



The Planning Inspectorate

EN.98.0223

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MAS/EN.97.283
Our Reference:
T/APP/L2820/C/98/1010019

Date:

6-3 8-18 1998

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR A FOREMAN
LAND AND BUILDINGS AT 47 KING STREET, KETTERING**

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine your client's 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 and the Council and also those made by an interested person. I inspected the site on 10 November 1998.

The Notice

2. a. The notice was issued on 11 May 1998.
- b. The breach of planning control as alleged in the notice is, without planning permission, the partial demolition of a workshop and the subsequent rebuilding of a wall incorporating doors and windows, as shown in green on the plan attached to the notice, roof structure and floor slab.
- c. The requirements of the notice are to:
- i. demolish the roof structure;
 - ii. demolish the wall shown in green on the plan attached to the notice;
 - iii. take up the new floor slab; and,
 - iv. remove all materials used in the construction of the roof, wall and floor from the land.



- d. The periods for compliance with these requirements are one month in respect of steps (i) and (ii), two months in respect of step (iii), and three months in respect of step (iv).

Grounds of Appeal

3. Your client's appeal is proceeding on ground (c) as set out in Section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. The deemed application for planning permission under Section 177(5) also falls to be considered.

Preliminary matters

4. There is an error in paragraph 1 of the notice in that the reference to Section 171(A)(a) of the Town and Country Planning Act 1990 is incorrect. It should refer to Section 171A(1)(a) of the Act. However, I do not consider that this error has misled you or your client in any way and I shall use my powers of correction accordingly to amend the notice in the event of it being upheld.

5. On a point of clarification, it appears to me, from the Councils' statement, that their main area of concern relates to the possible use to which the building at the rear of No 47 King Street may be put in the future. However, the notice that has been issued concerns an allegation of unauthorised operational development, the rebuilding of a workshop, rather than an unauthorised change of use. There is no evidence before me to suggest that any change of use has taken place thus I cannot correct the notice so as to make reference to operational development which has facilitated a change of use. Such a correction may, in any event, prejudice your client. It appears to be common ground that the appeal property was formerly in a mixed use of residential and Class B1 industrial use. It may be, therefore, that an extension of residential use into the entire property would require planning permission. However, I do not have sufficient evidence to consider this question and, whilst the re-built workshop appeared to be largely used for domestic storage at the time of my inspection, I have no information concerning its actual use at the date of issue of the notice. In all these circumstances I conclude that the appeal before me concerns purely the question of unauthorised operational development and I shall confine my deliberations accordingly.

The appeal on ground (c)

6. You contend that the work which was carried out at the former workshop constituted essential repairs to the building, which do not require planning permission. The front wall of the workshop, which is about 12m in length, became unsafe through lateral pressure from above, and it started to bow outwards. It was also weaker than the rear wall because it contained four openings, two doors and two windows, thus it was more vulnerable to collapse. Your client therefore instructed his builder to carry out repairs which involved replacement of both the front wall and the roof, and the laying of a new concrete floor. The new wall, which now contains a single door and three windows, has, however, been built on the original foundations, and you say that the roof is the same height and pitch as the original.

7. The extent of the work carried out on the building is not in dispute but the question of whether planning permission is needed for such operations involves consideration of Section 55

of the 1990 Act. Section 55(1) states, amongst other things, that development includes the carrying out of building operations on or over land. Section 55(1A) includes rebuilding within the broader definition of building operations. The question of whether rebuilding has taken place at the appeal property is one of fact and degree. In this case the front wall and the roof were removed and replaced. Such removal would have left a shell of three walls, all of which form boundaries with other property to the north, east and south. In my opinion, the taking down of the remainder of the workshop, and the construction of a new front wall, with a different set of openings, and roof, comprises a rebuilding operation rather than a repair. It is, therefore development, by virtue of Section 55, for which planning permission is required. As no such permission has been obtained the appeal on ground (c) fails.

The deemed planning application

8. The appeal property lies within an area of high density terraced property in the northern part of the town. The two-storey terraces that front directly onto streets are largely in residential use, but several backland buildings are in commercial or light industrial use, a remnant of the shoe industry that was once a major feature of this area. No 47 King Street comprises a mid-terrace house that appears to be used as a house in multiple occupancy. A covered alley between No 47 and No 49, to the east, leads to the rear garden area, and provides an independent access to the former workshop that is the subject of the notice.

9. The Development Plan for this area is the Kettering Borough Local Plan, which was adopted in January 1995. Several policies from this Plan have been drawn to my attention but many of them relate to the question of use of land and buildings. Therefore, in the light of my comments in paragraph 5 above, I only consider Policies 30, 46 and 47 to be relevant to the appeal before me. Policy 30 states that proposals for new development will be granted permission provided certain criteria are met, including that there is no adverse impact on the character of the area and/or on the amenity of existing or proposed nearby property. Policy 46 concerns alterations and extensions to housing, and contains similar provisions to Policy 30 in respect of matters to be taken into account before permission may be granted. Policy 47 is also similar, but specifies in greater detail the criteria for consideration of proposals that may affect the amenity of adjacent existing or proposed residential properties.

10. On the basis of the above understandings, therefore, and from the written representations and my inspection of the site and its surroundings, I consider that the main issue in this case is the effect of the retention of the building on the living conditions of residents of Nos 47 and 49 King Street, and on other nearby dwellings.

11. Although I have stated that the question of a change of use of the appeal property is not before me in this appeal, it is legitimate for me to consider whether the operational development that has taken place would inevitably result in a use which would have harmful effects upon the living conditions of neighbouring residents, including the occupants of No 47 itself. However, although the development has resulted in the rebuilding of a former workshop, the intended use of this building is uncertain. The Council suggest that it may be used for general storage purposes, as an independent commercial unit, but your client has stated that he intends it to be used for storage ancillary to the main residential use of the dwelling at No 47, and this would be consistent with my findings at the site inspection, where I saw a range of domestic items and furniture stored within the building.

12. If it were to be used for domestic storage, associated with the main dwellinghouse, it is difficult to see how such a use could cause any harm to the living conditions of neighbouring residents. In terms of visual impact, there seems to be little difference between the reconstructed workshop and that which existed previously, save that more modern windows have been installed, and one of the doors removed in favour of a further window opening. The new roof has also been tiled in materials that match those of an adjoining outbuilding in the rear garden of No 49. There is a suggestion, from a neighbour, that this alteration may prompt use of the building as a dwelling unit, but I am satisfied that such a use has not occurred, and the Council would be able to consider appropriate action should that happen.

13. Alternatively, if the Councils' suggestion were to be correct, and the building were to be used for more general storage, then it is possible that disturbance could be caused through the transportation of goods to and from the building using the alleyway that runs between Nos 47 and 49. There could also be noise and general disturbance from the parking, loading and unloading of vehicles in the street, immediately outside living room windows of these two houses. However, I have no evidence before me on which I could base a conclusion that the operational development that has taken place would inevitably lead to such a use. Moreover, the form of the building that now exists does not suggest to me that general storage, or the formation of an independent commercial unit, is the likely end purpose.

14. In all these circumstances, my conclusion on the main issue is that the retention of the development that has taken place would not, in itself, lead to any worsening of living conditions for residents of Nos 47 or 49 King Street, or those in other nearby areas. It follows that I find no conflict with the relevant provisions of the Development Plan. The appeal thereby succeeds and planning permission will be granted.

15. The Council have suggested two conditions in the event of the appeal being allowed and planning permission being granted. These concern the hours of operation of any storage unit, and the restriction of the use to the occupants of the dwelling. However, neither condition relates to the development before me, as the deemed application is for the retention of operational development, rather than for the retention of a use of land. Therefore these conditions fail one of the crucial tests set by Circular 11/95, that of relevance to the development permitted. In the circumstances I have outlined above, therefore, I see no reason for the imposition of any conditions. The question of any subsequent change of use from that which is already lawful is one for the Council to determine in the light of the use to which the building is eventually put.

Other matters

16. In reaching my conclusions on the grounds of appeal I have taken into account all other matters raised in the representations but they do not outweigh the considerations that have led to my decision.

FORMAL DECISION

17. For the above reasons, and in exercise of the powers transferred to me, I allow your client's appeal and direct that the enforcement notice be quashed. I hereby grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act for the development already carried out, namely the partial demolition of a workshop and the

subsequent rebuilding of a wall incorporating doors and windows, roof structure and floor slab on land at 47 King Street, Kettering referred to in the notice.

18. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISION

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

Yours faithfully

Martin Joyce

MARTIN JOYCE DipTP MRTPI
Inspector

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