



Appeal Decision

Site visit made on 19 May 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal A Ref: APP/Z0116/C/20/3255015

Appeal B Ref: APP/Z0116/C/20/3255016

41 Alma Vale Road, Clifton, Bristol BS8 2HL

- 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 Mrs Louise Small against an enforcement notice issued by Bristol City Council ('the Notice').
 - Appeal B is made by Mr Alistair Small against an enforcement notice issued by Bristol City Council.
 - The enforcement notice, numbered 20/01892/F, was issued on 2 June 2020.
 - The breach of planning control as alleged in the notice is without the grant of planning permission the change of use of the ground floor and basement of the premises to domestic storage (C3).
 - The requirements of the notice are:
Cease the use of the premises for domestic storage; and
Completely clear the ground floor and basement of the premises of domestic and personal items. This includes pool table, picture frames, arm chair, tables, chairs, lamps, dismantled furniture, DIY items, paint tins, boxes of personal papers, television and stand, video recorder, video tapes, CD player, CDs, boxes of domestic items which contain books, toys, trophies, clothes, washing detergent. All food items to include tinned and jars of food, boxes of crisps, tea bags, ready meals.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) 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.
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Decision

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

Procedural Matters

2. Mr Small lodged another appeal against the Notice. Being a duplicate of his appeal here, he subsequently withdrew it.
3. The Appellants originally appealed against the Notice on grounds (d) and (g). By way of their submission dated 7 July 2020, they introduced a ground (c) appeal and withdrew the ground (d), ending their submission with "*the only appeals now in place are 3255015 and 3255016 and that they are each on grounds (c) and (g)...*".
4. In their submissions under ground (g), the Appellants questioned whether all of the stored material need be removed, given the planning history of the

property. This is an argument that falls to be made under ground (f). I have, therefore, treated this line of argument as a 'hidden' ground (f) appeal. As the Council had had an opportunity to comment on this point, I did not refer back to it. I consider that it was not prejudiced by this.

5. An appeal has been made by the same Appellants relating to the proposed change of use of 41 Alma Vale Road from D1 (Pre-School Care) to C3 Flat. As that appeal relates to a different matter to that which is the subject of the Notice, the decisions have not been linked and they are the subject of separate decision letters.

Reasons

6. The prevailing form of development on Alma Vale Road is of properties with several floors of accommodation above street level, and basements or semi-basements below street level. Many of these properties have commercial premises, retail or offices, at ground level with residential accommodation above. 41 Alma Vale Road lies within a short terrace where most of the properties are set out in this manner. It presents a shopfront to the road, though the lawful use of the appeal site is disputed.
7. The ground floor and basement of No 41 are in the Appellants' ownership, whilst the upper floors are not. Although their property was not in use for commercial purposes when I visited, the evidence shows them to have been previously in A2 office use. It is stated by the Appellants that there has been a change of use to a pre-school/after school children's facility; this is a matter I address, below. The appeal site is accessed via a recessed doorway, which also serves the upper floors of No 41. The room first entered, fronting Alma Vale Road, has a shopfront. It is loosely divided from a room with a window looking towards the property's rear yard. From that room, doors lead to a further small room and a flight of stairs to a basement that is entirely below ground.

Validity of the Notice

8. In their submissions of the 27 October and 30 November 2020, the Appellants set out their assertion that the Notice is invalid. In this regard, reference is made to letters that have been sent out by the Council, in which the date of issue is reportedly 34 April 2020.
9. I do not seem to have been provided with a copy of the letters. However, even if this date has been given, it does not seem to have affected the Appellants' ability to lodge an appeal. Furthermore, others have not been prejudiced as it is apparent that third parties have nonetheless been able to make comments.
10. That the Notice refers to the use of the property as falling within Use Class A2¹ (Financial and Professional) should not be interpreted as saying that is what the Appellants have applied for. It is a reflection of the Council's position regarding the lawful use of the property.
11. The content of the Notice accords with the requirements of s173 of the Act. It tells its recipients with certainty, and unambiguously, what has been done and what needs to be done to remedy this. For the above reasons, I do not find it to be invalid or a nullity.

¹ As defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)

Ground (c)

12. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. This is a legal ground of appeal, where the onus lies with the Appellants to prove their case on the balance of probability.
13. The Appellants' case in this regard is based on their assertion that the appeal site was not in Use Class A2² (Financial and Professional Services), as described in the Notice and therefore the Council's case is incorrect. They state that the lawful use of No 41 lies in Use Class D1³ (Non-Residential Institutions) as the result of a grant of planning permission in 2008⁴. The storage that was carried out was, they say, related to that D1 use.
14. It is common ground between the parties that the appeal site was put to the D1 use. It is further agreed that this was short-lived. It seems that the use ceased following complaints that were made to the Council regarding noise generated from the site and the use of the rear yard.
15. The Council's position is that there is doubt as to whether the D1 use was lawfully commenced, as pre-commencement conditions on the 2008 permission were not formally discharged. The Delegated Report states that sound-proofing was not installed and that this was a breach of a condition attached to the 2008 permission, as was the use of the yard.
16. Neither party has provided me with a copy of the 2008 permission. Without this, it is not possible for me to reach a conclusion on whether the condition referred to was a true 'condition precedent', which established case law would describe as going to 'the heart of the permission'. Non-compliance with such a condition could result in a permission not having been lawfully commenced. As I have said, it is for the Appellants to prove their case, and without the planning permission, together with information regarding such issues as compliance with its conditions and the date that the site was first used for D1 purposes, I cannot determine on the balance of probability that the 2008 permission was lawfully commenced in accordance with s56 of the Act. Thus, I find that the case that the property was in Use Class D1 and those goods stored there accorded with that use is unproven.
17. Therefore, for the reasons above, the ground (c) appeal fails.

'Hidden' Ground (f)

18. An appeal under ground (f) is 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.
19. The Appellants say that certain of the stored items that are referred to in the Notice relate to what they consider to be the lawful D1 use of the property. As such, they should not be required to be removed.
20. I have found, above, that it was not proven that on the balance of probability the lawful use of the land was within Use Class D1. Therefore, I have

² Ibid

³ Ibid

⁴ LPA reference 08/3151/F – see Council's Officer Delegated Report into planning application 20/01892/F

insufficient evidence to find that the items that the Appellants refer to in this ground (f) appeal relate to the lawful use of the land.

21. For this reasoning, the ground (f) appeal fails.

Ground (g)

22. An appeal made under this ground is that the period specified for compliance with the requirements of the notice is too short.

23. The appeal has been made on the basis of the impacts that the Covid-19 pandemic had on the Appellants' abilities to comply with the Notice. One of them has been ill and they care for elderly parents. They described themselves as a "shielding family". Furthermore, at the time that the Notice was issued, and the appeal made, companies that hired the vans that would be necessary for compliance were closed as a result of the Covid situation. They say the requirements are completely unreasonable.

24. The Appellants did not refer to a period for compliance in their appeal form. However, in their submissions dated 10 July 2020, they gave a date of 31 December 2020. This would equate to a compliance period of between 5 and 6 months.

25. When I visited the property, there was very little storage being undertaken in the ground floor rooms. Although there was more in the basement, it was not considerable. The Covid situation is much-changed since the appeal was made, and it is apparent that much of the stored material has been removed. Given these factors, I do not find that the case to extend the period for compliance has been successfully made.

26. For the above reasoning, the ground (g) appeal fails.

Other Matters

27. It is reported that the recollection of the Council's Officer differs from that of the Appellants. Whilst this might be the case, it is not pertinent to the grounds pled by the Appellants and I have not taken the Officer's comments into account. I have not had to address the third-party comments that were received, as they refer to matters of planning merit and are not relevant where there is no ground (a) case.

28. The site lies within the Whiteladies Road Conservation Area ('CA'). The Council did not refer to the effect that the unauthorised use has on the CA in its Reasons for Issuing the Notice. As there was no ground (a) appeal, the planning merits of the development, including its effect on the CA, have not been debated. Nonetheless, given the terms of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA ('the statutory test').

29. There has been no change to the exterior of the building, thus both its appearance and that of the CA is preserved. I have not been provided with any evidence to show that the use of land has an ill-effect on the character of the area, and this was my finding after visiting the site. Therefore, I find that the use of the building has preserved both the character and appearance of the CA, in accordance with the terms of the statutory test.

30. Whether effort, time and money should have been expended on this matter during a pandemic is a matter for the Council, rather than for me.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed.

Roy Curnow

Inspector