

Appeal Decision

Site visit made on 21 June 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 7 July 2016

Appeal Ref: APP/P4225/C/16/3145545

256 Ashfield Road, Rochdale OL11 1QW

- 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 Act).
 - The appeal is made by Miss S Y Khapi against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The notice was issued on 19 January 2016.
 - The breach of planning control as alleged in the notice is the change of use of the land to use (as part of a mixed use) as a teaching centre and a place of worship.
 - The requirement of the notice is cease the unauthorised change of use of the land to use (as part of a mixed use) as a teaching centre and a place of worship.
 - The period for compliance with the requirement is one day.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

2. 256 Ashfield Road is an end-terraced property, the lawful use of which is a dwellinghouse. It was noted at the site visit that the property has been altered by the removal of internal partition walls to create large rooms at ground and first floor levels. Section 55(2)(a) of the Act indicates that the alteration of a building that affects only the interior of the building does not involve the development of land. The alteration of the interior of the building in this case gives no indication of whether an unlawful use has commenced. Two other properties in the terrace, nos. 262 and 266, have been the subjects of enforcement action for the same alleged unauthorised use but this action and all matters relating to these other properties are not relevant to this appeal.

3. The Council has referred to a website that they accessed in January 2015. The website sought financial contributions for the creation of an Islamic teaching centre at the appeal property and gave no indication that this use had commenced or would commence at any specific time in the future. The Appellant submitted a planning application in October 2015 for the alleged unauthorised use of the property, and a subsequent appeal against refusal of that application, which was refused in March 2016. The Appellant has stated that "...there has been no use for these purposes since the planning appeal was lodged..." but this does not indicate that the use had subsisted before the appeal was lodged. The website and the planning application and appeal do not, either individually or collectively, indicate that the use of the property as a teaching centre commenced at any time.

4. The Council has stated that "Site visits undertaken by the Council's Planning Enforcement Officers confirmed that this unauthorised use took place, both up to and following 1st October 2015". But there is no information or other evidence on when these site visits occurred or what was observed. A Planning Enforcement Officer has provided a written statement, which addresses the Appellant's claim that no unauthorised use of the property occurred after the planning appeal was lodged, in which she states that she "...witnessed a gentleman attending this property, dressed for prayer" on 18 December 2015. The statement is not signed or notarised, and the attendance of a single person, whether or not dressed for prayer, cannot be taken to justify a conclusion that the alleged unauthorised use, or any other use, of the property has occurred.

5. The Council maintains that "...it is well accepted law that in enforcement appeals the burden of proof lies with the Appellant". This may be the case, as a generality, but it is difficult to prove that a use of land has not occurred, because if it hasn't then there will be no evidence. The burden of proof, in fact, applies mainly where an Appellant accepts that an unauthorised use has occurred and is attempting, in a ground (d) appeal, to show that it has subsisted for a sufficient period of time to have gained immunity from enforcement action. In a ground (b) appeal the onus is on the Council to show that the alleged unauthorised use of a property has occurred and has, at the time of issue of the enforcement notice, replaced the lawful use and is the last known use of the property.

6. The Council has not adduced sufficient evidence to justify a conclusion that the alleged unauthorised use of the appeal property as a teaching centre and a place of worship (as part of a mixed use) has occurred, has replaced the lawful use as a dwellinghouse, and is the last known use of the property. The ground (b) appeal thus succeeds and the enforcement notice has been quashed.

John Braithwaite

Inspector