The Planning Inspectorate

Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2020

Appeal A Ref: APP/X1118/C/19/3240256
Appeal B Ref: APP/X1118/C/19/3240257
The White Hart Inn, Bratton Fleming, Barnstaple, Devon EX31 4SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Philip Milton against an enforcement notice ('the notice') issued by North Devon District Council.
- Appeal B is made by Mrs Helen Milton against an enforcement notice issued by North Devon District Council.
- The enforcement notice, numbered 10625, was issued on 10 October 2019.
- The breach of planning control as alleged in the notice is within the last four years, unauthorised material change of use consisting of the residential use of a public house.
- The requirements of the notice are: (1) Cease the use of the residential use [sic] of the public house building and the land edged red on the attached plan; (2) Remove the kitchen and cooking facilities from the residential unit known as The Apartment; and (3) Remove any rubbish or debris resulting from complying with steps 1 and 2.
- The period for compliance with the requirements is within nine months of the date when this notice takes effect.
- The appeal is proceeding on the grounds 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Procedural Matter

1. Given that both appeals were made on ground (d) alone, and the situation regarding the Covid pandemic, the parties were asked whether they had any objection to the appeal being taken forward without a site visit. Neither objected to this. As no party would be prejudiced by doing so, my decision has been reached on this basis.

The appeal on ground (d)

2. To succeed on this ground, the appellant must prove on the balance of probabilities that the use of the land alleged in the notice occurred on or before 10 October 2015 ('the relevant date') and continued for at least 4 years after the change without substantial interruption.

3. From the evidence before me, The White Hart (TWH) is a public house lying towards the centre of the village of Bratton Fleming. This ceased trading in 2012 and was vacant until bought by the appellants in 2014.

4. It is reported that it was in an "abandoned state" when bought. However, this does not necessarily equate with its use being abandoned in line with

established case law in *Hartley v MHLG* [1970] and *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40. In the latter, the Court suggested four criteria for abandonment: the period of non-use, the physical condition of the land or building, whether there had been any other use, and the owner's intentions as to whether to suspend the use or to cease it permanently. In this regard, I note the financial difficulties that have been encountered by those running the pub over the years. However, I have not been provided with evidence, based on the tests in *Castell-y-Mynach,* to find that the use of the property as a pub (Use Class A4[1]) was abandoned when the appellants purchased it.

5. The appellants sought to develop the site and their application for planning permission was refused. TWH was registered as an Asset of Community Value in 2016, but this lapsed. Both parties understand that a further application for registration as an ACV has been made.

6. To avoid the property being empty and vulnerable, the appellants decided to let part of the property for residential purposes. They describe the two units that were so let on the first floor of TWH as the Flat and the Apartment. According to the Council, the latter was previously known as the Bedsit, but I use the title the Apartment for clarity.

7. Before looking at the evidence of the use of the residential units, it is important in cases such as this to identify the correct planning unit, using the established judgement in *Burdle v SoS for the Environment* [1972]. Determining the planning unit allows an assessment to be undertaken as to whether and, if so, when a material change of use has occurred.

8. Parties agree that the Flat was used as accommodation by the pub's Manager. It was, therefore, ancillary to the use of the pub. The Council's belief is that the Apartment was used as overflow accommodation ancillary to the pub. As this has not been specifically countered by the appellants, I take it to be the case. Following the terms of *Burdle*, I find that TWH was, in its entirety, a single planning unit until 31 July 2014.

9. The appellants' evidence shows the Flat was first let independent of the pub on this date. That is to say, a material change of use occurred prior to the relevant date. The judgement in *Swale BC v FSS & Lee* related to assessing the continuous nature of breaches of planning control involving changes of use. Amongst other things, it sets out that where there are gaps in occupation a decision must be reached on whether these are *de minimis*. During substantial breaks, that is to say breaks that are not *de minimis*, the continuous use would have been broken and in these periods the Council would have been unable to take enforcement action against the use.

10. I consider the break in the occupation of the Flat for 3 weeks in March 2015, during a change in tenants, not to be substantial. The Council state, in paragraph 5.13 of its statement, that the Flat was empty for two months from May to July 2018; this was not challenged by the appellants in their final comments. Whilst, perhaps, at the upper end of a *de minimis* break, in the circumstances I again do not find this to be a substantial break.

[1] Town and Country Planning (Use Classes) Order 1987 (as amended)

11. Both, however, differ markedly from the 7-month break between 23 October 2016 and 15 May 2017 when a variety of upgrading works were carried out at TWH. Various reasons have been given for the length of this break - including the nature of the works involved, that the period during which those works were undertaken included the 2016 Christmas period, and that the "works were prolonged by the workmen engaged". Notwithstanding these reasons, this break was substantial. It did not equate to the sort of "fallow period" referred to in *Thurrock Borough Council v SSE* [2001]. Following the lead of the judgement in *Swale*, the Council would have been precluded from taking enforcement action against the breach during this period.

12. Although it was the intention of the appellants to continue to let the Flat after the work, the continuous nature of the breach was broken. As such, the required 4-year period for the Flat was not achieved.

13. An email[2] to the Council's Council Tax department, from Mr Milton, shows that from 23 April 2016 the Apartment was let as a self-contained residential unit. The evidence shows that a Mr Burrell rented both units with the intention of sub-letting one of them. Due to personal and health issues, he moved to the Apartment and gave up the Flat. In the email, Mr Milton states that prior to this date there was no kitchen in the Apartment.

14. The lack of a kitchen adds weight to the Council's assertion that the Apartment had been used as ancillary accommodation. It also points to the Apartment not being a self-contained unit until this time. Thus, the evidence shows on the balance of probability that its first use for residential purposes independent of the pub was after the relevant date. Therefore, a continuous material change of use of the Apartment for the required 4-year period cannot be demonstrated.

15. On the basis of the submitted evidence, it has not been shown that the residential use of TWH has been carried out for a continuous period of four years prior to the notice being issued. Therefore, the evidence before me does not show that, when the notice was issued, no enforcement action could be taken in respect of the breach of planning control.

Other Matters

16. My attention has been drawn to an appeal decision relating to an appeal against an enforcement notice at the 'Ring O' Bells' pub in Praxton[3]. Whilst this was submitted after the date for final comments, it was accepted in accordance with the guidance in paragraph 1.12 of the 'Enforcement Appeals: Procedural Guide' July 2020 as there are undoubted similarities between the 'Ring O' Bells' case and that which is before me.

17. However, notwithstanding these similarities, each appeal must be determined on its own merits. Therefore, the appeal before me does not turn on the 'Ring O' Bells' decision.

18. I note, however, that I share a concern expressed by the Inspector in that case regarding the wording of the Requirements of the notice. In the first of these, the Council requires the cessation of the residential use of the public house building. From the evidence before me, the established lawful use of the premises is a public house with ancillary living accommodation on the first

[2] 27 April 2016 - included in the Appellants' Appendix 5
[3] APP/X1118/C/19/3237425

floor. Therefore, the cessation of "residential use" could be interpreted as preventing any future residential use whatsoever. Were the pub to re-open, this could preclude the lawful use of the first-floor living accommodation for residential purposes ancillary to the primary use of the property as a public house.

19. I shall amend the requirement to specify that the residential use which must cease is such residential use as is unconnected with the use of the premises as a pub. This will prevent any misunderstanding, and I am satisfied that this will cause no injustice to either the Council or the Appellant.

20. There is, furthermore, a slight drafting error in this requirement where an extraneous "use of the" appears before the words "residential use of the public house…". This can be deleted without altering the intended meaning of the requirement, which has been readily understood in any event.

21. In reaching my findings I have been aware of the issues relating to the registration of the property as an ACV. However, it has not been demonstrated that this has had any bearing on the residential use of the property. That "tenants have been housed via the Council" is not relevant to this ground of appeal against the notice, which relates solely to the period that the Flat and the Apartment have been used. It is reported that the Council did not follow its enforcement protocol. This is a matter that lies outside the remit of the appeal process and would have to be taken up with the Council. The Council has not suggested that there has been any concealment, and I find no reason to find otherwise.

Conclusion

22. For the reasons given above I conclude that the appeal against the enforcement notice should not succeed. I shall uphold the notice with correction.

Formal Decision

23. It is directed that the enforcement notice be corrected by:

    • at paragraph 6 requirement 1, between the word "Cease…" and the phrase "…the residential use of…", deleting the words "the use of"

    and varied by:

    • at paragraph 6 requirement 1, adding the words "other than for purposes ancillary to the primary use of the premises as a public house" after the words "…the attached plan".

24. Subject to correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Roy Curnow

INSPECTOR