



# Appeal Decisions

Site visit made on 17 June 2020

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 July 2020**

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**Appeal Ref: APP/D0650/C/19/3239348 (Appeal A) & 3239349 (Appeal B)  
21 St Annes Road, Widnes, Cheshire WA8 6RB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 'Act') as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs Louise Roberts (Appeal A) and Mr Gavin Roberts (Appeal B) against an enforcement notice issued by Halton Borough Council.
  - The enforcement notice was issued on 1 October 2019.
  - The breach of planning control as alleged in the notice is the unauthorised material change of use of the dwelling house and cabin situated in the rear garden and the use of the rear garden for a mixed use, comprising a child-minding business for up to 12 children.
  - The requirements of the notice are cease using the land which includes the dwelling house and the cabin in the rear garden and the use of the rear garden for the purposes of the child-minding business.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)[b], [c], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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## Formal Decision

1. The appeal is allowed on ground [g] and it is directed that the enforcement notice be varied by:
  - (i) The deletion of the words 'three' months in relation to the time period for compliance at section 6 and the substitution of 'six' months as the period for compliance.
2. I direct that the enforcement notice be corrected by:
  - (ii) The deletion of the words 'dwelling house and cabin situated in the rear garden and the use of the rear garden for' in section 3 of the enforcement notice and their replacement with the words 'property to';
  - (iii) In section 3 of the enforcement notice, after the words 'comprising a child-minding business for up to 12 children' the insertion of ' and residential use'.
3. Subject to the variation and corrections above, the appeal is dismissed and the enforcement notice is upheld.

## Procedural Matters

4. The appellant has appealed under grounds (b) and (f), however, from the evidence submitted it appears that the matters raised by the appellants constitute a hidden ground (c). Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. Although the

appellants did not initially appeal under ground (g), S176(1)(b) of the Act allows me to vary the terms of the enforcement notice. The parties have been given the opportunity to comment on the above matters through the appeal and I have taken their representations into account in my consideration of the appeal.

5. The appellants have made reference in their evidence to matters which are controlled by other legislation such as VAT, business rates and Ofsted guidelines. They have also raised concerns regarding the reasons for issuing the enforcement notice and the nature of the investigation carried out by the Council, including breaches of General Data Protection Regulations (GDPR). Whilst I have had considered the matters raised, the appellants have not appealed under ground (a) and so I cannot consider planning merits, nor can I consider matters which are beyond the scope of the appeal before me. The reason for instigating an enforcement investigation and the approach taken are matters for the Council. Although I have directed that the enforcement notice be corrected, I am not persuaded that a more diligent investigation would have avoided a need to serve the notice.

### **Matters concerning the notice**

6. Although the allegation refers to a mixed use, it only refers to the child-minding business and not the residential use of the dwelling. It is clear from the evidence before me and from my visit that the property continues to be used for residential purposes. I consider that the allegation should be corrected to include the residential use and that this can be done without resulting in injustice to the parties given the evidence put forward by both sides. I have also consider it necessary to correct the wording of the breach so that it is clear that the allegation relates to the property as a whole. I am satisfied that this correction can also be made without resulting in injustice to the parties.

### **Grounds (b) and (c)**

7. Grounds (b) and (c) are known as legal grounds of appeal. The appellant asserts that the Council has offered no evidence for any of the alleged harms. However, the appellant has not appealed under ground (a) so I cannot consider planning merits and policy considerations are not relevant.
8. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus of proof is on the appellants to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
9. The appellants confirm that Mrs Roberts is an Ofsted registered childminder and is approved to have a maximum of 12 children at the appeal site. Whilst it is disputed that 12 children are ever at the property at any one time, it is not disputed that childminding takes place at the property. Indeed, the appellants confirm that childminding commenced in April 2015 and has been in continual use since. Therefore, the breach has occurred as a matter of fact. Accordingly, the appeal under ground (b) fails.
10. An appeal made under ground (c) is made on the basis that there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development"). It is not disputed that the lawful

use of the appeal property is a C3 dwellinghouse. The appeal under ground (c) will turn on whether there is a material difference between a C3 dwellinghouse and the mixed use alleged.

11. Whether a change of use has occurred will be a matter of fact and degree, taking account of the particularities of the site and the nature of the activities being carried out. The appellants have raised concern regarding a 'lack of evidence' offered by the Council, however, in a ground (c) appeal the burden of proof falls on the appellant, with the standard of proof on the balance of probabilities.
12. The appeal site is a semi-detached property located in a generally residential area characterised by semi-detached dwellings with modest front and rear gardens. Although many properties along St Annes Road have some access to off-street parking, on-street parking demand was high at the time of my visit. Whilst this is just a snapshot in time, given the residential nature of the area and limited availability of off-road parking, I consider such demand is likely to be characteristic of the area.
13. The appellants state that at no point is any room at the property given over to exclusive use of the business. During my visit, I saw that the dwelling house was conventionally furnished with no rooms specifically set aside for child-minding. However, to the rear of the appeal property is a substantial wooden clad outbuilding (the 'cabin') which was laid out with pre-school sized desks and chairs, various pre-school play equipment and books, files, a worktop, white goods, a sofa and a toilet. An area outside the cabin was laid with a mix of paving slabs and synthetic grass with various pre-school play equipment set behind fencing and a gate, providing a degree of physical and visual separation from the dwelling.
14. The appellants advise that the cabin is available to their family and 3 children for their own enjoyment and is used by the minded children when available. I have been provided with a breakdown of the times that the rooms in the house, including cabin, are used for the business and/or family use. The business uses the property between 8am and 18:00 Monday to Friday. Whilst as an overall percentage of total hours across the week this would be less than 30%, it is a significant part of the day during the working week.
15. Whilst the cabin and some of the items inside may be owned by the family, the contents and layout of the cabin and outside area appeared typical of a childcare setting. Although not exclusively used by the child-minding business, the outbuilding was furnished to such an extent that I consider it is beyond what would occur in normal family use.
16. There is dispute over the exact number of children that are cared for at the property. The appellants state in their response to a Planning Contravention Notice (PCN) that the maximum number of children at any one time is 9 and that the average number of children per day is 6. The Council states that, during a discussion with a planning officer, it was advised that on most occasions there were no more than 9 children at the property and occasionally there would be 12, which would include 2-3 children being there as part of an after-school club. The appellants request that the Council's statement be disregarded unless it can provide recorded evidence. However, as indicated above, the burden of proof in this appeal is firmly on the appellants.

17. In addition to Louise Roberts, at least one full-time member of staff is employed at the premises. Whilst I accept that there are likely to be fluctuations in numbers of children attending the setting, I consider it highly unlikely that the business would employ a full-time employee if the average number of children being cared for was 6, since Louise Roberts is registered to care for 6 children.
18. There is a paucity of documentary evidence to substantiate the assertion made by the appellants regarding child numbers. Nevertheless, even with 6 children, given the modest size of the dwelling and garden, I consider the noise generated by the activity is likely to be greater than that a typical family would generate. The appellants have drawn my attention to Ofsted guidelines, however, such guidelines are not relevant to my consideration of the appeal.
19. Concerns have been raised by interested parties regarding noise levels, traffic and parking as a result of the alleged use. Whilst I note that the majority of residents consulted by the Council have not objected, this supports the Council's contention that there has been a material change of use at the property. Although noise monitoring and traffic surveys have not been carried out at the property, such investigations are not a prerequisite to establish whether a change of use has occurred or not.
20. The appellants state that two of their immediate neighbours have 4 cars at each property and that traffic attending the setting is relatively minimal. Whilst there are no parking restrictions along St Annes Road, there would be additional comings and goings generated by both the employee and by parents as children are dropped off and collected which would materially exceed what might be expected at a family dwelling of this size.
21. From the evidence before me, on the balance of probability, I conclude as a matter of fact and degree, there has been a material change of use of the dwelling house to a mixed use comprising a residential use and child minding use. In accordance with the Town and Country Planning Act 1990 (the 'Act') this constitutes development for which planning permission is required and is not permitted development. Accordingly, the appeal under ground (c) fails.

### **Ground (f)**

22. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As the requirement of the notice is to cease the child-minding use it is evident that the purpose of the notice is to remedy the breach.
23. The appellants assert that the requirement to cease use of the property to be unreasonable and over enforcing as there are other options available. The appellant suggests reducing the numbers of minded children at the property to 6. However, just reducing the number of children being looked after would not remedy the breach, which is to cease the child-minding use. The appellant has not appealed under ground (a) and so the planning merits of reducing the number of children cannot be considered, nor is it a matter for this appeal to determine what scale and number of children would constitute a material change of use requiring planning permission.

24. The requirements fall within the purpose of S173(4)(a) of the 1990 Act and are not excessive. Accordingly, the appeal under ground (f) fails.

### **Ground (g)**

25. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. The parties have been given the opportunity to comment on the implications of this on the appeal.
26. The appellants initially requested that the compliance period is extended to between 6 or 8 months to enable families to find alternative care provision. However, in their latest correspondence, they advised that, should the notice be upheld, it would be of no consequence to extend any period of time.
27. The Council advise that, given the current circumstances, it is of the opinion that a period of 12 months would be acceptable to enable consistency of care for key workers that may use the service; sufficient time for parents/carers to get to a position of a summer term for the next school year; and so that the appellants can get finances in order or find alternative commercial premises.
28. I am mindful of the disruption that compliance with the notice will cause to families whose children currently attend the childcare setting, particularly in light of the effect Covid-19. However, I am also mindful of the issues raised by the Council and interested parties regarding noise and traffic impact.
29. There is considerable uncertainty as to what the on-going effects of Covid-19 are likely to be. Whilst I note the comments of the Council, S173A(1)(b) enables local planning authorities to waive or relax any requirement of an EN notice and, in particular, extend any period specified in accordance with s173(9). Given the current uncertainty as a result of Covid-19, and having regard to the above matters, I consider a period of 6 months is reasonable and proportionate. I shall therefore vary the terms of the enforcement notice accordingly. In this respect, therefore, the appeal on ground (g) succeeds.

### **Other Matters**

30. The appellants state that they have sought mediation and partnership working with the Council and now seek such an approach through the appeal. However, this is not the role of the appeals process. An enforcement appeal is made on one or more of the grounds set out under section 174(2) of the Act and as such, I am bound in my consideration of the appeal.
31. The appellants raise concern regarding the implications of this appeal on the childcare offer in Halton. I have no substantive evidence that my determination of this appeal would adversely affect childcare provision in Halton. Furthermore, I have determined the appeal on its own merits on the basis of the evidence before me.
32. The appellants assert that the cabin was constructed under permitted development rights, as advised by the Planning Portal and the cabin manufacturer, Dunster House. However, the enforcement notice does not identify the construction of the cabin within the breach, nor does it require its removal. As such, I have not considered whether or not the construction of the cabin would have been development which is permitted by the Town and

Country Planning (General Permitted Development)(England)Order (the 'GPDO') 2015 (as amended).

**Conclusion**

33. For the reasons given above I conclude that a reasonable period for compliance would be six months. I shall vary the enforcement notice in respect of the time period for compliance but, subject to that variation, I dismiss the appeal and uphold the enforcement notice subject to the corrections I have outlined above.

*M Savage*

INSPECTOR