

Appeal Decision

Site visit made on 13 September 2016

by Jean Russell MA MRTPI

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

Decision date: 30 September 2016

Appeal A: APP/W4705/C/15/3140226

Appeal B: APP/W4705/C/15/3140227

Land at 79 Kenley Parade, Bradford, BD7 4JJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Waheed Hussein (Appeal A) and Mrs Nasreen Chowdhary (Appeal B) against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 3 December 2015.
 - The breach of planning control as alleged in the notice is the change of use of the premises from residential to a mixed use i.e. residential and teaching establishment.
 - The requirement of the notice is to cease the use of the premises as a teaching establishment.
 - The period for compliance with the requirements is 7 days.
 - The appeals are proceeding on the ground set out in section 174(2)(b) of the 1990 Act as amended.
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Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

The Grounds of Appeal

2. The appeal on ground (b) is that the matters stated in the notice have not occurred but, as explained below, the appellants' evidence relates better to ground (c) – that the matters do not constitute a breach of planning control. In the interests of natural justice, I shall consider both grounds of appeal.
3. In relation to grounds (b) and (c), the onus of proof is on the appellants and the standard of proof is the balance of probabilities.

Appeals A and B on Ground (b)

4. The appellants admit that they have taught a limited number of students in the appeal building. The appellants also say that they have decided to stop teaching, but even if the use has ceased, it would still appear that the matters 'have occurred' as a matter of fact. The appeal on ground (b) must fail.

Appeals A and B on Ground (c)

5. If the teaching use has taken place but been 'limited', this gives rise to a question as to whether there has been a material change of use as alleged, which would require planning permission.

6. The lawful use of the appeal building is residential use. The use of a dwellinghouse for tutoring children may sometimes be considered 'incidental' to or functionally related to a residential use – but if the tutoring activity expands so that it becomes a primary use on its own and the building is in a mixed use, then it is likely that a material change will occur. The test here is whether a change was made to the overall character of the use of the land, as a matter of fact and degree.
7. The appellants stated that they taught 'very limited amount of students in the evening', but they have not elaborated on that comment, except to state that they taught religious studies. The Council has provided the following evidence as to how the teaching use was carried out:
 - A complaint was received that approximately 20 children attended the property for classes;
 - The appellants stated on 7 July 2015, in response to a Planning Contravention Notice, that two children attended religious education classes which were held five times a week;
 - The appellants advised the Council over the telephone on 22 October 2015 that four children attended a 45 minute class five times a week – and previously the class had been attended by 12 children;
 - The appellants stated on 12 November 2015, in response to a S330 Notice, that they taught six children.
8. The appellants have not disputed or sought to clarify this version of events. It therefore appears that a class of 2-12, if not more non-resident children, was taught at the appeal house on a scheduled basis five times a week. The appellants have not shown that this level of activity – or the teaching of religious education – was incidental or functionally related to the lawful residential use. I find that, as a matter of fact and degree, the teaching use likely caused a change to the character of the use of the property, such that there was a material change of use as alleged.
9. Moreover, the notice was issued in part because – the Council claimed – additional traffic movements and on-street parking were generated by the teaching use. I cannot speculate as to whether this might have caused unacceptable *harm*, but it is relevant to consider whether the alleged use had *an* effect on traffic. The appellants stated that they built an extra driveway to reduce inconvenience to other road users. I appreciate that they also received visits in connection with the residential use, but their evidence still indicates that the tutoring activity altered the character of the use of the land.
10. I conclude that, on the balance of probabilities, there has been a material change of use as alleged. Planning permission was not granted for the change of use and there has been a breach of planning control. The appeal on ground (c) fails.

Conclusions

11. For the reasons given above and with regard to all other matters raised, I conclude that Appeals A and B should be dismissed and the enforcement notice upheld.

Jean Russell

INSPECTOR