
Appeal Decision

Site visit made on 21 August 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2019

Appeal Ref: APP/M2270/C/18/3208001

**Land on the Ground Floor, 159A Silverdale Road, Tunbridge Wells,
Kent TN4 9HT**

- 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 D Cripps against an enforcement notice issued by Tunbridge Wells Borough Council.
 - The enforcement notice was issued on 22 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of a ground floor retail unit (A1) to use as a single dwelling (C3).
 - The requirements of the notice are to:
 1. Cease the residential use of the ground floor retail unit on the Land.
 2. Remove from the ground floor unit on the Land all domestic items, fixtures, fittings, personal belongings and furniture brought into the ground floor retail unit for the purposes of, and in connection with, the residential occupation.
 3. Remove the 4 vertical timber louvres located in the front window display of the ground floor retail unit.
 4. Remove all the resultant materials from compliance with Steps 1-3 above from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. The ground of appeal is that at the time the notice was issued, it was too late to take enforcement action. Section 171B(2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In order to succeed therefore, the Appellant needs to show that the breach has commenced a minimum of 4 years before the notice was issued (at least since 22 June 2014) with no material change thereafter. The relevant test is that of "the balance of probability" and the onus is on the Appellant to make out his case.
3. The appeal property comprises the front part of the ground floor of No.159 within a parade of shops. Before the change to a dwelling it was a funeral director's premises. The Appellant says the unit was first lived in by the

funeral director from September 2013 to 22 July 2014, followed by Mr and Mrs Szabo from 22 July 2014 to November 2017 and then latterly by the Appellant's son. At the time of my visit the dwelling was plainly occupied.

4. In support of his case, the Appellant has provided an email from a person who says he regularly visited the funeral director at this property from about September 2013 onwards. He says the funeral director was forced to move into the appeal premises owing to personal circumstances.
5. Whilst it describes the layout that I saw, it does not indicate whether, when the funeral director moved there, he was continuing to run his business from the property at the same time as living there. If he had been doing so then the change of use to a single dwelling would not have occurred until the funeral director's business ceased. If both uses had been operating together the premises would have been in a mixed use.
6. An appeal decision ref: APP/M2270/A/14/2225768 makes clear that the property was in use as a flat in March 2015. In addition, although the Inspector in that case had been told by the Appellant that the conversion had taken place in April 2014, the decision did not turn on that date and so no evidence would have been required to verify it.
7. The Council has provided a series of street view images. That dated September 2008 appears to show the property as a vacant shop, whilst those dated August 2012 and June 2014 depict it as a funeral director's premises with a sign written fascia, a sign written display window and views available into the premises. The photographs dated October 2014, May 2015 and July 2016 show the frontage much as it is now with signage removed and views into the property obscured (by blinds and louvres) – as one might expect to afford privacy were the unit in use as a dwelling. This suggests that the change to use as a dwellinghouse occurred sometime between June and October 2014.
8. That window of time seems further refined by the first registration of 159A Silverdale Road as a residential property for Council Tax purposes with effect from 22 July 2014. The Council says former tenants Mr and Mrs Szabo were liable for Council Tax from 22 July 2014 to 30 November 2017 and that they were also entered on the Electoral Register from the same date. Prior to that the property was not registered for Council Tax and there was no entry on the Electoral Register. The Appellant says Council Tax was being paid in June 2014 but that does not accord with the record provided at Appendix 2 to the Council's statement and the Appellant has not provided any evidence to support his claim.
9. Bringing together all the evidence available, it seems likely from the June 2014 photograph that a funeral director's business was still operating from the property on that date. Whilst the proprietor might have been living there as stated in the email provided for the Appellant; since it is said that he was 'forced' to move there due to personal circumstances, it is quite possible that the business was also still in operation as depicted in the photograph. Until the unit became used solely as a dwellinghouse, the four-year period for immunity from enforcement action would not have started to run. Whilst the Appellant questions the accuracy of the dates on the street view photographs, he has provided no evidence to demonstrate that they are inaccurate. Moreover, the Council Tax and Electoral Registry records provide clear evidence of use as a

dwelling from 22 July 2014 with later street view images suggesting the continuation of that use thereafter.

10. From the evidence available I conclude, on the balance of probability, that the use as a dwelling commenced on 22 July 2014 and has continued thereafter such that on the date the notice was issued, only three years and 11 months had elapsed and it was not, therefore, too late for the Council to take action against the use. The Appellant has failed to demonstrate otherwise. Why the Council did not take action at an earlier date since they were plainly aware of the use is not a matter before me. The law gives a period of four years within which to take action and I have found that the Council did take action within that time period.
11. For the reasons given above I consider that the appeal should not succeed.

B M Campbell

Inspector