
Appeal Decision

Site visit made on 29 July 2020

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 29 September 2020

Appeal Ref: APP/J4423/C/20/3249273

Little Intake Farm, Woodhead Road, Grenoside, Sheffield, S35 8QD

- 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 Mark Boulby against an enforcement notice issued by Sheffield City Council.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission the (a) change of use of the building and land to residential use and; (b) unauthorised alterations to the building and land to facilitate the change of use of the building to residential use. The unauthorised alterations are specified in detail in the notice.
 - The requirements of the notice are (a) cease the use of the building and land for residential purposes; (b) to (h) *in summary*, remove the unauthorised alterations and restore the building to its previous condition; and (j) to (m) *in summary*, remove retaining walls, soil and imported material, restore the land to its previous condition and remove material from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (d)

2. On ground (d), the onus is on the appellant to demonstrate, on the balance of probability, that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. In this case, the appellant would need to show that the alleged use has been carried out in breach of planning control continuously for a period of four years prior to the date of issue of the notice i.e. prior to 21 February 2016. The planning merits of the development are not matters which I am able to consider.
3. The appeal site, known as Little Intake Farm, is in an isolated rural location surrounded by woodland. Within an area of some 2.6 ha stands a stone barn, a modern stable block and two large, modern sheds. The stone barn, which is the subject of the notice, was built over 20 years ago. It was badly damaged by arson in 2005 and repaired a year or so later. In 2014 an application for change of use of the land to a campsite was approved by the Council (ref: 13/03412/FUL). As part of this permission, the barn was to be converted into

- a campsite reception at ground floor, with a manager's flat on the two floors above. It is agreed between the parties that some works were carried out to the barn and that a campsite use commenced but that this permission was not lawfully implemented. The permission expired in May 2017.
4. The operational development set out in the notice appears to have been carried out more than 4 years ago on the evidence of the submitted photographs. However, this appears to have been carried out to facilitate the unauthorised use and the parties cases mainly address the material change of use to residential use.
 5. The appellant states that the first tenants, Michael Killeen and Lynda Taylor, moved into the barn on 23 December 2015 under a planned 10 year tenancy. However, due to ill health, they moved out and the appellant and his family moved in for security reasons; there was justified concern about further arson, vandalism and fly tipping. The next tenants, Shaun Ellis and Kirsty Champion, moved in from July 2017 to October 2018. The appellant subsequently moved back in, vacating his permanent home, as evidenced by the rental agreement for this other property. Finally, the current tenants, Andrew Chase and Jemma Wallis, moved in during July 2019 and remain in residence. Copies of the relevant tenancy agreements are provided in each case and photographic evidence and invoices show the installation of the necessary utilities.
 6. The Council's case relies largely on the evidence of the first tenants and of its officers' numerous site inspections and photographs. The first tenants say that they moved in on 29 January 2016 and vacated the building on 4 March 2016 because the building was not equipped for residential use and was deemed unfit for human habitation by the Council's Private Housing Standards Service. They state that the ground floor did not contain any residential fittings, and that there was no running water or gas or electricity in the building and no functioning toilet facility. Cooking was by way of a primus stove.
 7. These tenants made a claim in the County Court against the appellant for the return of unsecured deposit and rent paid to him for a property that was unfit and unsuitable for human habitation. This claim was dismissed and, whilst the reasoning for this judgement is not given, it tends to lend weight to the appellant's contention that the property was indeed habitable. The Council has not disputed this inference. Invoices show that the property was fully wired in December 2015 and connected to a generator. There appears to have been a water supply, pumped from the original farmhouse well. There are photographs of the micro kitchen and the portable gas heaters provided. There was a fitted w.c., which appears to have been useable, irrespective of whether or not its outlet was suitably connected to a septic tank.
 8. The appellant states that, on the departure of the first tenants, he and his family moved in until the second tenants moved in during July 2017. He provides a diary and I find it quite credible that it was essential for him to occupy the building for security purposes, given the past history of arson, fly tipping and the threat of theft or damage in this remote location. A number of letters from persons familiar with the site are supportive of this version of events.
 9. Council officers visited the site on 14 March 2016 but did not gain access to the interior of the building. I have seen no evidence that the Council's Private Housing Standards Service visited the building. From viewing through the

ground floor windows, the Council concluded there was no indication that the building was occupied. However, the Council's photograph of part of the interior of the ground floor (taken from outside) shows it to be substantially complete, with joinery, flooring and a central heating radiator fitted, and fully decorated. Although empty (apart from a bicycle in one of the rooms shown), this does not cast significant doubt on the appellant's contention that the residential accommodation, which was at that time mainly on the upper two floors, was in use.

10. The Council visited the site and took photographs on 28 June 2016 and 5 September 2017. Again, without gaining access to the interior of the barn, it was concluded that the building was not occupied. The submitted photographs (taken externally) show some storage of building materials in part of the ground floor and the appellant does not dispute that some building operations were continuing. However, these photographs shed little light on the use of the remainder of the ground floor and of the upper two floors.
11. The Council does not dispute residential occupation from September 2017 onward. However, the tenancy agreement with Messrs Ellis and Champion appears to indicate their occupation from July 2017.
12. The Council's external site inspections and photographs of 6 June 2018 and 18 June 2019 led it to conclude that the building was occupied for residential purposes on these dates. By these dates, the ground floor appears to have been furnished and in residential use. However, it is not clear why enforcement action was not initiated at either of those times against the use or against the operational development.
13. None of the personal statements submitted in this case by either party are provided in the form of an affidavit. However, it appears that the building was occupied for residential purposes at the outset of the 4 year period by Michael Killeen and Lynda Taylor. From the submitted evidence, it appears on balance that the property was suitable for residential use in that it met the *Gravesham*¹ test of providing for the main activities of day-to-day domestic existence. It also appears that, on the balance of probability, the barn was used for residential purposes continuously for four years from that date, initially on the upper two floors and, in later years, on all three floors.
14. The Courts² have held that it is not just the availability for the unauthorised use that is relevant in a case such as this but whether it is actually being put to that use i.e. could the Council have taken enforcement action at any time throughout the relevant four year period? In my view, the answer to this is in the affirmative.
15. On the basis of the evidence put before me, I conclude that the appeal on ground (d) should succeed.

B.S. Rogers

Inspector

¹ *Gravesham Borough Council v SSE and another* [1984] 47 P & CR 142

² *Islington LBC v SSCLG* [2020] EWHC 649 (Admin)