



Appeal Decision

Site visit made on 6 November 2009

by Paul V Morris DipTP MRTPI

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

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**Decision date:
7 December 2009**

Appeal Ref: APP/L2820/C/09/2109789

Keepers Lodge, Storefield, Kettering NN14 1BN

- 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 appeal is made by Mrs K Tye against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2006/00137.
- The notice was issued on 26 June 2009.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land outside of the residential curtilage of the dwelling to garden land, and the construction of a summerhouse, erection of fencing, and the laying of pallets to provide a surfaced area, all carried out as part of the change of use.
- The requirements of the notice are to:
 - (1) cease the use of the land as garden land;
 - (2) cease the parking of vehicles on the site;
 - (3) permanently remove from the site the timber outbuildings, including the concrete base, and all structures and paraphernalia associated with the unauthorised use, including the fence panels, pallets, satellite antenna, water tap, pond and flower pots.
- The periods for compliance with the requirements are: steps (1) and (2) – one month; step (3) – 2 months.
- The appeal is proceeding on grounds (a), (b) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. The appellant is deemed to have made an application for planning permission for the development to which the notice relates by virtue of s177(5) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variations.

Ground (b)

1. The appellant claims that the enforcement notice plan identifies an area which is significantly larger than the area which is acknowledged to be the location of the summerhouse, the fencing and the surfaced area. These features are located in a relatively small area at the northern end of the appellant's land holding, whereas the vast majority of the land within the boundary line on the enforcement notice plan always has been, and still is, rough grassland which has no use as garden land. For a material change of use to have occurred, it must be demonstrated that the land identified in the notice and plan is being, or has been, continuously used for residential purposes. As the majority of the land within the notice plan boundary has no such use, the breach of planning control alleged in the notice has not occurred as a matter of fact.

2. Following my site visit, I consider that there is merit in the appellant's claim, but not to the point that this should result in the quashing of the notice. To my mind, the notice can, and should, be corrected by amending the notice plan so that it relates to a smaller, northern portion of the land. As this correction would reduce the scope of the notice, and is in line with the appellant's representations, there would be no prejudice to the appellant.
3. As it is clear from the Council's representations, including the Council's enquiries through the Planning Contravention Notice, that the notice is mainly directed at the northern portion of the land, I also find that there would be no prejudice to the Council. I am confirmed in this view as I have borne in mind, prior to considering the ground (a) appeal, that if planning permission were to be granted on the deemed application relating to the land within the boundary of the original enforcement notice plan, the consequence would be that this whole area would then have planning permission as garden land. I do not consider that this foreseeable consequence would be in the Council's interests.
4. My conclusion is that the alleged development has occurred as a matter of fact, but that the allegation should relate to an amended plan showing a reduced area of land. The amended area is an approximation, based on the appellant's plan included with the representations.

Ground (a) and the deemed application

Planning policy and the main issues

5. The North Northamptonshire Core Spatial Strategy was adopted in 2008. Whilst the Council refers to Policy 1, to my mind, this is more concerned with development as it affects the form and pattern of settlements. Policy 13 is relevant as it deals with sustainable development including the need to conserve and enhance landscape character.
6. Saved Policy 7 of the Kettering Borough Local Plan 1995 restricts development within the open countryside.
7. The main issue is the effect of the development on the character and appearance of the locality.

Reasons

8. The land is close mown grass bordering the access into Keepers Lodge from the A6003, Rockingham Road. The structures are located near the northern boundary of the appellant's land holding, not far from the house and its associated buildings.
9. That the development is remote from any existing settlement is not in question, and the Council concludes that it is detrimental to the rural character of the locality. It is clear to me that the structures and accompanying paraphernalia significantly extend and consolidate the already substantial amount of development which has taken place around Keepers Lodge.
10. I acknowledge that the structures are relatively close to the existing buildings and not in an isolated location, but the taking for development of a further extensive area of previously open land to the north-west beyond the line of the access supports the Council's conclusion that there is conflict with Local Plan

Policy 7. It seems to me that adding development, for which there is no support in the relevant policies, around an essentially residential property is contrary to the principle of conserving the predominant open character. The integrity of the rural landscape depends on keeping in check individual developments which would compromise its quality overall, and I consider that this applies here.

11. I appreciate that there is some tree and shrub cover along the roadside which provides some screening for the development, particularly in the summer months. However, the development is readily visible through the access, and whilst the traffic on the A6003 will pass by quickly, which means that the immediate impact of the development will be lessened, I have given more weight to the need to conserve and enhance landscape character in the interests of long term sustainability required by Policy 13 of the adopted North Northamptonshire Core Spatial Strategy.
12. The appellant points out that this garden land with its structures is of benefit because it is a quieter and more pleasant place to enjoy the outdoors, as there is disturbance from the landfill site to the west and the nearby main road. It was not apparent to me, however, how this would be the case as there is no appreciable difference in the position of the appeal land relative to the landfill site, and it seemed to me to more exposed to traffic noise than the area of established garden behind the house itself.
13. I have attached little weight to these matters, and whilst I acknowledge that the change of use does not have a major impact on the locality, the policy considerations are overriding.

Ground (f)

14. The appellant has queried the requirements to cease the parking of vehicles on the site, and to remove the water tap and pond.
15. The requirements should reflect the allegation as far as is possible and reasonable, and I concur with the appellant that the basis for the restriction on the parking of vehicles is not apparent. It is not mentioned in the allegation as a contributory factor to the change of use, and I have concerns about its enforcement. I note that there have been appeals in the past dealing with the storage of damaged and broken down vehicles and the repair, service and storage of vehicles but these uses are a different matter. The parking of a motorhome seems to me to have little or no connection to the allegation, and I accept that step (2) should be deleted.
16. As for the pond and the water tap, and I would also include the flower pots, again I can see no clear reason to require their removal. The requirements to cease the use, and remove the main structures associated with the use are, to my mind, sufficient to address the breach of planning control and the harm to amenity. These items will be deleted from step (3).
17. To that extent, the appeal on ground (f) succeeds.

FORMAL DECISION

18. I direct that the enforcement notice:

1. be corrected by substituting the plan attached to the enforcement notice by the plan attached to this decision;
2. be varied by adding, in paragraph 5(1), the words: '*as shown hatched black on the plan attached to appeal decision APP/L2820/C/09/2109789*';
3. be varied by deleting paragraph 5, step (2);
4. be varied by deleting, in paragraph 5 step (3), the words: '*water tap, pond and flower pots*'.

19. Subject to this correction and variations, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul V Morris

Inspector



Plan

This is the plan referred to in my
decision dated 7 December 2009

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