for the storage of used windows, doors and other non-domestic items along with a small amount of ancillary sales"; and the appellant evidently sought planning permission in 2013 for "continued use for residential and B8 storage of used windows and doors with ancillary sales". The enforcement notice is incorrect in stating that "the retail use is continuing", despite the council's own assessment that it has ceased.

4. Mr Legg has obviously become a hoarder, and storage is the predominant component in the current use. The extent of storage is such that parts of the site are inaccessible, and it is difficult to move around inside the bungalow.

5. It is sometimes possible for something which is unauthorised to consist of both "development" (as defined in Section 55 of the 1990 Act) and a breach of condition; but in this instance since the retail use has evidently ceased (except perhaps for a minimal amount), the real breach is the unauthorised change of use to the current mixed storage and residential use.

6. Inspectors have powers to correct and vary enforcement notices, provided such action would not cause injustice to any party. In this case there are complications. The appellant (through his agent) has asked for time to modify his case to give consideration to an appeal on ground (d) if the notice were to be corrected. Such time could be granted. But the appellant's agent (as part of the responding comments) has also submitted that:

> "The enforcement notice does (correctly) exclude the areas hatched blue on the plan and we would stress that our ground (c) appeal relates to the

agreed position that a certain amount of ancillary storage is considered lawful in relation to the extant planning consent for retail use".

7. If the allegation were to be changed to refer to mixed storage and residential use, this would relate to the whole of what for the purposes of planning law has to be treated as the "planning unit" (that is to say, the unit of occupation). The concept of the blue-shaded areas having some lawful use rights for ancillary storage would not apply - the mixed residential and storage use involves the whole planning unit and the logical requirement of an enforcement notice directed at this unauthorised use would be the cessation of the use. Moreover, under-enforcement would have the effect of creating an unconditional planning permission covering parts of the site, and I suspect that this has not been fully realised by both sides.[1]

8. Another point relates to the exclusion of the blue-shaded areas from the definition of the land enforced against. It is not possible to require the unauthorised mixed use to cease whilst purporting to allow storage use to continue in the blue-shaded areas because access to those areas can only be obtained across the rest of the site, and this means that the parts of the site used for access would still be used for storage purposes.[2]

9. The same problem applies to the enforcement notice as drafted by the council. The requirement to cease the use of the "land" as defined in the council's notice (that is to say, the open areas not hatched blue) for storage, whilst leaving the blue-hatched areas excluded from this requirement, is contradictory and impossible to implement because of the access considerations just mentioned - the buildings could not be used for storage without the storage use impingeing on other parts of the site. So even if I were not to amend the allegation, the enforcement notice would still be defective.

10. It is not legally possible for me to correct and vary the enforcement notice if the result would be more onerous than the original notice, as that could be regarded as causing injustice to the appellant. Redefining the definition of the "land" so that it equates to the planning unit, amending the allegation so that it refers to an unauthorised change of use to use for mixed storage and residential purposes, and then requiring the storage component to cease and all the stored items to be removed from the site would be more onerous than the original requirements.

11. If this appeal had been decided by means of a hearing or inquiry it might have been possible for me to explain all the relevant points of law to the parties orally, so that alternative courses of action could have been discussed more readily than is possible with written representations. With that in mind I have considered the possibility of arranging for a hearing to be held; but allowing for all the statutory requirements, such a course would take a considerable time, and the outcome might not differ from my decision.

12. In all the circumstances described above, I have decided that the enforcement notice is flawed beyond correction. I shall therefore quash it. I reach this conclusion reluctantly because all those involved, including neighbouring residents, have waited a long time for the issues involved in this site to be resolved, and if matters cannot be resolved by other means the next step may well be a further enforcement notice, with a corrected allegation and perhaps with

[1] The planning permission referred to here arises because of the effect of Section 173(11) of the 1990 Act.

[2] In case it might help to explain this point by means of a simple analogy, for the purposes of planning law the use of a driveway to a typical house standing in its own plot is "residential" or "dwellinghouse", not "driveway" or "car parking" or "access", because the driveway is part of the residential planning unit.

requirements more onerous than before. (The local planning authority and the appellant's agent will no doubt be aware of the so-called "second bite" provisions under Section 171B of the 1990 Act.) I am also concerned from a humanitarian, welfare and medical viewpoint about the poor and possibly unsafe living conditions which Mr Legg has created for himself, but I can only deal with planning matters.

13. For the enforcement notice to be quashed for the legal reasons I have explained, it is necessary to allow the appeal. The grounds of appeal pleaded (grounds (a), (c), (f) and (g) under Section 174(2) of the Act), become superfluous and do not fall to be considered. This decision should not be taken as in any way accepting or permitting the unauthorised development at the site.

Formal Decision

14. I allow the appeal and direct that the enforcement notice be quashed. The application deemed to have been made under Section 177(5) of the 1990 Act does not fall to be considered.

G F Self

Inspector