
Appeal Decisions

Site visit made on 23 August 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 27 August 2021

Appeal Refs: APP/R2330/C/20/3272358 & 3272359

Land at 266 Whalley Road, Clayton-le-Moors, Accrington BB5 5HE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeals are made by Mr Muj Ansar and Northwest Property Investment NW Ltd against an enforcement notice issued by Hyndburn Borough Council.
 - The enforcement notice was issued on 24 February 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the property from a commercial showroom (Class A1) to a residential development comprising of 12 self-contained flats (Class C3), and the installation of doors and windows onto external elevations materially changing the external appearance of the building.
 - The requirements of the notice are (i) Cease the use of the site for residential purposes; (ii) Remove the unauthorised alterations that have been carried out at the site. This includes but is not exclusive to the windows and doors that have been installed in the exterior of the building, the extended external platform at first floor level and the internal walls and bathroom fixtures and fittings; and (iii) Remove any resultant waste and rubble from the site.
 - The period for compliance with requirement (i) is one month, with requirement (ii) is four months, and with requirement (iii) is five months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so 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 appeals are dismissed and the enforcement notice is upheld.

Reasons

The ground (b) appeals

2. The two storey appeal building was formerly in use as a commercial showroom. Works have been carried out to convert the building into twelve residential units. The works have not been completed and residential occupation has not commenced. However, the building has been subdivided into the twelve units and each unit is laid out to include a bathroom and a kitchen. Some bathrooms and kitchens have been fitted and first fix electrical work to provide power and light to all units has been largely completed. The works are sufficiently far advanced to conclude that the material change of use of the building set out in the enforcement notice has occurred. The ground (b) appeals thus fail.

The ground (c) appeals

3. The material change of use of the building that has occurred is not development permitted under any Part of The Town and Country (General Permitted Development) Order 2105 as amended, and planning permission has not been granted for the development. The ground (c) appeals thus fail.

The ground (e) appeals

4. The Appellants maintain that the enforcement notice was sent to the wrong persons and to the wrong addresses. Section 176(5) of the Act provides that where it would otherwise be a ground for determining an appeal under section 174 in favour of the Appellant that a person required to be served with a copy of the enforcement notice was not served, this may be disregarded if the Appellant has not been substantially prejudiced. The Appellants have made appeals and have therefore not been prejudiced in any way. The ground (e) appeals thus fail.

The ground (f) appeals

5. A planning application has not been submitted for the change of use of the building or for any operational development, and any indication by a Council Officer that an application would be successful would have been an informal opinion only. This factor is, in any event, irrelevant. The requirements of the notice are the minimum necessary to remedy the breach of planning control. The requirements are, therefore, not excessive and the ground (f) appeals thus fail.

The ground (g) appeals

6. No details have been provided to indicate that the building is tenanted or that the Appellants are unable to comply with the requirements of the enforcement notice. A breach of planning control should be remedied as soon as is reasonably possible. The periods for compliance with the requirements of the notice are reasonable and the Appellants have not, in any event, stated what they consider would be reasonable compliance periods. The ground (g) appeals thus fail.

John Braithwaite

Inspector