



Appeal Decision

Site visit made on 22 November 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/G4620/C/19/3223239 & 3223240

54 Crawford Avenue, Smethwick, B67 6RT

- 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 1990 Act").
- The appeal is made by Naveed Sanallah and Sanallah Nadeem Sani ("the Appellants") against an Enforcement Notice issued by Sandwell Metropolitan Borough Council ("the Council").
- The Enforcement Notice was issued on 25 January 2019.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, a material change of use of the property from the current lawful use of C3 (Dwelling house) to an unauthorised mixed use of a dwelling house and a non-residential religious education centre ("Unauthorised Use").
- The requirement of the Enforcement Notice is to cease the unauthorised use at the property.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the ground set out in Section 174(2)(b) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice is upheld.

Procedural Matters

1. The Appellants appeal relies solely on Ground (b). Ground (b) is that the breach of planning control alleged in the Enforcement Notice has not occurred as a matter of fact. The onus of proof rests with the Appellants and they have to prove this on the balance of probabilities.

Background Matters

2. I do not intend to repeat all of the Council's evidence, but I note in particular that:
 - a) A Council Officer carried out a site visit and witnessed between 10 and 15 children attending No. 54 around 16:30 on 25 June 2018.
 - b) Another Council Officer carried out a site visit and witnessed five children attending No. 54 between about 16:25 and 16:30 on 29 June 2018.
 - c) On 13 August 2019 two Officers met the Appellants at No. 54. The Appellants confirmed that classes were taught at No. 54 for about 1 hour each day on Mondays to Fridays (inclusive). The Appellants were informed that planning permission was required for this.
 - d) The Council wrote to the Appellants on 20 August 2018 and requested that the unauthorised use should cease. An Officer also spoke with Solicitors representing the Appellants and explained their planning concerns regarding the unauthorised use.

- e) In late August and early September 2018 letters were submitted to the Council from parents of various children who attended the classes at No. 54 and their support for the work carried out by Naveed Sanaullah. The lessons were described as the teaching of Arabic / Quranic studies.
- f) In mid-September 2018 Council Officers explained to the Appellants' Solicitors that planning permission could be sought for the unauthorised use. The Solicitors confirmed in late September 2018 that planning permission would be sought but such an application did not materialise, and the unauthorised use continued.

Reasons – Ground (b)

- 3. The Appellants statement in support of the ground of appeal is set out in the appeal form dated 21 February 2019 and need not be repeated.
- 4. In summary, the Appellants deny running a religious school and claim that they have been targeted by spiteful and xenophobic neighbours. It is also suggested that their children's cousins visit them at No. 54, and this creates an impression of school children arriving at the premises. Further, they suggest that because their children wear traditional Muslim attire that neighbours have come to erroneous conclusions that there is a religious school being run from No. 54. The Appellants deny that other people's children are taught at No. 54 .
- 5. It is clear from all the evidence presented that children who are not living at No. 54 regularly attend those premises and are taught by Naveed Sanaullah. There is no suggestion that the activity of teaching the children is in anyway inappropriate – the Council's concerns are that the location of No. 54 within a quiet cul-de-sac is not an appropriate place for such activities for the number of children attending.
- 6. I therefore conclude that the Appellants have failed to show on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact.

Overall Conclusion

- 7. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice.

Formal Decision

- 8. The appeal is dismissed, and the Enforcement Notice is upheld.

Tim Belcher

Inspector