



Appeal Decisions

Site visit made on 11 April 2018

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2018

Appeal A Ref: APP/P4415/C/17/3181511

Land at 21 Orchard Croft, Wales, Rotherham S26 5UA

- 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 Mr Stephen Goldthorpe against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice was issued on 26 July 2017.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the ground floor of the premises from residential accommodation to B1 offices.
 - The requirements of the notice are to cease the use of the ground floor of the premises for B1 office accommodation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/P4415/W/17/3181510

21 Orchard Croft, Wales, Rotherham S26 5UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Goldthorpe (PJH Engineering Solutions) against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2017/0707, dated 3 May 2017, was refused by notice dated 4 July 2017.
 - The development proposed is a mixed office and dwelling use for a period of up to 3 years.
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Appeal A APP/P4415/C/17/3181511 Decision

1. It is directed that the enforcement notice be corrected in section 3 by deleting all the words and substituting them for the words "*the material change of use of the premises to an office and dwelling*" and varied by the deletion of all the words in section 5 and substituting them for the words "*cease the use of the premises as an office*". Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B APP/P4415/W/17/3181510 Decision

2. The appeal is dismissed.

Preliminary Matters

The Notice

3. In respect of appeal A, the breach of planning control as outlined in the notice is *"without planning permission the unauthorised change of use of the ground floor of the premises from residential accommodation to B1 offices"*. However, this is in fact incorrect. The property is being used as an engineering company office on part of the ground floor (i.e. two rooms) and as a dwelling on part of the ground floor and the first floor. Indeed, the appellant confirmed on 16 March 2018 that *"this case relates to only 2 rooms on the ground floor with shared use of the kitchen and toilet facilities by domestic and office uses"*. It has been agreed by the main parties that the breach of planning control therefore relates to a material change of use to a mixed office and residential use. I shall accordingly correct the allegation of the notice and in doing so I am satisfied that there would be no injustice caused to any of the parties.
4. As a consequence of correcting the allegation in the notice to a mixed use, it is necessary that I also vary the requirement from *"cease the use of the ground floor of the premises for B1 office accommodation"* to *"cease the use of the premises as an office"*. Such a varied requirement would not preclude any subsequent lawful and ancillary use of the premises as an office. I am satisfied that no injustice would be caused in terms of varying the requirement of the notice.

Section 78 appeal

5. In respect of Appeal B, the description of proposed development on the planning application form reads *"3 year temporary change of use from residential accommodation to offices on the ground floor"*. However, the accompanying plans and planning application documents indicate that it is in fact proposed that the appeal site is used as a sui generis mixed office and dwelling use for a period of up to 3 years. In the interests of precision and accuracy, and following consultation with the main parties, I have therefore amended the proposed description of development in the banner heading above.

Appeal A (ground (a)) and Appeal B

6. In respect of the ground (a) appeal (Appeal A) and Appeal B, the main issues are (i) whether or not there are any sequentially more preferable sites in or on the edge of a town centre and the effect of the development upon the vitality and viability of any such a town centre and (ii) the effect of the development upon the character of the area and the living conditions of the occupiers of nearby properties in respect of vehicular and pedestrian comings and goings and off site car parking.

Sequential Assessment

7. As the development is for a mixed use including an office use, it is necessary for the appellant to complete and pass the sequential assessment. In this case, the appellant has submitted a sequential assessment and I have also taken into account the addendum to it submitted as part of Appeal A and Appeal B. The appellant has discounted two sites which are sequentially more preferable on the basis of size.

However, these two sites are not significantly smaller or larger than the space being used for office purposes in the appeal property. The appellant has not provided me with any reasonable evidence to demonstrate why there is a specific need for about 50 square metres of office space and why sequentially preferable sites which are respectively about 9 square metres larger and 6 square metres smaller are not suitable. In considering this matter, I note that paragraph 24 of the National Planning Policy Framework (the Framework) states that "*applicants and local planning authorities should demonstrate flexibility on issues such as format and scale*".

8. The appellant argues that even if the above properties were suitable in size terms, they would not be suitable in so far that he needs to be located so that he can immediately be on hand to care for or assist his elderly mother who lives in the appeal property. He indicates that a nine minute drive time would be too much in these circumstances. I note that there is a stair lift in the appeal property and that there is a panic alarm on the upper floor. However, I have not been provided with any evidence explaining the health conditions relating to the appellant's mother or indeed what particular emergencies might mean that it is necessary for the appellant to be permanently and immediately on hand during business hours.
9. On the evidence that is before me, I conclude that the sequential test is not passed. In locational terms, there are sequentially more suitable and available sites which could accommodate the office use. The appellant's contention that he needs to be close to his mother to deal with a possible emergency does not outweigh or alter this conclusion. I acknowledge that the business does not include any "cold callers" and that visits are made by appointment only. Nonetheless, if the business were located within one of the sequentially more preferable sites, it is more likely that any such visitors would also seek to make use of the town centre from a linked trips point of view. I conclude that as the sequential test has not been passed, there would be unacceptable harm caused to the vitality and viability of the town centre. Furthermore, and in any event, paragraph 27 of the Framework states that "*where an application fails to satisfy the sequential test it should be refused*".
10. For the reasons outlined above, I conclude that use of the appeal property as a town centre office use would fail to accord with the town centre vitality and viability aims of Policy CS12 of the adopted Rotherham Core Strategy 2014 and the Framework.

Character and living conditions

11. In respect of Appeals A and B, the office space is confined to two rooms on the ground floor of the premises. On my site visit I was able to see that there were 3 desks in the front room and 4 desks in the back room. According to the appellant, there are five people employed in the business comprising the appellant who also lives next door at No 20 Orchard Croft, the appellant's son, a design apprentice and two contract designers. The remainder of the appeal property is being used by the appellant's mother as her main residence.
12. There is space on the drive associated with the appeal premises to park four cars and there is also a small parking bay opposite the site on Orchard Croft. On my site visit, three vehicles were parked on the drive and the

parking bay opposite was in use but the vehicles belonged to the appellant's agent and the Council's representative. My site visit was of course only a snap shot in time and so I cannot be sure that activity and parking levels were typical.

13. The appeals are made on the basis that visitors to the property are strictly on a "by appointment" basis and that there are no direct sales to the public. The appellant says that stationary is delivered once per month and that *"new projects are not being actively sought by the appellant due to pending retirement"* which would be in three years' time.
14. I note that the appellant considers that a temporary planning permission should be allowed so that the use can be assessed as a trial run. However, the use in question has been in operation for some time and those that live in the area have had an opportunity to make comments in respect of both the planning application and Appeals A and B. I have considered the comments made by other interested parties and note that concerns have been raised about the effect of the development upon the character of the residential area and the living conditions of the occupiers of neighbouring properties in terms of vehicular and pedestrian comings and goings and on-street car parking. However, these comments have not been substantiated by means of objective evidence (e.g. diaries of activities and movements). That said, it would be unusual for local residents to raise concerns if there had not been at least some impact upon what is a relatively peaceful residential cul-de- sac.
15. The engineering business involves five people and only the appellant's mother lives in the dwelling part of the mixed use. Given that the dwelling is occupied by the appellant's mother, I consider that it is reasonable to conclude that the number of residential comings and goings associated with residential use of the premises would likely be lower than for other dwellings in the cul-de-sac where more people are likely to occupy such properties. Had these been the only matters that I had needed to take into account, I am satisfied that the proposal would not cause significant harm to the living conditions of the occupiers of neighbouring properties (including on-street car parking provision) and the character of the area. Indeed, the intensity of the use would have been capable of being controlled by planning conditions including controls relating to the number of employees occupying the premises, confining the office use to the two rooms only and an hours of use condition for the office. A temporary and a personal planning condition could also have been considered.
16. Notwithstanding the above, I have not been provided with enough information relating to the frequency and numbers of client appointments/visits. In the absence of further and very detailed information relating to the number and frequency of client appointments and visits, I am unable to reach a properly informed conclusion relating to the overall effect of the proposal upon the character of the area and the living conditions of the occupiers of neighbouring residential properties in respect of vehicular and pedestrian comings and goings and on-street car parking demand.
17. I consider that information relating to customer appointments is fundamental to the determination of the acceptability of the principle of the

development and consequently I do not consider that a temporary planning permission would be appropriate. Even if I had been provided with such information, I do nonetheless have my doubts about whether it would have been possible to impose a planning condition which would restrict such visits and also accord with all of the paragraph 206 Framework planning condition tests.

18. For the reasons outlined above, I conclude that I do not have sufficient information before me to determine whether use of the premises as a mixed office and residential use would have a significantly detrimental impact upon the living conditions of the occupiers of neighbouring residential properties and the character of the area. Consequently, I am unable to properly assess the development against the amenity and character aims of saved Policies ENV 3.7 and HG1 of the Rotherham Unitary Development Plan 1999.

Overall conclusion on Appeal A (ground (a)) and Appeal B

19. The appellant has failed to pass the sequential test and I have insufficient information before me to determine whether material harm would be/has been caused to the living conditions of the occupiers of neighbouring residential properties and the character of the area. Even if I did have more information relating to prior appointment visits, this would not have overcome or outweighed the failure to pass the sequential test.
20. I note the appellant's reference to a sign which suggests that there is another local business in the area, but I have not been provided with any details relating to such a use. On my site visit, I walked Manor Road as well as Orchard Croft and I could not see any visible evidence of commercial premises. In any event, I have reached my conclusions on the main issues on individual planning merits: the existence of another business in the locality would not outweigh my overall conclusion on the main issues.
21. I acknowledge that use of the appeal property for business purposes does enable the appellant to be close to his mother. However, this is not in itself sufficient to justify granting planning permission on a three year basis when there is clearly identified harm and conflict with the development plan and the Framework. In addition, I note that the appellant lives next door to the appeal property and so there will be times when he is close to her. None of the other matters raised by the appellant alter or outweigh my overall conclusions relating to the deemed planning application (Appeal A) and the Appeal B.
22. I therefore conclude that planning permission must therefore be withheld for continued use of the property as a mixed office and residential use and the ground (a) appeal (Appeal A) should fail. For the same reasons, I conclude that Appeal B should be dismissed.

Appeal A – ground (f)

23. An appeal on ground (f) makes the claim that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be

constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

24. The appellant considers that the requirements of the notice are excessive and contends that a temporary planning permission (including the imposition of planning conditions) should be imposed. I have considered this matter as part of the ground (a) appeal above and have concluded that a temporary planning permission would not be appropriate or acceptable in planning terms. I conclude that I do not consider that there are any lesser steps than those required in the corrected notice that would remedy the breach of planning control.

25. For the reasons outlined above, the ground (f) appeal fails.

Appeal A – ground (g)

26. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

27. The appellant has referred to a period of four weeks to comply with the requirement of the notice. However, the notice actually requires compliance within 3 months. The appellant considers that a period of six months is needed in order to allow the business to relocate and to notify clients and suppliers of the change of address.

28. I do not consider that an extended period would be reasonably needed in order to notify clients of a change of address. The appellant has indicated that he will not be taking on any new clients and, in any event, it is a relatively easy and speedy task to notify clients using either the telephone or email. I have found that there are sequentially suitable and available sites which the office use could occupy.

29. On the evidence that is before me, I consider that a period of three months is a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to bring this inappropriate and harmful development to an end and the interests of the business, the employees and the customers.

30. For the reasons given above, I conclude that the compliance period in the notice is reasonable. The appeal under ground (g) therefore fails.

Daniel Hartley

INSPECTOR