The Planning Inspectorate

Appeal Decision

Site visit made on 13 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2020

Appeal Ref: APP/X1925/C/19/3234786
Land at The Cabinet, High Street, Reed, Royston SG8 8HA

- 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 Richard Newman against an enforcement notice issued by North Hertfordshire District Council.
- The enforcement notice was issued on 18 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of a public house to a residential dwelling house.
- The requirements of the notice are to cease the unauthorised use of the public house as a residential dwelling house.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)[e] and [g] of the Town and Country Planning Act 1990 as amended.

Decision

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

Ground (e)

2. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required. Section 172 (2)(b) of the Town and Country Planning Act 1990 (as amended) requires that a copy of an enforcement notice be served (a) on the owner or occupier of the land to which it relates and (b) on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.

3. The appellant says that as the notice was not served on Philip Roy Newman, Rita Newman and Kate Laura Newman (the Newmans) who are trustees of the Newman 2004 Settlement Trust it cannot be regarded as having been properly served.

4. The Council argues that the Newmans are not proprietors of the property in their own right and that as the notice required cessation of the use only and no demolition or other works they were not materially affected by the notice. It is for the Council to decide who is materially affected, but they risk an appeal on ground (e) if they exercise their discretion wrongly and this is the basis of the ground (e) appeal in this case.

5. There is no dispute between the parties that Richard Kelly Newman (Mr Newman), who is named as the Proprietor on the Official copy of register of

title (the Title), was properly served the notice. Although a copy of the Planning Contravention Notice (PCN) is not available the Council has set out the questions which it contained and has provided a copy of the response to the PCN which confirms that Mr Newman identified himself as the owner.

6. In his response to the PCN Mr Newman answered 'N/A' to question 2 which was 'does anyone else have an interest in the property (i.e. Landlord/Mortgage Company)?'. Furthermore, Certificate A is signed by the agent acting for Mr Newman in relation to a number of applications to the Council which confirms that nobody except the applicant i.e. Mr Newman was owner of any part of the application site which is specified as The Cabinet, High Street, Reed.

7. The Council say that a restriction on the Title requires that the Cabinet cannot be disposed of unless one or more of the trustees of the Newman 2004 Settlement gives a certificate. There is no information to counter this assessment of the way in which the Title is restricted. Furthermore, there is no evidence to contradict the Council's view that the Newmans are not identified as proprietors of the property. On this basis the Newmans do not fall to be served with the notice under Section 172 (2)(b)(a).

8. The Council has exercised its discretion in not serving the Newmans with a copy of the notice on the basis of Section 172 (2)(b)(b). The fact that at least one of the Newmans would need to be involved in any disposal of the property could reasonably be regarded as an interest in the land, which the appellant argues means that the notice should have been served on them. However, Section 172 (2)(b)(b) also requires consideration as to whether or not the Newmans are materially affected by the notice. In this regard the appellant has provided no evidence to demonstrate that the Newmans would have been materially affected by the Notice.

9. I conclude that the Council has exercised its discretion correctly and that the requirement for the notice to be served on the Newmans has not been demonstrated. Consequently, the appeal under ground (e) fails.

Ground (g)

10. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that compliance with the notice by 19 February 2020 is too short because he is reliant on the Council determining current applications for listed building consent so that he can implement the works necessary to enable him to reopen the public house and occupy the domestic accommodation.

11. The notice requires that the unauthorised use of the public house as a residential dwelling house ceases 6 months from the date when the notice takes effect. The notice has not taken effect because the appeal has been submitted, consequently the compliance period has not commenced. Even if I were to dismiss the appeal and leave the compliance period at 6 months the use would not be required to cease until June/July 2020 not 19 February 2020 as believed by the appellant.

12. The notice requires the cessation of the use of the building as a dwelling. It does not and cannot require the use as a public house to resume. The appellant says that the only accommodation available to him is that which would form part of the public house use and that alterations which require listed building

consent are needed to provide those facilities. However, notwithstanding the length of time that the Council have been considering them, there is no guarantee that the necessary consents will be granted which would allow the alterations to be made.

13. Whilst noting the appellants intention to occupy the public house there is no certainty regarding this option and the appellant may have to consider alternative arrangements. In this regard the appellant has not shown that a compliance period of 6 months would be insufficient to allow him to make such arrangements, with or without any assistance from the Council.

14. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed, and the enforcement notice upheld.

Sarah Dyer

Inspector