



The Planning Inspectorate

Room 1111(1)
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117-9878598
Switchboard 0117-9878000
Fax No 0117-9878782
GTN 1374-8598

Mrs A Harrison
N Yorks Moors N P Authority
The National Park Officer
The Old Vicarage
Bondgate
Helmsley
YORK, YO6 5BP

Your Ref:

Our Ref:
APP/W9500/C/99/1022799
APP/W9500/C/99/1022800

8 September 1999

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEALS BY MR J FERNS AND MRS A FERNS
SITE AT STATION ROAD POST OFFICE AND STORES, STATION ROAD,
ROBIN HOODS BAY

I enclose a copy of our Inspector's decision letter.

Yours faithfully

P. P. Coombs

pp.

Mrs M Hearle

212A

ENC1

NYM NPA
- 9 SEP 1999



Appeal Decision

site visit held on Wednesday, August 25, 1999

by **Derek Thew DipGS ARICS**

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

8 SEP 1999
8 SEP 1999

Appeal : T/APP/W9500/C/99/1022799 – 800

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Mr J and Mrs A Ferns against North York Moors National Park Authority.
- The site is located at Station Road Stores and Post Office, Station Road, Robin Hood's Bay.
- The Council's reference is NYM4/29/182D/EF
- The notice was issued on 23 April 1999.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the Land from use as a domestic garden to a mixed use for use as a domestic garden and as an outside seating area for the consumption of hot and cold food and drinks sold on the premises.
- The requirements of the notice are [1] cease the sale of all hot food and drinks from the premises; [2] cease the sale of cold food and drinks for consumption on the premises; and [3] remove the five picnic tables from the shop forecourt and reinstate the Land to its former use as a domestic garden.
- The period for compliance with the requirements is 2 months.
- The appeal was made on the grounds set out in section 174(2)[c] and [f] of the 1990 Act. As the required fees have been paid I will also consider the application for planning permission deemed to have been made under section 177(5) of the Act.

Decision: The appeal is dismissed and the enforcement notice upheld with corrections.

Procedural matters

1. The alleged breach of planning control as set out in the notice is a cause for some concern. "The Land" for the purposes of the notice is the entire plot upon which the Station Road Post Office and Stores are situated. The extent of the plot is shown edged in red on the notice plan. Section 3 of the notice refers to the change of use of the Land from use as a domestic garden to a mixed use, but quite clearly this is not correct. It is only small parts of the Land that are used as a domestic garden and those parts are not defined anywhere in the notice. I consider it appropriate for the notice to refer to the entire plot, but in that case it is necessary for the alleged breach of planning control to be redefined.
2. The principal uses of the Land appear to be use as a retail shop and use as residential accommodation. In the context of this appeal those uses are not contentious. What is of concern to the Council is the use of the Land for the sale of food and drink for consumption on the premises. I therefore consider that the alleged breach of planning control should be worded as follows:

Without planning permission, the change of use of the Land from use as a retail shop and residential accommodation to use as a retail shop, residential

| |
|------------|
| NYMNP |
| 9 SEP 1999 |
| 133 |

accommodation and use for the sale of food and drink for consumption on the premises.

3. I have the power to correct a notice where I am satisfied that to do so would not cause injustice. The revised wording that I have put forward is not dissimilar to the change of use of the premises for which planning permission was refused on appeal by letter dated 1 March 1999. I am therefore satisfied that I can reasonably make the proposed corrections.

The Appeal on Ground C

4. There is no dispute that the Land has been used for the sale of food and drink for consumption on the premises. The use of the Land for the sale of such items is materially different from its use as a retail shop, being a use within Class A3 rather than Class A1 as defined in the Town & Country Planning (Use Classes) Order 1987. A breach of planning control has therefore occurred and the appeal on ground [c] must fail.

The Deemed Application for Planning Permission

5. The planning merits of this use have recently been considered in an appeal under section 78 of the Act and little substantial evidence on this aspect of the present appeal has been submitted for the appellants. Nevertheless as the requisite fees have been paid I will consider the deemed application, even though no appeal was lodged on ground [a].

The main issues

6. The main issues in this case are the effect of the unauthorised use upon, first, the amenities of neighbouring residents, and secondly, the character and appearance of the locality.

The development plan

7. The appeal site is within the North York Moors National Park and hence the provisions of section 61 of the Environment Act 1995 are applicable. The development plan for the area comprises the North Yorkshire County Structure Plan and the North York Moors Local Plan. Policy TR13 of the Local Plan deals specifically with the provision of refreshment facilities and provides, amongst other things, that "*proposals will not normally be permitted where there is likely to be a conflict with the interests of local residents*". In addition policy G2 of the same document seeks to ensure that new development "*will help to preserve and enhance the natural and built environment of the National Park*".

Inspector's reasons

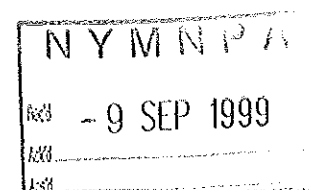
8. The premises are situated on the main road through the village and to the south there are a number of bed and breakfast establishments, plus the Victoria Hotel. In addition, the Grosvenor Hotel is situated a short way to the north of the site. I also noted during my visit that Station Road is part of a busy pedestrian route linking one of the principal car parks and the old village. Even so, most properties in the locality appear to be private dwellings and I consider this to be a predominantly residential area.
9. The Council's main concern is that five picnic tables have been placed on the northern part of the frontage to the appeal site, and those tables have been used for the consumption of food and drinks purchased on the premises. The part of the site where the tables are positioned is adjacent to a modest bungalow, Whin Sill. In view of this proximity, I consider it almost inevitable that customers congregating at the tables would result in a loss

of privacy and be a source of noise and disturbance to occupiers of that bungalow. I regard this harm to the amenities of neighbours as a clear "conflict with the interests of local residents", and a sufficient reason in itself for not permitting the sale of food or drink for consumption at the premises.

10. Turning to the second issue, I have considered the photographs submitted for the appellants, of other premises in the locality, and I am mindful that several premises nearby have picnic tables on their forecourts. I also noted from these photographs that at certain times the forecourt in front of the entrance to the appeal premises can be very busy. This appears to be a successful local business and clearly such enterprises are to be encouraged. However, the additional activity likely to be generated by the sale of food and drink from the five tables on the remainder of the forecourt could from time to time be significant. And I consider that this additional activity concentrated in one small area would be materially detrimental to the predominantly residential character and appearance of the locality.
11. For these reasons I do not intend granting planning permission for this unauthorised use.

The Appeal on Ground F

12. I understand that the sale of hot food and drinks from the premises has ceased, as has the sale of cold food and drinks for consumption on the premises. There is therefore no objection to the first two requirements of the notice. The appellants' principal objection is to the third requirement that the five picnic tables be removed from the shop forecourt. I will therefore consider this particular matter.
13. The placing of the picnic tables on the forecourt of the premises was not operational development, nor in itself did it amount to the making of a material change of use of the land. However those picnic tables were an essential element of the alleged breach of planning control, namely the use of the premises for the sale of food and drink for consumption on the premises. Where items such as this are an integral part of a breach of planning control, then I consider it reasonable for an enforcement notice to require the removal of those items. I therefore find it reasonable for the notice to require the removal of those tables from the forecourt, and I draw support for this conclusion from the judgement in Somak Travel Ltd. v the Secretary of State for the Environment & Brent LBC (1987) JPL 630.
14. I note that the appellants wish to retain the tables on the forecourt for their own domestic use, and they have indicated a willingness to erect a low fence to separate the area containing the tables from the shop forecourt. However, so long as the tables remain in their present location then there is an on-going likelihood that they could be used by customers to the shop. There is a private garden to the side of the premises and the notice does not preclude the tables being placed within that area. If relocated to the side garden then I consider there is less possibility of the tables being used by customers and consequently less risk of a reoccurrence of the breach happening at some time in the future. The requirement to remove the tables from the shop forecourt is, in my view, necessary to secure a permanent remedy of the breach of planning control. Accordingly the appeal on ground [f] fails.

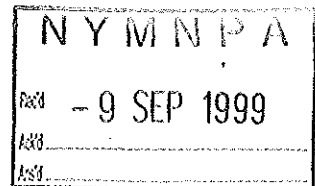


Conclusions

15. I have taken account of all other matters raised but they do not alter my conclusions upon each of the grounds of appeal. For the reasons given above I consider that the appeal should not succeed and I shall exercise the powers transferred to me accordingly.



Derek Thew
Inspector



Schedule:

Appeal : T/APP/W9500/C/99/1022799 – 800

It is directed that the enforcement notice shall be corrected by deleting section 3 of the notice and substituting therefor the following:

THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the change of use of the Land from use as a retail shop and residential accommodation to use as a retail shop, residential accommodation and use for the sale of food and drink for consumption on the premises.

Subject thereto the appeal is dismissed, the notice upheld as corrected, and planning permission refused on the application deemed to have been made under section 177(5) of the amended Act.

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

You may wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

CHALLENGES UNDER SECTION 289

Section 289(1) relates to decisions on enforcement appeals. The appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 289 may only proceed with the *leave* (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the appeal decision, unless the period is extended by the Court.

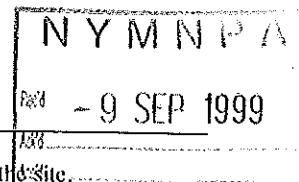
If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Decisions on appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 or by judicial review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s78 or s195 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- i) the decision is not within the powers of the Act; or
- ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).



¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by that Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under section 288 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. Leave of the High Court is not required for this type of challenge.

ADVICE

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

In an inquiry case, any person who is entitled to be notified of the decision has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents are not normally refused but please note that our appeal files are usually destroyed one year after the decision is issued. Please make your request to Room 11/00, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

You can make a written complaint about the decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal to the Complaints Officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. We aim to send you a full reply within 15 days of receipt of your letter. Please note that, once the decision has been issued, we cannot reconsider any appeal or the decision. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library) although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the outcome of the appeal decision.

| | |
|---------|------------|
| NYMNP A | |
| Recd | 9 SEP 1999 |
| Assd | |
| Issd | |

LEAFLET A