The Planning Inspectorate

Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Appeal Ref: APP/H0724/C/22/3298586
38 Linden Grove, Hartlepool TS26 9PY

- 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 Mrs Claire Adams against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice is dated 20 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of a residential property to a mixed use residential with hairdressing salon.
- The requirements of the notice are: (i) Cease the use of the property as a mixed use residential with hairdressing salon. (ii) Return the use of the property to its lawful use before the breach took place, that being residential use only.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by the deletion of the following text in its entirety from the requirements paragraph: '(ii) Return the use of the property to its lawful use before the breach took place, that being residential use only.'

2. The appeal is dismissed, and the enforcement notice, as corrected, is upheld.

Preliminary Matters

3. The determination of this appeal relates only to ground (b), which is a legal matter that rests on the facts of the case. I was able to assess the case from the written evidence alone, and as neither of the main parties raised any issue with this approach, it was not necessary for me to carry out a site inspection.

The enforcement notice

4. The enforcement notice attacks an unauthorised material change of use, and it should go no further than is necessary to achieve its purpose, which in this case is to remedy the injury to amenity. The cessation of the unauthorised use is sufficient to achieve that purpose, and an enforcement notice cannot go on to require that a lawful use is actively carried out.

5. For that reason, I have directed that the notice be corrected to remove the second element of the requirements. I am satisfied that this correction does not prejudice the appellant or make the notice more onerous.

Ground (b)

6. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

7. The property at 38 Linden Grove is located in a predominantly residential area. The Council visited the address in July 2016 and found that a rear room had been fitted out as a hairdressing salon, with seats, mirrors, a reception desk, and a hair washing basin and shower unit. They have submitted photographs of the room taken on the visit.

8. At that time, the appellant stated to the Council that her hairdressing business was mainly carried out on a mobile basis, but that friends and family would sometimes come to the house for hairdressing and other treatments. On investigation, the Council determined that the hairdressing business being carried on at No 38 was more than ancillary to the domestic use, and so planning permission was needed for a material change of use.

9. The Council have provided a copy of the Planning Contravention Notice in which the appellant confirms that the business started at No 38 in January 2016, and received 10-12 customers a week, on average.

10. During the course of the appeal, the appellant changed the ground of appeal from ground (a), seeking planning permission for the material change of use, to ground (b). This was on the basis that she no longer works from home due to a change in her circumstances.

11. Whilst I take this into account, the ground of appeal as set out in s174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. An appeal on ground (b) cannot succeed simply on the basis that the activities amounting to a material change of use prior to the issuing of the notice have since ceased.

12. It is clear from both the Council's and the appellant's own evidence that the alleged unauthorised change of use comprising a hairdressing business within the dwelling had occurred as a matter of fact prior to the date of the notice.

13. As a result, the appeal on ground (b) must fail.

Conclusion

14. The appeal is dismissed, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR