

Appeal Decision

Site visit made on 23 September 2019

by John Whalley

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

Decision date: 02 October 2019

Appeal ref: APP/B3030/C/19/3223682

1 Home Farm Close, Kelham, Newark-on-Trent, Nottinghamshire NG23 5QB

- The appeal is made by Kelham Hall Limited under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Newark and Sherwood District Council.
- The notice was issued on 30 January 2019; reference 18/00400/ENF.
- The breach of planning control was: Without planning permission, the material change of use of the land from C3 dwelling house to commercial leisure accommodation, which constitutes a Sui Generis use.
- The requirement of the notice is:
 - A. Cease the use of the Land for commercial leisure lettings.
- The period for compliance with the requirement is 28 days.
- The appeal was made on grounds (b) and (c) as set out in the amended Act.

Summary of decision: The appeal is dismissed and the enforcement notice upheld

Appeal property

1. The appeal concerns the 5 bedroom detached house No. 1 Home Farm Close, Kelham. When seen during the appeal site inspection, it appeared that the property had just been vacated.

Note: this appeal decision runs contemporaneously with similar appeal ref: APP/B3030/C/19/3223683 that deals with the use of the house at 8 Home Farm Close, Kelham. The enforcement notices, the Parties involved, the issues and cases made were closely similar. However, a separate decision has been issued because separate enforcement notices were served on different areas of land.

The appeal on ground (b)

2. An appeal on ground (b) says that those matters, (as stated in the notice which may give rise to the breach of planning control), have not occurred.
3. This ground of appeal was introduced to deal with the somewhat unusual situation whereby what the Council said has happened has not in fact happened. In this case, the appeal on ground (b) was not correctly addressed. It was accepted that the house at 1 Home Farm Close had been used by the Appellants to provide short term accommodation since 2014.

Use was said to have been consistent during that time. The lettings had mainly been for use in association with the Appellants' adjacent wedding business at Kelham Hall and Country Park. The property was said to also be available for general tourism purposes.

4. It cannot therefore be credibly said that the use of No. 1 as set out in the enforcement notice allegation has not, as a matter of fact, occurred. The appeal on ground (b) must fail.

The appeal on ground (c)

5. The Appellants said No. 1 was ordinarily occupied by a single-family group. It was set up for domestic use as a family home with a self-catering facility. The use was domestic. No physical changes to the property had taken place to facilitate that type of occupation. There were no individual bedroom locks. The property was not, and never had been, let by the room as had been suggested.
6. The Planning Portal defines a dwelling or dwellinghouse as a self-contained building or part of a building used as a residential accommodation, and usually housing a single household. In my view, the use of No. 1 as a letting property for occupation in the manner described by the Appellant is outwith a normal residential use as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) at Class C3 dwellinghouses.
7. Class C3(a) covers use by a single person or a family, (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees, (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child. The other 2 subdivisions of Class C3, that is, Classes C3(b) and C3(c) cover groups of people living together.
8. Class C3 relates to places of residence. That is, where people live. It does not include properties let for short term occupation to individuals, families or groups of people who live elsewhere; as 1 Home Farm Close is used.
9. Section 55 of the Act states that "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. In my view, the dwelling at 1 Home Farm Close has undergone a material change of use from its undisputed C3 lawful use that required planning permission. The appeal on ground (c) fails.

FORMAL DECISION

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

John Whalley

INSPECTOR