
Appeal Decisions

Site visit made on 22 April 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2022

Appeal A: APP/R4408/C/21/3287562

Appeal B: APP/R4408/C/21/3287563

32 Manor View, Shafton, Barnsley S72 8NQ ('the land') as shown edged red on the attached plan

- The appeals are 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 Andrew Knaggs and Appeal B is made by Mrs Claire Knaggs against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice, numbered 2021/ENQ/00561, was issued on 11 October 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the land and buildings from a detached garage to one of a residential dwellinghouse for human habitation (C3: Dwellinghouse Use Class).
 - The requirements of the notice are (i) cease the unauthorised change of use as cited in paragraphs iii-iv. ii) Amend the unauthorised development so that it resembles the structure in the Approved Plans (Plans and Elevations Oct 2016 Rev A).
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (c), (d) and (f) 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. Appeal B is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions - Appeals A and B

1. The enforcement notice is quashed.

Preliminary Matter

2. On the site visit, the appellant's representatives showed me the gas and electricity boxes and connections for both the main dwelling on the site and the appeal building. The Council confirmed that that they did not dispute that the main house and appeal building were physically connected in respect of the electricity and gas supply.

The Enforcement Notice

3. Section 173(1) of the Town and Country Planning Act 1990 (the Act) requires that an enforcement notice should state: (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) confirms that the requirements of section 173 (1) (a) will have been complied with if the notice enables a person on whom a copy of it has been served to know what the matters are.

2. On the one hand, the Council appear to allege that a material change of use has taken place from that of a garage to a residential dwellinghouse, and then on the other hand that a material change of use has occurred on the land from one dwelling to two dwellings. Furthermore, in the reasons for issuing the notice the Council allege that the *'unauthorised development has been constructed in a way of which is materially different to that approved by the Council. Consequently, it is the view of the authority that the development in its current form does not have planning permission'*, which suggests an allegation of unauthorised operational development.
3. Given the above, there is considerable doubt about what is the actual alleged breach of planning control. This uncertainty is compounded in so far that at paragraph 4 of the enforcement notice it states *'it appears to the Council that the breach of planning control listed in paragraph 3 has occurred within the last ten years'*.
4. Assuming that the Council did mean the allegation in the enforcement notice to refer to a material change of use of the land and buildings from a detached garage to one of a residential dwellinghouse for human habitation, then this would have needed to have said *'it appears to the Council that the breach of planning control listed in paragraph 3 has occurred within the last 4 years'*.
5. The above requirement would be because section 171B (2) of the Act states *'where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach'*. Furthermore, I would add that operational development is subject to section 171B (1) of the Act, i.e. a 4 year enforcement immunity period.
6. In this case, the enforcement notice is ambiguous and contradictory and is therefore invalid. I have considered whether I could correct the notice without it causing injustice to interested parties in accordance with the powers available to me under section 176(1) (a) of the Act.
7. I do not consider that I can correct the notice without injustice being caused. This is firstly because I am not actually certain of the Council's exact position in terms of the alleged breach of planning control, and secondly because any correction to the allegation, and potentially to paragraph 4 of the enforcement notice, would likely have implications in terms of how the appellant would have made their appeal under grounds (a), (c), (d) and (f). Furthermore, and depending on the Council's actual position in respect of the alleged breach of planning control, it is possible that the appellant may have wanted to lodge an appeal under ground (b) of section 174 (2) of the Act.

Conclusion – Appeals A and B

8. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the actual alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under grounds a, c, d and f as set out in section 174(2) of the Act as amended and the application for planning permission

deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

D Hartley

INSPECTOR