



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/R4408/C/20/3259611

4 Willow Bank, Wilthorpe, Barnsley S75 1BN

- 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 Nicholas Carlile against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 25 August 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of land, including residential dwelling (C3), to a Sui Generis Commercial Holiday Let for the purposes of operating a 24 Hours Self Check in Boarding House Business.
- The requirements of the notice are: cease the commercial use of the residential dwelling and revert in its entirety to a C3 Larger Dwelling.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation as set out in the Formal Decision below.

Procedural Matters

1. A site inspection was arranged for 11:45 on 10 June 2021. The appellant or their representative failed to attend. I was thus unable to get access to the appeal site and abandoned the visit.
2. I subsequently visited the property at 12:00 on 27 July 2021. Again, there was no one present to allow me access to the property. I subsequently abandoned the site inspection for a second time.
3. As a result of the appellant's failure to provide access to the appeal site at the appointed time on two occasions, I have determined to proceed to a decision on the appeal without the benefit of a site visit.

The Notice

4. The heading of the notice states that there has been a breach of planning control under Section 171A(1)(b) of the 1990 Act. Section 171A(1)(b) relates to the falling to comply with any condition or limitation subject to which planning permission has been granted. However, the notice is clear on its face that the alleged breach of planning control is development without planning permission under section 171A(1)(a). That is explicit in section 3 of the notice. I can correct the notice so it refers to Section 171A(1)(a) without injustice to the appellant or the Council.

5. The enforcement notice is directed at a material change of use. That being the case, the allegation should also state a material change of use, as this is the act of development as defined by the Act. This can be corrected as it would not give rise to injustice to the appellant or the Council.
6. Likewise, it is clear that the notice is directed against the Land as defined in section 2 and that is the land where the alleged breach has taken place. Thus, section 3 of the notice should be corrected to refer to the material change of use of "the Land" rather than "land including residential dwelling". I can correct the notice accordingly without injustice to the appellant or the Council.

Application for costs

7. An application for costs was made by Barnsley Metropolitan Borough Council against Mr Nicholas Carlile. This application is the subject of a separate Decision.

Hidden appeal on ground (b) and the appeal on ground (c)

8. The appellant has not advanced an appeal on ground (b). Nevertheless, in their submissions, they state there is no evidence that there has been a change of use. That essentially amounts to an appeal on ground (b) that the breach of planning control alleged to have occurred in an enforcement notice has not occurred.
9. Given the issues at hand in this appeal I have considered this 'hidden' ground of appeal alongside the appellant's appeal on ground (c). The appeal on ground (c) is that the breach of planning control constituted by the matters stated in the notice do not constitute a breach of planning control.
10. In both grounds of appeal, the onus of proof lies with the appellant. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
11. The notice alleges a material change of use of the Land to a commercial holiday let for the purposes of operating a 24 hours, self check in boarding house business.
12. The appellant says that the property has been let on a short term basis through AirBnB on a limited number of occasions. The appellant's submissions indicate that during 2019, the property was let for 56 days, with the lets ranging from 2 nights to 5 nights in length. Thus, the Land was occupied by short term holiday lets for around 16% of the year. The appellant says they occupied the property for the remainder of the year.
13. However, the appellant's submissions are not supported by any booking records, invoices, letting agreements or other documentation which would demonstrate the extent of the short-term occupation. Nor does the appellant indicate how often the property was occupied for short-term lets for the time in 2020 up until the notice was issued on 25 August 2020.
14. Moreover, the submissions from interested parties indicate that the property is in constant use as a short-term let, with no occupation by the appellant. As

such, they cast doubt on the appellant's stance that the alleged material change of use has not occurred.

15. If those matters have occurred, then they will not constitute a breach of planning control if what is alleged is not development as defined by section 55(1) of the 1990 Act. Section 55(1) defines development as including the making of any material change in the use of any buildings or other land.
16. The question for consideration on ground (c) is therefore whether the change of use from a single dwellinghouse to a holiday let was material. For a material change of use to have occurred, there has to be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
17. The appellant's evidence is that the property has only been occupied as a short term let for a small proportion of time, with it remaining as a dwellinghouse for the remainder. In contrast, the Council say that there is no evidence that the appellant occupies the property at all, with the occupation being solely as a short-term let. In addition, there are several submissions from interested parties before me. They indicate that the property is constantly and exclusively occupied by large groups and that the appellant has not been present at the property at any point in 2020 or indeed several months prior to that.
18. The appellant states that when let, the property is occupied as a whole to single groups. It is said that the characteristics of the property do not materially differ from its occupation by a single family in the level of comings and goings, visitors, vehicle trips and noise and disturbance.
19. Nonetheless, the submissions of local residents indicate that the occupation has resulted in considerable levels of noise and disturbance. It is also said that the use as a short-term let has generated high levels of vehicular movements, including taxis and high levels of parking.
20. It seems to me that the nature of the occupation by large groups for only a few days at a time means that the numbers of different people occupying the property would be substantially higher than if it were occupied by the same people every day. Moreover, the frequency in turnover of occupation is different in character to that if the property were occupied by a single family with visits by family and friends.
21. Furthermore, there is also the issue that those occupy the property for short-term lets are likely to be doing so for the purposes of a holiday or recreation. As such, the occupants are more likely to give rise to higher noise levels at less sociable hours, as is evidenced by the submissions of neighbouring residents.
22. Similarly, the pattern of vehicular movements is likely to vary. In isolation, the number of vehicles visiting the property may not materially differ from the number of vehicles typically used by a single family. However, the fact that the numbers will increase and decrease on a frequent basis depending on the group occupying the property mean the associated movements will be materially different in character.
23. Thus, the pattern of occupation of the property can be characterised as transient rather than settled as would be the case with occupation as a single family dwelling.

24. Ultimately, the appellant has provided very little evidence which shows how the property has been occupied. The appellant's evidence is in itself insufficiently precise and unambiguous. I am therefore unable to conclude that the alleged change of use was not material.
25. I conclude, therefore, that the appellant has not shown, on the balance of probability, that there has not been a material change of use of the Land to commercial holiday let for the purposes of operating a 24-hours, self-check in boarding house business at the date the notice was issued. Moreover, it has not been demonstrated that the alleged change of use is not development as defined by section 55(1) of the 1990 Act. Thus, the matters constitute a breach of planning control.
26. The 'hidden' appeal on ground (b) and the appeal on ground (c) therefore fail.

The appeal on ground (f)

27. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
28. Section 173(4) is clear that a notice can remedy the breach of planning control by either: making the development comply with the terms of any planning permission; by discontinuing the use of the land; or, by restoring the land to its condition before the breach took place.
29. The requirements of the notice are to cease the commercial use of the residential dwelling and revert in its entirety to a C3 Larger Dwelling. Notwithstanding the appellant's position in respect of the 'hidden' ground (b) and ground (c) appeals, there is no dispute that the previous use of the property is as a dwellinghouse. Thus, it seems to me that the purpose of the notice is to remedy the breach of planning control.
30. The land to which the notice relates is the house, its parking area and its garden as shown on the plan attached to the notice. The allegation, as corrected, refers to the material change of use of the Land. The requirements, however, refer to the need to cease the use of the residential dwelling rather than the Land.
31. The appellant considers this imprecise and overly restrictive since it does not refer to the land, only the dwelling. The appellant also points out that the requirement refers only to the commercial use of the dwelling. There is no reference to the holiday-let use alleged in the notice. Thus, the appellant says, the remainder of the land beyond the dwelling is afforded planning permission for a commercial use under section 173(11) of the 1990 Act. Section 173(11) states that where a notice could have required any activity to cease but did not do so, then planning permission shall be treated as having been granted by virtue of section 73A.
32. It seems to me that this is an error on the part of the Council since the alleged material change of use relates to the Land as a whole, that being the planning unit of the house, parking areas and garden. It is open to me to correct the requirement so that it refers to the Land rather than the dwelling, provided doing so does not cause injustice. Correcting it accordingly would potentially

be more onerous for the appellant. However, case law¹ has established that a correction can be made which makes the notice more onerous on its face, provided no injustice would arise. In this instance there would be no practical benefit in a resultant planning permission for a commercial holiday let use for the parking area and garden but not the building. It is difficult to see how the garden and parking areas could be occupied as a holiday let when the building is not. Nor would any physical steps need to be taken to cease the use of the garden and parking areas. As a result, I am satisfied that no injustice would arise from correcting the notice to require the use of the Land to cease.

33. Furthermore, whilst I note the requirement refers only to commercial use, a fair reading of the notice on its face would result in the recipient referring back to the allegation. The alleged breach is clear that the commercial use enforced against is a holiday-let business. Thus, I am satisfied that the recipient could tell with reasonably certainty that the notice requires the commercial holiday-let business use to cease.
34. The appellant argues that the requirement would prevent any occupant letting out the property for just a day or two per year and have the effect of preventing the occupant from using a room as a home office or parking a work vehicle. However, those activities are ones which could be accommodated within a use as a dwellinghouse which the Council's evidence suggests is the lawful use of the Land. The question is whether, as a matter of fact and degree, such activities would result in a material change of use. I am satisfied that the requirement would not preclude the occupant from carrying out such activities at a level associated with use as a dwellinghouse.
35. The appellant also states that the requirements of the notice are not in accordance with the development plan policies referred to in the Council's reasons for issuing the notice. However, the requirements of the notice are to reflect the purpose of the notice, not the Council's reasons for issuing it.
36. Nevertheless, the notice as corrected requires the Land to revert to a "C3 larger dwelling." However, a "larger dwelling" is not defined in Class C3 of the Town and Country Planning (Use Classes) Order 1987. Rather C3 relates to dwellinghouses. In any event, the requirement to revert to a "C3 larger dwelling" is excessive, since the requirement to cease the use is sufficient to remedy the breach of planning control by discontinuing the use of the Land. I can therefore vary notice to delete that part of the requirement without causing injustice to the Council or the appellant.
37. There are no other lesser steps than those specified in the notice as varied that would remedy the breach of planning control.
38. As a result, the appeal on ground (f) fails.

Appeal on ground (g)

39. An appeal on ground (g) is made on the basis that the period for compliance with the requirements of the notice is too short. The notice gives a period of one month for the use to cease.

¹ *Lynch v SSE & Basildon DC* [1999] JPL 354

40. The appellant says that a four month period would be more appropriate as this will allow customers who are booked into the property reasonable time to find alternative accommodation.
41. However, it seems to me that a period of one month would be sufficient for those booked beyond that time period to source alternative accommodation if necessary. Moreover, allowing a time period of four months would not overcome the planning harm with suitable expediency.
42. The appeal on ground (g) therefore fails.

Formal Decision

43. It is directed that the enforcement notice is corrected by:

- Deleting the phrase "171A(1)(b)" from section 1 of the notice and its substitution with the phrase "171A(1)(a);
- Inserting the word "material" between the word "The" and "change" in section 3 of the notice;
- Deleting the words "land, including residential dwelling (C3)" from section 3 of the notice and their substitution with the words "the Land";
- Deleting the words "residential dwelling" from section 5(i) of the notice and their substitution with the word "Land".

44. And varied by:

- Deleting the words "and revert in its entirety to a C3 Larger Dwelling" from section 5(i) of the notice.

45. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR