
Appeal Decision

Site visit made on 1 May 2018

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2018

Appeal Ref: APP/G4620/C/17/3181054

The land and premises at Haliburton House, Hall Street South, West Bromwich, West Midlands B70 6BN

- 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 C Mahne, 1878 Property Ltd against an enforcement notice issued by Sandwell Metropolitan Borough Council.
- The enforcement notice was issued on 28 June 2017.
- The breach of planning control as alleged in the notice is without the required planning permission, the material change of use of the first and second floors of the Land from vacant offices to multiple units of residential occupation (sui generis), shown hatched black on the attached plan ("Unauthorised Use").
- The requirements of the notice are:
 - 5.1 Cease the Unauthorised Use at the Land
 - 5.2 Remove from the first floor of the Land all baths and showers
 - 5.3 Remove from the first floor of the Land two of the three kitchens and two of the three lounge facilities
 - 5.4 Remove from the second floor of the Land all baths and showers
 - 5.5 Remove from the second floor of the Land one of the two kitchens and one of the lounge facilities
 - 5.6 Remove all washing machines from the Land
 - 5.7 Remove from the Land all materials and debris arising from compliance with steps 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 above.
- The period for compliance with the requirements is:
 - 6.1 Six 6 months after this notice takes effect in respect of step 5.1.
 - 6.2 Nine 9 months after this notice takes effect in respect of steps 5.2, 5.3, 5.4, 5.5 and 5.6
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice upheld with correction.

Procedural Matter

1. A site visit was arranged for 12.00 on Wednesday 9 May 2018. The appellant's agent was informed about this in a letter dated 30 April 2018. On the day of the site visit neither the agent nor any other representative for the appellant met the Inspector at the site and the Inspector had not been advised of any other arrangements. The Inspector was met at the site by a representative from the Council who advised that there was an office inside the building. The Council Officer and Inspector entered the building and were met by a tenant who informed them there were no offices only bedrooms. The Planning Inspectorate telephoned the agent but obtained no reply. The visit was then aborted.

2. Paragraph B.9 onwards of the Procedural Guide: Enforcement Notice Appeals, England¹ states that visits to the appeal site are normally carried out to enable the Inspector to assess the impact of the development on its surroundings. In this case the appeal has been made solely on ground (f) and the Procedural Regulations² permit a decision to be made taking into account only such written representations as have been submitted within the time limits. Having looked at the building and its surroundings from the public domain, I am satisfied that a second visit is not necessary and I am content that I have all of the evidence to enable me to make a decision taking into account only the written representations.

The Enforcement Notice

3. In Part 5 'What you are Required to Do' step 5.4 and part of step 5.5 appear twice. I will correct this typographical error by deleting the duplicated requirements. There would be no injustice or prejudice to either party if I were to do so as the requirements remain.

The appeal on ground (f)

4. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173(4) of the Act and are to remedy the breach of planning control (s173(4) (a)) or to remedy injury to amenity (s173(4)(b)). Having regard to the requirements in the notice it is clear that the purpose of the notice is to remedy the breach.
5. The appellant considers that the requirements of the notice are excessive because having secured planning permission for the upper floors to be used as offices he wishes to promote the property as a bike friendly environment and thus there is a need to retain the showers, kitchens and communal areas. The appellant argues that providing these facilities will make the property more marketable to potential tenants and a more attractive place in which to work.
6. However, case law establishes that it is not excessive to require the removal of all items introduced to facilitate the unauthorised use (whether or not they amounted to development in their own right and whether or not they could have been permitted development) as part of the requirements of the notice and to require the land to be restored to its condition before the breach took place.
7. The evidence before me indicates that the baths, showers, kitchens and lounges were all installed in order to facilitate the unauthorised use. I acknowledge the appellant's comments regarding the works, financial investment and the need for sufficient income to repair/maintain this listed building. However, whilst I accept it is not unreasonable for an office building to provide a kitchen, a lounge area and showering facilities for those cycling to work, I have been provided with no evidence regarding the potential number of offices/employees to show that the number of baths/showers as indicated on the proposed floor layout plans are necessary. Given the size of the building the number indicated on the proposed layout plans appears excessive.

¹ Published 23 March 2016

² Town and Country Planning (Enforcement)(Written Representations Procedure)(England) Regulations 2002, Rule 10

8. I therefore conclude that the steps are not excessive to remedy the breach of planning control and the appeal on ground (f) fails.

Formal Decision

9. It is directed that the enforcement notice be varied by the deletion of the entire duplicate requirements at the bottom of the second page of the enforcement notice by deletion of the words "5.4 Remove from the second floor of the Land all baths and showers" and "5.5 Remove from the second floor of the Land one of the two kitchens and one of".
10. Subject to the above correction the appeal is dismissed and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR