
Appeal Decisions

Site visit made on 16 May 2017

by **D E Morden MRTPI**

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

Decision date: 16 June 2017

Appeal Refs: (A) APP/D1590/C/16/3158045 & (B) 3158046 196e Hamlet Court Road, Westcliff-on-Sea, Essex, SS0 7DE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr M Najib & Mrs M Raja against an enforcement notice issued by Southend-on-sea Borough Council.
- The enforcement notice, reference 17/00004/ENFNOT, was is dated 9 August 2016.
- The breach of planning control as alleged in the notice is the change of use of the land from storage within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to dwellinghouse (Class C3).
- The requirements of the notice are to cease the unauthorised use of the land as a dwellinghouse.
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) on Appeal A an application for planning permission is deemed to have been made under section 177(5) of the Act. The appeal on Ground (a) on Appeal B has lapsed as no fee has been paid.

Decisions: The appeals are dismissed and the enforcement notice is upheld. On Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

1. An application for costs was made by Southend-on-sea Borough Council against Mr M Najib and Mrs M Raja. This application is the subject of a separate Decision.

The appeals on Ground (d) – Appeals A and B

2. In its final representations the Council stated that the appellants' ground (f) appeals appeared to relate more to ground (d) appeals which had not been submitted. The appellant did confirm appeals on this ground in a letter dated 13 December 2016 and confirmation of this was sent by email (from PINS) to the Council on 17 January 2017. I will deal with the appeals on this ground as the Council in its final representations commented on what had been put forward by the appellants in any event.
3. The onus on any ground (d) appeal is firmly with an appellant to produce evidence to substantiate the claim made – in this instance that the building had been used continuously for residential purposes for a period of four years before the Notice was issued and had continued since (or at least had not been abandoned or materially changed to some other use).

4. Very little evidence was produced by the appellants to support the claim in this instance and none of the documentary evidence supported the claim. From the appellants' side it was claimed that whilst they had not occupied the building until 2014, it had been occupied for residential purposes by the previous occupants (from whom they had purchased it) and the appellants believed it had been residential when those previous occupants purchased it. Copies of the Land Registry entry were provided but these only showed when the appellants became the registered owners and when the previous occupants became the registered owners; it stated nothing about the use of the building.
5. The Council acknowledged that the previous owners did start using the building for residential purposes in late 2005 but ceased following the issue of an enforcement notice in November of that year. An application for permission to use it as such was refused in 2009 and again in 2015. Council tax records produced by the Council show that it was deleted as an entry in 2008 as the use had ceased. Valuation Office records showed it after that date as a business use and the advertising material from 2014 (the year the appellants purchased it) show it being marketed as commercial property.
6. In all these circumstances the weight of the evidence is that there has not been a continuous period of four years prior to the issue of the notice during which the building has been used for residential purposes. If the appellants immediately used it for such a use that would have been only for about two years and five months prior to the issue of the Notice. The appeals on ground (d) accordingly fail.

The appeal on Ground (a) – Appeal A

Main Issues

7. The main issues in this case, having regard to the prevailing policies in the adopted Development Plan, are firstly, whether the building would provide reasonable living conditions for the occupants and secondly whether it would materially detract from the Council's adopted employment strategies.

Reasoning

8. Dealing with the first main issue, the building is located at the rear of premises fronting Hamlet Court Road and London Road. The access which runs alongside number 198 is a narrow concreted track that serves as a service access to the rear of business properties fronting London Road, a detached single storey building to the rear of 198, a derelict fenced off area of land to the north of the appeal building and the enclosed electricity sub-station adjoining and to the rear (east) of the appeal building.
9. Boundary structures to the rear of the London Road properties have been removed and most of the area to the west of the appeal site is a roughly surfaced parking/servicing area. The building itself has its only entrance door on the north side with those exiting looking out over the derelict land.
10. The only windows in the building are also on the north side. They are small and do not provide natural light to all rooms. The three bedrooms each have a window as does the larger en-suite bathroom but there is no window to the other cloakroom, the kitchen or large hall area that runs along the south side of the building giving access to the various rooms. Some light enters through the partially glazed entrance door to the small lobby inside at that door.

11. Lighting inside the building is, therefore, poor particularly with no natural light into the kitchen and there is no 'living room' at all. The bedrooms are not big enough to double as living areas and the result is very substandard accommodation. Pedestrian access is through what is basically a service yard and parking area and the only outlook is either over a derelict site or the side of a non-residential building about 2 metres to the north. There is no outside amenity area for the occupants whatsoever.
12. In all these circumstances the building is completely unsuitable for occupation as a dwelling, it conflicts with Policies CP1 and KP2 of the Southend on Sea Core Strategy (SCS), adopted in December 2007, Policy DM8 of the Development Management Document (DMD) and its use should not be permitted to continue.
13. Turning to the second main issue, the Council stated that the use is contrary to Policy CP1 of the SCS and DM11 of the DMD. The former states that permission will not be granted for the loss of business use and the latter states that permission for alternative uses will only be permitted where it is no longer viable for continued business use or it gives rise to unacceptable impacts. It will also need to be demonstrated that any alternative use proposed will give greater potential benefits than the continuing use.
14. In this instance nothing whatsoever has been put forward to support the change of use that has taken place and/or to satisfy the requirements of the policy. The change of use is therefore contrary to the adopted policies and permission should not be granted.

Conclusion on ground (a)

15. In all these circumstances I conclude that the development is contrary to the Council's adopted policies and the appeal on this ground should be dismissed. The appeal on this ground on Appeal A shall not be allowed and I shall uphold the Notice.

The appeals on ground (f) – Appeals A and B

16. On this ground no lesser steps whatsoever were put forward by the appellants. The notice was served to remedy the breach of planning control rather than to remedy any injury to amenity and in my view the only step that can be taken to do that is to cease the use. In these circumstances I consider that the requirement of the notice is reasonable and the appeals on this ground accordingly fail.

Overall conclusion

17. The various appeals on all three grounds should be dismissed and I will uphold the notice and refuse to grant permission on the deemed planning application (on Appeal A).

DE Morden

INSPECTOR