

Appeal Decision

Site visit made on 25 October 2016

by John Whalley

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

Decision date: 1 November 2016

Appeal ref: APP/A2335/C/15/3140672

Moorlands Hotel, Quarry Road, Lancaster LA1 3BY

- The appeal was made by SAHA Capital Limited under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Lancaster City Council.
- The notice was issued on 10 November 2015.
- The breach of planning control alleged in the notice was: Without planning permission, the material change of use of the upper floors of the building from public house to student accommodation.
- The requirements of the notice were:
 - (i) the upper floors of the building shall be used for no other purpose than student accommodation;
 - (ii) there shall be no living/sleeping accommodation on the second floors;
 - (iii) provide cycle storage in accordance with Appendix B & D of the Local Plan, (Development Management DPD);
 - (iv) provide bin storage in accordance with Appendix D of the Local Plan (Development Management DPD);
 - (v) erect a stone boundary wall, to a height of 1.8 metres between points A & B shown on the plan attached to the notice. The wall shall be built using stone of similar appearance to that of the main building;
 - (vi) the occupation of the premises shall be limited to students in full time education and accommodation leases shall be arranged only through the Head Lease scheme of the appropriate Further Education provider or via a similar The premises shall not be used for any other purpose or occupied in any other manner without the express consent of the local planning authority, (sic).
- The compliance date for (i), (ii), (iii), (iv) and (vi) was 13 January 2106. The compliance date for (v) was 16 February 2016.
- The appeal was made on grounds (a), (b), (c), (d), (f) and (g) as set out in section 174(2) of the 1990 Act. Grounds (b) and (c) were later withdrawn. The appeal on ground (a) does not fall to be considered. That is because planning application ref. 13/01301/CU for the same use as alleged in the notice and which exempted the fee for the deemed application was withdrawn and the fee refunded to the Appellants at their request.

Summary of Decision: The enforcement notice is bad for uncertainty and is quashed.

Appeal property

1. The appeal concerns the former public house, Moorlands Hotel, at the junction between Quarry Road and Dumbarton Road, Lancaster. At the time of my visit the ground floor was stripped out and under repair. The first floor and the second floor in the roof were rented to students in one flat. There were five bedrooms, a bathroom and a lounge on the first floor, 2 bedrooms and a bathroom on the second floor.

Planning history

2. The Council had resolved to approve application 13/01301/CU for the change of use of the building to 4 student studio apartments subject to removal of the 2 bedrooms in the roof space. The objection to the poor outlook from the roof space bedrooms was delegated to the Chief Officer for resolution. Before that took place, the Applicants withdrew the application.

The enforcement notice

3. Usually, where an enforcement notice alleges an unlawful change of use of land or a building, it requires cessation of that use. Here, the Council sought to under-enforce against the student accommodation use of the appeal property. They were content that the first floor student accommodation use should continue, but the 2 roof space bedrooms were not to be used as such because their high cill roof windows failed to provide an acceptable outlook. That under-enforcement approach is as set out at s.173(11) of the Act - *Where a notice could have required any activity to cease, but does not do so; and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s.73A in respect of the development* - (summary).
4. In this instance, this approach causes difficulties. A deemed permission under s.173(11) would be unconditional whereas permission granted under the deemed planning application could be conditioned. What this notice seeks to do, in effect, is to grant a conditional planning permission; the Council's "pragmatic way forward". But that cannot be done by means of under-enforcing an enforcement notice. The attempt to do so also leaves it unclear as to what s.173(4) purposes the requirements seek to achieve. The requirements of an enforcement notice are not planning conditions and do not have the same effect.
5. There are other problems. The notice's first requirement says: *(i) the upper floors of the building shall be used for no other purpose than student accommodation*. That requires a particular use to be carried out. A notice's requirement cannot require a former use to be resumed, (*Lipson v SSE [1976] 33 P and CR 95*), let alone require another use to take place and with no apparent end. The second requirement is bad for uncertainty because it says: *(ii) there shall be no living/sleeping accommodation on the second floors*. It may be that "floors" should have read "floor". Even if that was only a slip, the second requirement appears, at least in part, to contradict the first requirement.
6. Requirements (iii) and (iv) are uncertain. They do not specify with sufficient particularity what is required of the Appellants, to remedy the breach of planning control, or remedy any injury to amenity caused by the breach, (s.173(3), (4)). They are more akin to purported planning conditions rather than requirements of an enforcement notice. As drafted, they unacceptably require compliance with unspecified schemes, (*Kaur v SSE [1989] EGCS 142*).

Requirement (vi), in a manner similar to requirement (i), unacceptably restricts the use of the property, even excluding its lawful use.

7. Of lesser concern, the notice should have set a period of time, for example 3 months, following the date the notice takes effect, to achieve better accord with s.173(9) of the Act - *An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased*. The Council's method on this point is not itself fatal to the notice because a period can be gleaned from within the notice. However, fixing a date rather than a period for compliance denies the possibility of an appeal being made.
8. In my view, the serious problems with this notice cannot be corrected. There is a duty on me to get the notice in order if I can, (*Hammersmith LBC v SSE and Sandral [1975] 30 P and CR19*), by exercising the powers available to me under s.176(1)(a) of the Act. The case of *Simms v SSE & Broxtowe BC [1998] JPL B98* is authority for the view that any correction can be made, so long as there is no injustice to either side. In the present instance, because so much of the notice and its requirements need correction, I consider it would not be possible to do that without injustice to one or both parties. I therefore quash the enforcement notice.
9. The attempt by the Council to fashion a conditional permission for the use of the former Moorlands Hotel as student accommodation by means of under enforcing the notice was inappropriate. The matter could have been resolved if the 13/01301/CU application had not been withdrawn but approved subject to conditions.

FORMAL DECISION

10. The enforcement notice is bad for uncertainty and is quashed.

John Whalley

INSPECTOR