



Appeal Decision

Site visit made on 18 October 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/R4408/C/22/3301157

The Hawthorns, Keresforths Hall Road, Kingstone, Barnsley S70 6NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act").
 - The appeal is made by Ms Karen Neville against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 27 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material of change of use of the Land to a mixed use of a dwellinghouse and a venue for wedding/civil ceremonies, seasonal events and afternoon teas (use classes C3, A3 and Sui Generis).
 - The requirements of the notice are:
 - (i) Cease the unauthorised change of use of Land as a venue for wedding/civil ceremonies, seasonal events and afternoon teas;
 - (ii) Remove from the Land any items associated with the unauthorised use of the Land for wedding/civil ceremonies, seasonal events and afternoon teas.
 - The period for compliance with the requirements is: One month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - in Section 3 deleting all of the words and their substitution with "Without planning permission, the material change of use of the land to a mixed use of a dwellinghouse and a venue for seasonal events and afternoon teas";
 - in Section 5(i) deleting all of the words and their substitution with "Cease the unauthorised change of use of Land as a venue for seasonal events and afternoon teas; and
 - deleting all of Section 5(ii).
2. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The notice as drafted at Section 3, states '*...the material of change of use of the land*'. It is clear that the alleged breach relates to '*the material change of use of the land*', and the duplicate '*of*' is a typographical error. I will correct the notice by deleting it as it would not result in injustice to any party.
4. The notice describes the allegation as a mixed use, this includes use as a dwellinghouse, a venue for wedding and civil ceremonies, seasonal events and afternoon teas. An enforcement notice that alleges a material change of use

should describe precisely the actual activities taking place, and not refer to Use Classes, since these can include a much broader range of activities.

5. The appellant has argued her case on the basis of the activities alleged to have occurred, hence deleting reference to the Use Classes in the alleged breach would not result in injustice to any party. I will therefore correct the notice accordingly using powers available to me under s176(1) of the Act.

The appeal on ground (b)

6. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities'.
7. The alleged breach at Section 3 of the notice as corrected thus far is: *'the material change of use of the Land to a mixed use of a dwellinghouse and a venue for wedding/civil ceremonies, seasonal events and afternoon teas'*.
8. From all the evidence before me it appears that the alleged "seasonal events and afternoon teas" relates to the hosting of dining/food events, including afternoon tea events, and craft events such as wreath making. The appellant's own evidence, is that such events have taken place since Autumn 2021, having held some 20. They do not seek to argue there have been no dinner parties or small hosting events, with the average gathering attended by some 14 people, but no more than 20. Therefore, these alleged activities have occurred as a matter of fact. Whether they constitute a breach of planning control, is a matter to be considered under ground (c).
9. The appellant states that the land has never been used as a venue for wedding or civil ceremonies. The Council's evidence in Appendix 1 to the notice contain social media entries, but none relate to weddings or civil ceremonies. Furthermore, there is no convincing evidence from the Council or third parties which contradicts the appellant's evidence to make it less than probable. Consequently, as a matter of fact and degree, I find on the balance of probabilities that the use of the property as a venue for weddings and civil ceremonies has not occurred.
10. The appeal on ground (b) therefore succeeds to this extent and I will correct the alleged breach accordingly by removing the reference to wedding/civil ceremonies.

The appeal on ground (c)

11. Section 174(2) of the Act sets out the scope for an appeal on ground (c). It states, 'that those matters (if they occurred) do not constitute a breach of planning control'. The burden of proof is on the appellant and the relevant test of the evidence is made on the 'balance of probabilities'.
12. The alleged mixed use in the corrected notice comprises use as a residential dwelling house, and for seasonal events and afternoon teas. The critical issue in this case therefore is whether the introduction of the seasonal events and afternoon teas has resulted in a material change of use from the lawful residential use of the appeal site as a dwellinghouse.
13. The appellant asserts what has occurred has not materially changed the character of the house as a whole, and the impact of what has occurred on

local amenity has been negligible. Thus, that there has been no change of use and hence 'no development'.

14. Established case law¹, held that for the purposes of determining whether a material change of use has taken place, it is important to identify the planning unit, of which there are three broad categories of distinction:
- (1) *A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;*
 - (2) *A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and*
 - (3) *The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.*
15. In this case there is no dispute that the large dwellinghouse together with its outbuildings and gardens at The Hawthorns, and as indicated by the red line on the plan attached to the enforcement notice, is the relevant planning unit for comparing former and present uses.
16. A material change of use is not defined in any statute or statutory instrument, and is a question of fact and degree² to the circumstances of the individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of any activity from what has taken place previously. Any off-site impacts of any new activity may also be relevant considerations in making such a judgement³, including the impact on local residential amenity, highway safety and parking. These are not determinative by themselves and should not be considered in isolation but whether the increase in scale of use has reached the point where it gives rise to such materially different planning circumstances.
17. The appeal site relates to a large, detached dwelling within a substantial plot, situated within a predominantly residential area. The appellant acquired the property in June 2018, and as I saw has been living there whilst carrying out renovation and restoration. There have been events taking place, with up to 20 persons per event. At the time of the site visit, I saw that the property benefits from a 'full premises licence' certificate, for seven days a week 10:00 to 23:00 hours, including for live music. I saw that the layout of the rooms, gardens and outbuildings were as described in the detailed information provided by the appellants in their statement of case.
18. However, the drawing room itself is of a substantial size. It is laid out primarily with tables and chairs, and appeared to me to be a typical commercial dining area. Whilst I accept there may be some use of the wider room as residential, as described by the appellants with regard to the family/friends' gatherings, the room's main use is undoubtably for these events. I saw there is also a separate toilet area, directly across from the drawing room which would

¹ *Burdle & Willams v SSE & New Forest DC* [1972] 1 WLR 1207

² *Moore v SSCLG* [2012] EWCA Civ 1202

³ *Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited* [2012] EWCA Civ 1473; *Lewis v SSE* [1971] 23 P&CR 125

provide rest facilities for visiting members of the public. Moreover, I have not been provided with any substantive evidence as to additional floor space that is likely to be shared between the residential use and the events.

19. I saw the garden area has an outbuilding, containing separate toilet facilities, and part of the building had an area containing electricity, sink, worktops, cooking equipment, and cutlery. The outbuilding has an attached canopy area where there is patio seating, a bar area including a drinks fridge, and space for outdoor cooking facilities with equipment. The garden area can be accessed externally from the front of the dwellinghouse, or via internal doorways, and the appellant states gatherings/events had taken place within the garden/grounds. I also saw that the cellar area, and other rooms were used for storage of equipment and items, that were likely to relate to the alleged use, than for a sole residential purpose.
20. To the front and side of the property, vehicles can access the site from both Beech Grove, and Keresforth Hall Road, and there are areas of hardstanding for parking. The appellant's own evidence identifies that they adopted an entry/exit and parking plan that is marshalled for events.
21. By a decision dated 4 June 2019⁴ planning permission was refused for 'the change of use of dwelling (use class C3) to a mixture of a dwelling and a venue for wedding/civil ceremonies, seasonal events and afternoon teas (use classes C3, A3 and Sui Generis)'. An appeal⁵ was dismissed for the same development proposal, dated 1 July 2020 resulting from concerns related to highway safety, and the living conditions of existing nearby occupiers. I consider such impacts on living conditions and highway safety would inevitably result from the activities carried out.
22. Taking account of all the above factors together, I consider the use of the property for 'seasonal events and afternoon teas' is significantly different from just residential use alone in terms of the nature and character of the use, and its resulting off-site impacts as a consequence of the significant comings and goings by customers, including vehicles and parking demand at the property. It thereby amounts to a material change of use which requires planning permission. I have given no weight to the matters of purchasing shopping with existing household goods, or that items/equipment are shared with family/friends, as this would not be unusual in any such typical mixed residential and commercial use.
23. For the above reasons I find, as a matter of fact and degree, that the seasonal events and afternoon teas use is an intensive use of the drawing room, and garden and is significantly different in character to the lawful residential property use. As such, it is not an ancillary or incidental use; it is a primary use in its own right and has resulted in the mixed use as alleged in the corrected notice. Therefore, the appellant has failed to discharge the burden of proof upon them that there has not been a material change of use.
24. To conclude, the material change of use constitutes development as defined in section 55 of the Act, and for which no planning permission has been granted. It is therefore a breach of planning control.
25. For the reasons given above, the appeal on ground (c) must fail.

⁴ 2019/0712

⁵ APP/R4408/W/20/3245976

The appeal on ground (f)

26. This ground of appeal is that the steps required to be taken by the (corrected) notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act, and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the change of use to cease, the purpose is clearly to remedy the breach.
27. Requiring the unauthorised use to cease would do no more than to remedy the breach that has occurred. Consequently, the notice requirement at Section 5(i) cannot be an excessive one. However, for reasons set out earlier I will vary the requirement by deleting the reference to wedding/civil ceremonies.
28. In respect of the requirement at Section 5(ii) of the notice, the appellant argues that this is excessive, as there is no specific equipment that is connected solely to the unauthorised activities, as this is also being used in connection with the dwellinghouse (food/drink preparation, cooking, and cutlery). In this regard there is nothing in the Council's evidence which clarifies what the reference to 'items associated' might be and so it is unclear what precisely should be removed. In any event, the breach would be fully remedied by cessation of the unauthorised activities as required in Section 5(i). For these reasons, I will delete the second requirement from the notice.
29. The appellant has suggested that the notice should be varied to allow the requirements of *"no more than one gathering/dinner party a week, attended by no more than 20 persons and for the gathering/event to only occur within the hours 11am until 11pm and at no time on a bank holiday"*. These arguments are relevant only to an appeal on ground (a) that conditional planning permission should be granted. However, there is no ground (a) appeal for me to consider and the arguments are not relevant to an appeal on ground (f) which is only concerned with whether the requirements exceed what is necessary in order to remedy the breach of planning control. Therefore, it is not open to me to vary the requirement in the way suggested by the appellant.
30. For the above reasons, I conclude that the appeal on ground (f) succeeds only to the extent set out above, and I shall vary the requirements of the notice accordingly

Conclusion

31. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

K A Taylor

INSPECTOR