
Appeal Decision

Site visit made on 4 March 2014

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 13 March 2014

Appeal Ref: APP/Y2736/C/13/2203840

9-11 Westgate, Rillington, Malton, North Yorkshire YO17 8LN

- 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 Mr Charles Croft against an enforcement notice issued by Ryedale District Council.
- The Council's reference is 12/00117/CU.
- The notice was issued on 16 July 2013.
- The breach of planning control as alleged in the notice is: material change of use to a blacksmiths and paint spraying business.
- The requirements of the notice are:
 - (i) Discontinue the use of the land for use as a blacksmiths business.
 - (ii) Discontinue the use of the land for paint spraying purposes.
 - (iii) Remove the tools and equipment used for the blacksmiths business from the land.
 - (iv) Remove the paint spraying equipment from the land.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on grounds (b), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

NB: The National Planning Practice Guidance (NPPG) was issued on 6 March 2014. The content of the guidance has been considered but, in light of the facts in this case, the NPPG does not alter my conclusions'.

Decision

1. I conclude that the enforcement notice is invalid and it is, therefore, quashed.

The Enforcement Notice and background information

2. The red line on the plan attached to the notice includes the whole of the single storey stone and tiled building which is located to the rear of and along the eastern boundary of the Fleece Public House and the adjoining property at No 5 Westgate. It lies to the south of Westgate Road (A64), on the approach to Rillington from Malton. There is a Vicarage further to the east and Rillington Primary School lies to the south of the site beyond open paddocked areas.

3. However, the plan is incorrect since it is evident from the submissions and my inspection that only the southern third (or thereabouts) of the outbuilding is being used for what is alleged in the notice. The other two thirds of the building are being used for lawful storage purposes in relation to the Public House use. The authority indicates that the '*use class of the appeal building is B8 (Storage and Distribution)*' but also indicates that it is '*ancillary to the primary A4 (Drinking Establishment) use of the site*'. Also, although there is reference to some unauthorised use having taken place

outside of the building, this land has not been included within the red-line area to which the enforcement notice relates.

4. Because the plan includes the whole of the outbuilding any allegation could have correctly referred to a change of use of the outbuilding to a mixed use. That is, from storage use for the public house, to a mixed use of this storage use and use as a blacksmiths (or metalworkers) and for paint spraying. However, by its plan, the notice alleges the unauthorised change of use of the whole of the outbuilding.

5. There is no dispute that some unauthorised use of the southern-most part of the outbuilding has taken place and continues to take place. In October 2012 the authority received a complaint about the use of the 'outbuilding'. The complainant referred to the fact that a business was being carried out on the site which resulted in disturbance due to noise and fumes. An enforcement officer visited the site and reported '*commercial type noises originating from the outbuildings*'. The Council does not elaborate on the actual sounds of these '*commercial type noises*' and there is no reference to an internal inspection of the appeal part of the outbuilding by the enforcement officer, or for that matter, any other part(s) of the outbuilding.

6. No references were made to the lawful uses linked to the Public House or to the fact that only the southern one third of the outbuilding was being used unlawfully. The complainant had provided a business name and a website indicated a range of products and services provided by the business. The services included *welding, galvanising, powdercoating, painting, balsting (sic) and dipping, buildings, repairs and restoration and spare parts*. It was clear from my site visit inspection that some of these processes/activities could not possibly have taken place in such a small area.

7. If the Council had inspected the interior of the 'outbuilding' it would have been clear that the alleged '*business*' was only being carried out in part of the building; that it was not a '*blacksmiths*'; that '*paint spraying*' was not being carried out on a large scale and that processes such as *galvanising and powder coating* would be difficult to carry out in such a confined space. These matters are pointed out by the appellant who was clearly aggrieved and considered that the Council had taken enforcement action without knowing the full facts relating to the use of part of the outbuilding and the nature of the '*business*' which was actually being carried out at the premises. I agree with the appellant that if the Council had inspected the whole of the outbuilding the nature of the '*business*' being carried out in this part of the outbuilding would have been clear and so too would the lawful use of the rest of the building.

8. The authority wrote to the appellant on 19 October 2012 and 8 November 2012 stating amongst other things, '*I write in relation to the above address where I believe a blacksmith business is operating from*'. The letters went on to request evidence that the use was lawful or that the appellant submitted a planning application for a change of use of the premises to a blacksmith use. A further letter was sent on 22 November 2012 setting out the options which were available to the appellant.

9. There was no response from the appellant and no planning application was submitted, although the appellant did inform the authority that a '*business*' had been operating from within part of the outbuilding building since 2006. However, as indicated above, the Council had not inspected the premises thoroughly and had issued the notice on the basis that a '*blacksmiths business*' and '*paint spraying business*' was operating: seemingly in the whole of the outbuilding.

10. At Schedule 2 the notice alleges the '*Unauthorised material change of use to a blacksmiths and paint spraying business*'. However, from the submissions and my site inspection, it is clear that although some form of metalworking takes place, the premises are not being used for a '*blacksmiths business*'. As pointed out by the

appellant (who is an agricultural blacksmith by trade) there is no forge, fire or chimney in any part of the outbuilding. During my visit I noted various metal sections which the appellant made into gates and other metal objects as well as cold metal cutting and bending machinery. I accept that this is akin to work that a blacksmith might carry out but the allegation is, nevertheless, imprecise.

11. The second part of the allegation is also imprecise in my view. It relates to a '*paint spraying business*' being carried out. From the submissions and my own inspection it is evident that some paint spraying of components took place. However during my site visit I only noted a small generator/sprayer which was no larger than one might expect to find in a domestic garage or workshop. There was no evidence of any other spray booth(s) or industrial spray painting equipment and the appellant has clearly indicated that any powder-coating of metalwork is carried out elsewhere. In any case there would be insufficient room in the appeal premises for any large scale paint spraying booths or equipment.

12. The steps required to be taken in Schedule 3 to the notice require the '*blacksmiths*' and '*paint spraying*' businesses to be discontinued and the tools and equipment associated with these to be removed. In my view these requirements compound the imprecision of the allegation and, together with the issues relating to the plan, cause me to question the validity of the notice.

Conclusions

13. There is no dispute that an unauthorised use of part of the outbuilding has taken place. It is clear that this is some form of metalwork fabrication which includes cold metal bending and cutting as well as some welding. In this respect I agree with the appellant's description of it being categorised into the bracket of *light fabrication or cottage craft industry*. Small scale spray painting of components also appears to have taken place but, I question the description, '*paint spraying business*' used by the authority.

14. I also note that there is a reference to some of the unauthorised metalworking and painting having taken place outside of the building in open areas. This external space is not included in the plan attached to the notice and also causes me to question the precision and validity of the notice as issued. It would cause injustice in my view to extend the plan area of the notice in this particular instance.

15. In most circumstances relating to incorrect plans and/or a difference in what is alleged and what is actually taking place, the powers of correction as set out in section 176(1) of the Act can be applied. However, in this particular case and in the light of an imprecise/uncertain plan as well as imprecise allegations/requirements, I do not consider that it is appropriate or fair to correct the notice. As well as having to correct the plan (including extending it to an outside area) the notice would, in my view, need to be re-written to indicate more precisely what is alleged to have occurred and what is required to put matters right. I consider that it would cause injustice if I were to make so many corrections and/or variations.

16. I have concluded, therefore, that for the reasons set out above the notice is invalid and is not capable of correction and/or variation without causing injustice. In these circumstances the grounds of appeal as submitted do not fall to be considered. The notice will, therefore, be quashed although this does not prevent the authority from taking further enforcement action if that is considered expedient. I agree with the authority that planning permission is required for such a change of use and, as indicated previously by the Council, it would be up to the appellant to make a planning application in this respect.

Other Matters

17. In reaching my conclusion I have taken into account all other matters raised by the Council and by the occupier of the adjacent property. Although I am not empowered to deal with the merits of the case, I acknowledge that the activities carried out in part of the outbuilding have had some effect on residential amenity and the authority had clearly considered that it was expedient to issue a notice.

18. However, none of the other factors raised outweighs my conclusion that this particular enforcement notice is invalid and incapable of correction without causing injustice. No other matters are of such significance so as to alter my decision.

Anthony J Wharton

Inspector