



Appeal Decisions

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 8th March 2022

Appeal A Ref: APP/N4205/C/21/3286393

Appeal B Ref: APP/N4205/C/21/3286425

8 Back Chapel Street, Horwich, Bolton, BL6 6BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Bethany Sah and Appeal B is made by Mr Sah against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice was issued on 22 October 2021.
 - The breach of planning control as alleged in the notice is : the unauthorised material change of use of the premises from Class B8 (storage) to Class C3 (residential use as holiday let).
 - The requirements of the notice are to:
 - (i) Permanently cease the use of premises as a residential holiday let and
 - (ii) Permanently remove from the premises all equipment associated with the use of the site as a residential holiday let. Such as all kitchen and bathroom facilities including the cooker, sink, hob and breakfast bar, WC, wash basin, shower cubicle, and shower rail and return the premises to its authorised use
 - The period for compliance with the requirement is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (the Act) as amended.
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Decisions

1. It is directed that the enforcement notice is corrected as follows :
 - 1) Deleting the allegation in full and replacing it with:

“ The unauthorised material change of use of the premises from Class B8 (storage) to residential use as a holiday let.”
 - 2) Deleting the word “ Permanently” from both requirements.
 - 3) Deleting the words “ and return the premises to its authorised use” from requirement (ii)
2. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

3. The appeal is being made under grounds (b) and (c) only which are referred to as the legal grounds. As no appeal is made under ground (a) for a grant of planning permission, the planning merits of the holiday let are not matters that

are within the remit of this appeal. In the absence of a ground (a) appeal with no assessment of the location or planning merits of the appeal property needed for grounds (b) and (c), a site visit was not necessary.

Background Matters

4. Prior to the appellants' ownership, a planning application for use as a dwelling was refused on the 2 March 2007 due to insufficient information and issues regarding living conditions of neighbouring occupiers.
5. The appellants acquired the appeal building for conversion to holiday let use in 2019. They submitted, but subsequently withdrew, a prior approval application for a change of use to dwelling in February 2021. A subsequent planning application for an extension to the rear and a change of use to dwelling was considered to be invalid by the Council and returned on the 12 July 2021.

The Notice

6. The allegation refers to a change to residential use as a holiday let and the appellants, despite lodging a ground (b) appeal, do not dispute that the appeal property is being let out to holiday guests. I had considered amending the allegation to be more descriptive but the current allegation in terms of the use is clear. However, as there is no need to specify a Use Class and holiday lets can fall within a sui generis use, I will delete the reference to Class C3 so that the allegation matches the requirement which is to cease the use as a residential holiday let.
7. There is no ground (d) appeal before me based upon the immunity period in the notice which is said to be 10 years. Whilst a shorter period of 4 years can apply in relation to Class C3 uses as the appellants only purchased the vacant appeal property for conversion to holiday let use in 2019, that use or any kind of residential use has not been ongoing for 4 years prior to the issue of the notice in 2021 even if that shorter period applied. I do therefore consider that I can make this amendment without causing injustice to the parties.
8. The second requirement includes to "return the premises to its authorised use." However, cessation of the holiday let use and removing the associated equipment would achieve compliance with the notice. The word "Permanently" is superfluous in both requirements and can be removed. I am satisfied that these amendments do not cause injustice. I will amend the notice and requirements accordingly.

The appeal under ground (b)

9. An appeal under ground (b) is that a breach of planning control has not occurred as a matter of fact. All of the information provided by the appellants who are unrepresented under this ground is about the Council's reasons for issuing the notice and how the appellants considers that the holiday let use complies with the Council's policies. However, in the absence of a ground (a) appeal, these are not matters that I can consider within this appeal.
10. The sole issue for consideration under ground (b) is whether the breach of planning control alleged which is use as holiday let has occurred as a matter of fact. The appellants do not dispute that the use of the appeal property is as a holiday let and for example state that the holiday let adds value to local area. Third parties have also provided details of the letting as a Airbnb property. As it

is not disputed that the holiday let use has taken place, the breach of planning control has occurred as a matter of fact. The appeal under ground (b) therefore fails.

The appeal under ground (c)

11. An appeal under ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. A breach occurs when development in this case, the material change of use, takes place without planning permission and the onus is on the appellants to show that there has not been a breach. Section 57 of the Act then states that planning permission is required for development subject to listed exceptions. Section 55(1) of the Act set out what constitutes development and it includes a material change of use.
12. Whilst the appellant has referred to procedures in place such as vetting of guests, a material change of use has occurred due to the occupation of the appeal property by paying guests of a building not previously used for that purpose. As a material change of use has taken place, the onus is on the appellants to show that the use has the benefit of either express planning permission or benefits from permitted development rights. However, the appellant does not rely upon either of those matters.
13. Instead, the appellants state “the property has been re-categorised by the central government planning office as a holiday let at the request of ourselves and the local planning office.” The only evidence provided is an email from the Valuation Office which addresses the consequences in terms of rating value for different uses for the appeal property. Although, the appellants in their appeal form state that a planning application is ongoing that is not the Council’s view. In any event, it remains the case that there is no express planning permission in place for use as a holiday let or any kind of residential use.
14. The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO) does provide that certain changes between use classes can take place without express planning permission subject to meeting specified criteria and in some cases a prior approval procedure. However, the appellants withdrew their application for prior approval for a change of use from office use in February 2021 and third parties have commented upon the lack of any previous office use. There is therefore no information before me to show that permitted development rights apply for a holiday let use or any kind of residential use.
15. To succeed on a ground (c) appeal, the appellant would have to show that the matters alleged in the notice, if they occurred, did not constitute a breach of planning control. However, a material change of use to a residential holiday let has taken place which in the absence of express planning permission or permitted development rights constitutes a breach of planning control. The ground (c) appeal must therefore fail.

Conclusion

16. For the reasons given, the enforcement notice as corrected, is upheld and the appeals should be dismissed.

E Griffin INSPECTOR