
Appeal Decision

Site visit made on 16 May 2017

by Paul Dignan MSc PhD

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

Decision date: 9 June 2017

Appeal Ref: APP/P4605/C/16/3165661
35 Blews Street, Birmingham, B6 4HN.

- 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 appeal is made by Woodbridge Housing Ltd against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2014/0884/ENF, was issued on 22 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the first floor to a house in multiple occupation.
 - The requirements of the notice are: Cease the use of the first floor of the premises as a house in multiple occupation and return the layout of the first floor to its original layout before the breach of planning control took place.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. It is directed that the notice be varied by extending the time for compliance from 4 months to 6 months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. The appeal concerns the conversion of the upper floor of the former Globe public house, a 2-storey building on the corner of Blews Street and Manchester Street, to a self-contained 5-bedroom flat. It appears that at least part of the upper floor is likely to have been used for residential purposes in the past.
3. An appeal on ground (c) is that there has not been a breach of planning control. The appellant's argument on this ground is that the use of the upper floor of the public house was previously residential with no restriction on who lived there, or how the accommodation was organised, and hence the present residential use is not a material change of use.
4. However, the only real evidence of the previous use comes from the plans submitted in support of a 2014 application¹ for the change of use of the premises from a public house to offices, workshops and retail unit at ground

¹ Council Ref. 2014/01951/PA

floor and the creation of a 6 bed house in multiple occupation at first floor and the erection of a single storey rear extension. The existing first floor layout was shown as comprising a function hall/room, three bedrooms, two toilets, a store, a bar and a bathroom. A kitchen is indicated on the ground floor, and access to the hall and bar on the upper floor is from the same corridor as that to the bedrooms. The Council considers that this layout is indicative of the existence of residential accommodation ancillary to the use of the building as a public house rather than of a separate independent residential use of the upper floor. On the balance of probability I consider that this is the most likely conclusion that can be drawn from the available evidence.

5. On an appeal on this ground the onus is on the appellant to demonstrate that there has not been a material change of use, but nothing has been provided that would indicate that the use of the building was other than as a public house with some ancillary residential accommodation on the first floor. A change from ancillary residential use of part of the first floor of the public house to the establishment of a separate self-contained residential unit, whether a single dwellinghouse or a house in multiple occupation, comprising the whole of the first floor, is a material change of use that requires planning permission, in the absence of which the appeal on this ground cannot succeed.

Ground (a) and the deemed planning application

6. Under this ground planning permission is sought for the development. The development plan for the city includes the recently adopted Birmingham Development Plan (2017) (BDP). BDP Policy GA1.3 provides that new development should support and strengthen the distinctive character of the areas surrounding the City Centre core. The city centre is formed by seven quarters with the core at its heart, and within each quarter varying degrees of change are proposed. The appeal site lies in the Gun Quarter, and the main policy aspiration for this area is to maintain the area's important employment role and industrial activity. The part of the Gun Quarter that includes the appeal site is an identified Core Employment Area and subject to BDP Policy TP19, which seeks to retain Core Employment Areas in employment use, specifically uses in Use Classes B1b (Research and Development) B1c (Light Industrial), B2 (General Industrial) and B8 (Warehousing and Distribution).
7. The public house use is not amongst the type of uses envisaged as being retained within this part of the Gun Quarter, but there is scope for re-use of the building. However, re-use as a dwellinghouse, even in part, involves the introduction into the area of a use that is incompatible with some of the types of uses that BDP Policy TP19 seeks to encourage. Even with good quality sound insulation, a residential use is a noise sensitive use whose presence within this established industrial area is likely to inhibit the establishment or operation of some of the uses which the development plan seeks to encourage. The development thus undermines the economic and employment aims of the development plan. As such it conflicts with BDP Policies GA1.3 and TP19.
8. Similarly, while the standard of residential accommodation within the building appears good, it is surrounded by industrial uses that are likely to be unpredictable and relatively unrestricted in their ability to give rise to disturbance levels that would not normally be considered to be conducive to acceptable residential amenity. The possibility of providing high levels of sound insulation has been mentioned, but nothing has been provided to support this

contention. Paragraph 123 of the National Planning Policy Framework seeks to ensure that care is taken to avoid noise giving rise to significant adverse impacts on health and quality of life, but on the information before me I could not confidently conclude that this residential development provides, and will continue to provide, satisfactory living conditions in this respect.

9. In summary, I consider that the residential use of the first floor would undermine the ability of the Core Employment Area within Gun Quarter to fulfil its long term economic role, and it has not been demonstrated that a satisfactory residential environment could be provided and maintained. In coming to this view I acknowledge that there has been residential accommodation within the building, which could be resumed along with the public house use. However, the level of residential amenity expected of public house ancillary accommodation is likely to be somewhat less than that of a dwellinghouse use, and a public house use would have a less inhibitory effect on surrounding uses.
10. Having considered all other matters raised, I conclude that the development is contrary to the development plan, and there are not material considerations that indicate that planning permission should nonetheless be granted. The appeal must therefore be dismissed and planning permission refused.

Ground (f)

11. The appellant's argument on this ground is that it is excessive and imprecise to require the internal layout to be returned to that before the breach took place. On the latter point, the plans provided with the 2014 application provide details of the previous layout, so there is no imprecision. Regarding the purpose of the notice, it is clear from the requirements that the purpose is to remedy the breach of planning control, and leaving the layout as it is would leave in place the facilities for a separate self-contained residential unit, which would be contrary to the purpose of issuing the notice.
12. I consider that the steps required do not exceed what is necessary to remedy the breach of planning control, and the appeal on this ground fails.

Ground (g)

13. It is submitted that the 4 month period for compliance should be extended to 6 months given that tenancies are normally for 1 year. The Council has pointed out that Assured Shorthold Tenancies only require landlords to give a minimum of 2 months notice, but the existing tenants will also have to look for other accommodation. I consider that a period of 6 months would be more reasonable in this respect. The appeal succeeds to this limited extent.

Paul Dignan

INSPECTOR