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## Appeal Decisions

Site visit made on 26 November 2018

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 07 December 2018**

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**Appeal Refs: APP/C3240/C/18/3199253, 3199254, 3199255  
Cleveland Arms, Cotwall Road, High Ercall, Shropshire, TF6 6AE**

- 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 Act").
  - The appeals are made by Mr John Hickinbottom (3199253), Ms Susan King (3199254), and John Charles Homes Limited (3199255) against an enforcement notice issued by the Telford and Wrekin Council.
  - The enforcement notice was issued on 2 March 2018.
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land from public house (Use Class A4) to a residential dwelling house (Use Class C3).
  - The requirements of the notice are:
    1. Cease the use of the land as a residential dwelling house, except for residential occupation ancillary to the use of the land as a public house
    2. Remove from the land all residential items and paraphernalia currently stored in the former bar/restaurant area on the ground floor of the property.
  - The period for compliance with the requirements is 6 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(b),(c) and (f) of the Act.
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### Decision

1. The appeals are dismissed and the enforcement notice is upheld.

### Procedural Matters

2. The appeal was lodged on ground (c) only. However, part of the appellants' case is that the existing use of the building as a public house (PH) has only temporarily stopped while structural works are being carried out to the building. On that basis it is argued that if the lawful use as a PH has not permanently ceased, then the residential use of first floor of the building remains ancillary to the PH use while those works continue. I consider that this argument properly falls to be considered as an appeal under ground (b); that the change of use to a residential dwelling house has not occurred as a matter of fact.
3. The Council's detailed case, made clear in their statement and appendices, is that the change of use alleged has in fact occurred, and as such also constitute a breach of planning control. It would not therefore prejudice the Council's case for me to also consider the appeal on ground (b) in addition to ground (c).
4. The appellants also argue that the requirement to cease using the building for residential use, other than as ancillary to the use as a PH, is "too severe"<sup>1</sup>.

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<sup>1</sup> Appellants' Final Comments, paragraph 4.38

Although an appeal was not lodged on ground (f) - that the requirements of the notice are excessive, it would not prejudice the Council's case if I were to take the appellants' arguments into account, given that the Council's case<sup>2</sup> sets out their position that the requirements are necessary in order to remedy the breach of planning control.

### **The appeal on ground (b)**

5. This ground of appeal is that the "matters alleged" at Section 3 of the notice (the change of use from a PH to a residential dwelling house) has not occurred as a matter of fact. The burden of proof in a ground (b) appeal falls to the appellant, and the test of the evidence is on the balance of probability.
6. The appellants' statement records the long history of the appeal building as a PH, and there is no dispute between the parties that the lawful primary use of the property is as a PH with residential use being ancillary to that use.
7. The appellants purchased the PH in 2013. It operated and traded as a PH with the appellants occupying the upper floor as their residence until 3 January 2016, when it closed and ceased trading. The appellants say this was necessary due to serious structural defects that had resulted largely from inappropriate works of alteration that were carried out in 1972. At the time of my visit to the appeal site I saw that the ground floor of the PH had been largely stripped out, toilets removed and floor dug out, and numerous acrow props had been deployed.
8. Whether all the works carried out thus far, and those identified as required in the detailed technical survey and documents submitted by the appellants, are fully justified and necessary is not a matter that is critical to my decision. That is because all that information in relation to structural stability only explains *why* the active use of the building as a PH ceased in 2016, and *why* since then the building has only actively been used for residential purposes. Hence, it does not provide evidence that the alleged change of use did not occur, rather it evidences when a change in the use of the building did occur.
9. Short periods of time in which a primary use is temporarily interrupted by another use would not necessarily result in a *material* change of use, for example due to the carrying out of internal building/refurbishment works. However, in this case there has been no active use of the building as a PH, and only a residential use, for almost three years. In my view that period of time goes well beyond what might reasonably be considered to be an interruption or temporary. Moreover, given that there is no extant planning permission for any other use of the building, together with the appellants' own evidence in respect of a lack of financial viability for carrying out further works in order to restore the PH use, it seems to me that the non-active use as a PH is likely to continue indefinitely.
10. The residential use continues in the first floor of the building. An area of the first floor landing now serves as the appellants' kitchen. Although at the time of my visit to the appeal site the ground floor PH kitchen did not appear to be in use by the appellants, the Council's evidence<sup>3</sup> is that it had previously been used by the appellants as part of their residential use of the building. The residential use of the ground floor now appears to be limited to providing the

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<sup>2</sup> Council's Statement, paragraph 4.38

<sup>3</sup> Council's Statement, paras. 4.6, 4.7, 4.14 and appendices 3, 4, 10

appellants' means of access to and from their accommodation at first floor via the internal staircase. Even if there were no active residential use of the ground floor, it is clear that the only use of the building is for residential purposes.

11. The only residential use of the building which could lawfully take place would be a residential use *ancillary* to the main use as a PH, as previously existed before 3 January 2016. However, given the considerable length of time during which there has only been an active residential use of the building, with no active use as a PH, the residential use is no longer an ancillary use; it has become the sole and primary use of the building.
12. Given these factors I conclude on the balance of probability, and as a matter of fact and degree, that the use of the building has changed from a PH to a residential dwelling house.
13. The appeals on ground (b) must therefore fail.

### **The appeals on ground (c)**

14. This ground of appeal is that the matters alleged at Section 3 of the enforcement notice, if they occurred, do not constitute a breach of planning control. The onus of proof in a ground (c) appeal is on the appellants and the test of the evidence is on the balance of probability.
15. I have already found under the ground (b) appeal that the alleged change of use has occurred. The change of use of the appeal building to use as a residential dwelling house is *materially* different in character and effect from its use as a PH. The change of use from one to the other is therefore a "material change of use" and constitutes "development" as defined at Section 55 of the Act.
16. Planning permission is required for the development. However, there are no permitted development rights to make such a change within the GPDO<sup>4</sup>, and no planning permission has been granted by the Council.
17. Consequently, the making of a material change of use from PH to residential dwelling house amounts to "development". Since the development has been carried out without the required planning permission it thereby constitutes a breach of planning control.
18. The appeals on ground (c) therefore fail.

### **The appeals on ground (f)**

19. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
20. The appellants argue that the first floor could be reconfigured so as to make it a self-contained unit rather than being forced to lose their home, and that if unoccupied the building would be vulnerable to crime. Also that there would be no on-site risk management of the property with regard to its structural stability and safety.

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<sup>4</sup> Town and Country Planning (General Permitted Development) Order 2015

21. The requirements in Section 5.1 of the notice require the complete cessation of the residential use of the building, and Section 5.2 requires the removal of all residential items and paraphernalia from the ground floor of the building. Hence, it is clear from these requirements that the purpose of the notice is to *remedy the breach of planning control*. Given that is the purpose of the notice, the requirements cannot be excessive since any lesser steps would not fully remedy the breach of planning control.
22. I acknowledge the appellants' arguments in support of allowing some form of residential use to remain. However, the continued use of the first floor for residential occupation would require planning. It is not within the scope of a ground (f) appeal to grant such permission which is limited, in this case, to the question of whether the requirements exceed what is necessary in order to remedy the breach of planning control. For the reasons set out above I have found that they are not excessive.
23. I accept that the appellants' points that the requirements would deprive them of their *peaceful enjoyment* of the building and would *not strike a fair balance between the appellant's interests as property owners and the general interests of society as a whole*.
24. In this regard the rights and freedoms within the European Convention on Human Rights (ECHR) are enacted through the Human Rights Act 1998 (HRA). In circumstances where someone stands to lose their home as a result of an appeal decision, as in this case, it is likely to be a serious interference with their rights under Article 8, but it does not follow that this would be a violation of their human rights.
25. I have already found that the requirements in the notice are not excessive. Furthermore, in terms of the HRA I find that they are not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's statutory Development Plan; that being made and applied in the wider public interest.
26. The appeals on ground (f) therefore fail.

*Thomas Shields*

INSPECTOR