
Appeal Decisions

Site visit made on 24 April 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 24 May 2017

Appeal A: APP/Z1510/C/16/3155020

Appeal B: APP/Z1510/C/16/3155236

Thee Horseshoes, Water Lane, Helions Bumpstead, Haverhill CB9 7AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Jennings and Appeal B is made by Mrs Jennings against an enforcement notice issued by Braintree District Council.
 - The enforcement notice was issued on 23 May 2016.
 - The breach of planning control as alleged in the notice is 'Without planning permission, a material change in use from a public house with ancillary residential accommodation to solely residential use.'
 - The requirement of the notice is to cease the residential use of the building.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

1. Both Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Appeals on ground (b)

2. In appealing on ground (b) the burden of proof is firmly on the appellants to demonstrate that the matters stated in the enforcement notice have not occurred.
3. The public house use of the Three Horseshoes ceased on 2 June 2014. The appellants' state that they stay at the property while they do work but do not consider this makes the use of it 'solely residential'.
4. The public house has been shut in excess of two years. One of the bars on the ground floor has been removed. The only use of the property in that time is, as I understand it, when the appellants stay at the property on their visits to check the property and carry out work. As such, I consider that the property has been used for solely residential use as no other use has existed at the property since the public house has shut. Therefore as a matter of fact the matter alleged in the Notice has taken place and the appeals on ground (b) fail.

Whether those matters alleged in the Notice constitute a breach of planning control

5. There is no formal appeal on ground (c) before me. Nonetheless, the appellants have questioned whether or not the use of the property amounts to a 'solely residential' use as set out in the allegation.
6. The Inspector in a recent appeal relating to the Three Horseshoes (reference APP/Z1510/X/15/3006147) found that when the public house was in operation, the residential use was regarded as being subservient and very closely related to the public house use. She noted that at the time of that appeal the appellant (Mrs Jennings) described the existing or last use of the land as a public house. The Inspector concluded that the lawful use of the property was as a single primary Class A4¹ use, which is use as a drinking establishment, with the residential use being of an ancillary or incidental nature.
7. Since the public house ceased trading in 2014 the only use of the property has been by the appellants who live there when they visit to check on the property or to carry out work to it. Therefore, the only use of the property currently taking place is for residential use. There is no public house use or any other use that I am aware of.
8. In effect the ancillary/incidental residential use of the property established when it was in use as a public house, has become the primary and only use of the property since the closure of the public house and at the time the Notice was issued. Given the passage of time since the public house ceased trading, I consider that there has been a material change of use of the property from Class A4 to a solely residential use.
9. The previous appeal decision indicates that the appellant was considering alternative uses at the property, albeit that appeal was dismissed. In addition, while I note the appellants state that they are 'carrying out work prior to its re-opening', there is no clear indication of when that would be or that there is a clear intention to do the works and resume use of the property as a public house in the near future. I note the appellants consider it would take between twelve and fourteen months to make the public house safe and functional and the cost is stated to be not inconsiderable.
10. The burden of proof is firmly on the appellants to demonstrate on the balance of probabilities that the matters alleged in the Notice do not constitute a breach of planning control. No express planning permission exists for the material change of use of the property to a solely residential use and as such the matter alleged in the Notice constitutes a breach of planning control.

Appeals on ground (g)

11. This ground of appeal is that the time given to comply with the Notice is too short. The Council have given six months for compliance. The appellants seek twelve to fourteen months for compliance.
12. The appellants list issues affecting the safety of the premises and also essential repairs of a non-safety nature. They refer to much of the work having to be done by professionals and a fair amount being done by themselves. No details of whether professionals have been instructed to do

¹ Class A4 of the Town and Country Planning (Use Classes) Order 1987.

works, or any quotes for works or any indication of when or if works are timetabled to take place have been provided. The cost of such works is stated to be 'not inconsiderable' by the appellants.

13. The requirement of the Notice is to cease the residential use of the building. While I appreciate that there may be various works necessary to bring the premises back into its lawful use, there is no substantiated evidence to demonstrate why it would not be practicable to cease the residential use of the building in six months. Furthermore, I note that the appellants state that the Three Horseshoes is not their primary residence and, as such, they would not need to 'look for' alternative accommodation prior to complying with the Notice.
14. I therefore find, on the evidence before me, that a period of six months is a reasonable period of time in which to comply with the requirement of the Notice. The appeals on ground (g) therefore fail.

Conclusion

15. For the reasons given above I consider that the appeals should not succeed.

Hilda Higenbottam

Inspector