



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Council Reference:
EN/96/044
Our Reference:
APP/C/96/L2820/645128

Date: 25 JUN 1997

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6 PLANNING AND COMPENSATION ACT 1991 LAND AND BUILDINGS AT WESTFIELD HOUSE, WEST STREET, KETTERING

1. The Secretary of State for the Environment has appointed me to determine your appeal against an enforcement notice issued by the Kettering Borough Council concerning the above mentioned land and buildings. I have considered the written representations made by you, the Council and by interested persons. I inspected the site on 17 June 1997.

The enforcement notice

2. (1) The notice was issued on 4 October 1996.
- (2) The breach of planning control as alleged in the notice is that on 23 May 1995, *planning permission was granted for conversion and extension of the building and land to create 14 flats for the elderly, subject to conditions. One of the conditions is that the footpath through the site from West Street shall be maintained in a reasonable condition to the satisfaction of the Local Planning Authority and shall be kept open and available for public use during daylight hours. It appears to the Council that the condition has not been complied with fully, because the footpath has been obstructed at the western boundary by a combination of fencing and planting, which prevents public passage.*
- (3) The requirements of the notice are
 - (a) *Remove the section of fencing obstructing the footpath from West Street.*
 - (b) *Remove the planting from the section obstructing the footpath from West Street.*
 - (c) *Lay proper foundations and a tarmacadam top surface to the section of footpath where the planting has been removed.*
 - (d) *Maintain the footpath in a condition suitable, open and available for public passage during daylight hours.*
- (4) The period for compliance with these requirements is 1 month.



Grounds of appeal

3. Your appeal was made on grounds (a) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. The fees for the appeal were not paid within the prescribed period, and this means that the ground (a) appeal and the deemed planning application accompanying the appeal have lapsed. The merits of the situation ie the retention of the housing scheme without complying with the disputed condition will not therefore be considered. The appeal proceeds only on ground (g) relating to the adequacy of the period for compliance.

4. I note your comments about discussions with the Council about an alternative condition relating to the footpath, and the form of words embodied within their written statement. If you wished to pursue the matter further, this would have to be by way of further contact directly with the Council. Requirement (d) of the enforcement notice sets rather clearer terms for the usage of the footpath than the wording of condition 9 of the 1995 planning permission, but retains the reference to *daylight hours*.

Ground (g) appeal

5. In seeking extension to the 1 month period, you mentioned difficulties arising from the completion and occupation of the site. It seems to me that rather more time would be needed to make arrangements for the appropriate works and for their execution. Although not within the requirements, you may be seeking to replace the fencing with some form of gates at this point. In the circumstances, I consider it appropriate to increase the period to 2 months. The appeal succeeds to this extent, and in upholding the notice its terms will be varied accordingly.

6. I have taken into account all the other matters raised, but I find none so compelling as to outweigh the factors which have led to my conclusions.


FORMAL DECISION

7. For the above reasons and in exercise of the powers transferred to me, I direct that the enforcement notice be varied at section 5 by the deletion of *1 month* and the substitution of *2 months* as the period for compliance. Subject thereto, I dismiss your appeal, and uphold the notice as varied.

Rights of appeal

8. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

Yours faithfully


ALAN UPWARD BA(Hons) MCD MRTPI
Inspector

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