



Appeal Decision

Site visit made on 29 June 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Appeal Ref: APP/W3330/C/23/3316711

Blue Anchor Hotel, Blue Anchor, MINEHEAD, TA24 6JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Cara Strom against an enforcement notice issued by Somerset West and Taunton Council.
 - The notice, numbered ECC/EN/22/00048, was issued on 12 January 2023.
 - The breach of planning control as alleged in the notice is a material change of use of part of the building on the land (which part is shown edged blue on the plan attached to the notice) from garage and storerooms in connection with the hotel to use as a residential dwelling.
 - The requirements of the notice are to:
 - (a) Cease the use of that part of the building on the land (which part is shown in blue on the plan) as a dwelling house.
 - (b) Remove from the land all items, fixtures and fittings which facilitate the unauthorised use of part of the building on the land as a residential dwelling.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:

the deletion of the words "shown edged blue" and the substitution of the words "shown edged and hatched in black" in the allegation:

the deletion of the words "shown blue" and the substitution of the words "shown edged and hatched in black" in requirement (a);

the deletion of 6 months and the substitution of 12 months as the time for compliance; and

the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

3. The Council failed to attend the site visit. In the event I carried out an access required site visit with the appellant providing access around and within the building.

The site and relevant planning history

4. The plan attached to the notice identifies a large site by a red line incorporating The Blue Anchor Hotel and attached residential accommodation comprising six letting rooms, one holiday apartment and the owner's accommodation. The site also includes a car park, a small static caravan site, gardens and grounds.
5. Part of the site is subject to considerable coastal erosion and collapse and remedial works are currently in progress which are anticipated to be completed by September 2023. The contractors are currently using the public house as their temporary site office.
6. The plan identifies a blue area as part of the building used as a residential dwelling but it was evident at the site inspection that this failed to indicate accurately the area that the allegation should refer to, which is on two floors. The upper floor is at ground level and is accessible from the car park and contains a number of rooms in residential use. Two separate staircases lead to a basement level also converted to residential use. There are two internal connecting doors between the hotel and the extensive living accommodation.
7. The change of use of land to the south east of the car park was granted in June 2022 (3//26/21/022) for the siting of 6 static caravans for holiday let use but permission was refused for the installation of solar panels on the main building and static caravans along with panels in the garden area (3/26/22/013).

The Notice

8. The appellant under his ground (b) appeal appears to be arguing a case that the notice is a nullity because it fails to enable the appellant to understand the allegation because it is ambiguous and uncertain.
9. The appellant contends that the alleged breach has not occurred within the area identified by the local planning authority in the plan attached to the notice. The notice identifies the alleged breach to have occurred within part of the building outlined in blue. In this respect the appellant has submitted as Appendix B to the statement of case a first floor plan and a basement plan indicating grey lines showing the corrected area. I have a duty to ensure the notice is in order and this allows me to correct the plan where no injustice would be caused to the parties. As the Council has had the opportunity to respond to this aspect of the appellant's case but has chosen not to do so, I am satisfied that no injustice would occur through correcting the notice to indicate more accurately the area to which the allegation applies.
10. Additionally, the appellant claims that if there is a residential use it does not consist of the creation of a separate dwelling house but can be more accurately described as an incidental and ancillary residential use to the identified planning unit consisting of a mixture to commercial and residential. However the planning unit is that shown outlined in red on the plan attached to the notice and that the primary use of the site is as a hotel. The allegation specifically attacks the material change of use of those parts of the hotel building from use as garage and storerooms to use as a residential dwelling.
11. It is further argued that the steps required are not clear. The appellant states that the facilities to be removed are not identified, and the plan attached to the notice is misleading. The appellant states that as a consequence, it is not possible to establish the areas of the planning unit subject to the requirements.

The requirements of a notice cannot be so vague and uncertain that the recipient does not know how to comply. However in this case the appellant has identified that part of the site that he believes the notice relates to and I have accepted this through my intention to correct the plan. The appellant acknowledges that that the garage has been converted to residential accommodation and that the basement rooms were related to the pub and included a skittle alley, which have also been converted to residential accommodation. With a variation to the wording of the requirements I am satisfied that the appellant will have no doubt about what is required to be done to remedy the breach of planning control, and that such a variation would not lead to any injustice to the parties.

12. A notice must be drafted to tell the recipient fairly what has been done wrong and what must be done to remedy it. However the notice must be profoundly defective in order to be found 'hopelessly ambiguous and uncertain' to be a nullity. This is not the case here.

The appeal on ground (e)

13. An appeal on this ground is that copies of the notice were not served correctly as required by s172.
14. The appellant claims that it was not expedient for the Council to take enforcement action under s172(1)(b) due to circumstances outside the control of the appellant relating to coastal erosion. The appellant has not been able to submit a planning application or submit an appeal on ground (a) as Policy NH9 of the Local Plan cannot be satisfied until after remedial works have taken place to rectify coastal erosion issues. The appellant advises that these works were scheduled to start in Spring 2022 although they have now started and are the responsibility of the new unitary Somerset Council. The appellant refers to a recent application on the same site for solar panels and static caravans which was refused for coastal erosion reasons and believes this confirms that any applications where the site is considered unstable will be refused.
15. In response the Council state that due to the amount of time that had elapsed with no planning application to regularise the use, they have deemed it appropriate to serve the notice, having taken into account the history of the site and coastal erosion.
16. However the question of the expediency of taking enforcement action is a matter for the Council. In any event, the appellant has misdirected his appeal on this ground. Ground (e) may be argued where a copy of the notice was not served on the owner/occupier of the land or any other person having an interest in the land; where it was served more than 28 days after its date of issue (or less than 287 days before the date for taking effect); where the appellant was not served a correct copy of the notice; and, the mechanics of service set out in s329 were not followed. None of these circumstances are pleaded here.
17. The appeal on this ground fails.

The appeals on grounds (b) and (c)

18. An appeal on these grounds is that the matters alleged in the notice have not occurred (ground (b)) or if they have occurred, they do not constitute a breach of control as they are lawful ancillary uses within the planning unit (ground

- (c)). The onus of proof involving appeals on legal grounds rests solely with the appellant and the level of proof is on the balance of probabilities.
19. The appellant claims that the appellant is not able to understand which areas are subject to the requirements of the notice as there are a number of storerooms located within the area identified on the plan. The appellant's own submitted plan purports to show the areas of the planning unit (over two floors) that they consider are used for residential purposes ancillary, and incidental to the lawful mixed use of the site for commercial (public house) and residential (owner/occupier) areas of the building.
 20. The appellant states that the kitchen and living area are contained within an area located at ground level that was previously a double garage used for residential purposes in connexion with the lawful residential elements of the rest of the building, as occupied by the appellant and her family. There has always been a doorway between the existing lawful residential element and the garage area. The appellant therefore claims that there has been no material change of use to residential as the garage element has always been residential. The bedrooms and bathroom facilities located within the basement were previously a skittle alley associated with the lawful mixed-use the building as commercial public house and owner/occupier accommodation.
 21. The appellant contends that if there is a residential use it does not consist of the creation of a separate dwelling house but can be more accurately described as an incidental and ancillary residential use to the identified planning unit consisting of a mixture to commercial and residential.
 22. The primary use of land or a building will be, as the term implies, the main use or activity carried out by the occupier. The concept of a mixed use is one or two or more primary uses existing within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use. An incidental use, which is a matter of fact and degree, is one which is functionally related to the primary use and cannot be one that is integral or part and parcel of the primary use.
 23. The Council considers that the residential use associated with the site is for the manager's accommodation and not to be used independently of the pub and that there has not been any application to turn the ancillary storage rooms into ancillary accommodation. The Council further states that whilst the identified areas may have been used as garage and/or storage ancillary to the planning unit, it is considered that the primary use of the site is as a 'public house' and therefore the conversion of the garage/storerooms would require planning consent which would need to be justified as either manager's accommodation, or accommodation associated with the hotel.
 24. Having regard to the facts of the case, it appears to me that the site is not in a mixed use and the residential accommodation is as the Council conclude, this being either manager's accommodation or accommodation associated with the hotel. The appellant has not provided any clear evidence to indicate that the residential accommodation before its extension was anything other than that of the owner's/manager's accommodation which was fully integrated with the hotel use in terms of internal access.
 25. I note also that the appellant states that if there has been any unauthorised development it consists of the alteration of existing accommodation, or

commercial areas within the planning unit and not the creation of a new dwelling in the countryside.

26. Whilst there may be parts of the building identified by the Council with the blue line where there has been no breach of planning control, there has been a breach of control at basement and ground floor levels within that part of the building shown on the corrected plan attached to this decision.
27. I therefore conclude that the alleged works have occurred as a matter of fact. The works represent development by way of a material change of use of part of the building from hotel related use to residential accommodation for which planning permission is required for their conversion.
28. The appeals on grounds (b) and (c) fail.

The appeal on ground (f)

29. An appeal on ground (f) is that the steps to remedy the breach are excessive but no lesser steps are put forward which would overcome the harm caused by the unauthorised development.
30. The Council believe the steps are clear 'as far as the occupation of the ancillary accommodation is to cease' and believe that the main use of the planning unit to be a hotel/public house.
31. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
32. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
33. The appeal on this ground fails.

The appeal on ground (g)

34. An appeal on this ground is that the compliance period of 6 months is too short and that a period of 24 months would be reasonable to reflect the personal circumstances of her family, which includes children, and to the disruption to her business, although no evidence has been submitted to explain what the effects on the business and family would be. The appellant states that the compliance period does not take into account that the Council is aware that a planning application could be submitted to address perceived breaches and comply with policy once the remedial coastal works have been completed.
35. The Council indicates that the appellant became aware that a planning application was required in 2019 but none has been submitted. However the appellant states that the Council is aware that the alleged works did not take place until June 2021 at the earliest.
36. It is evident that coastal erosion has had an effect on the grounds of the hotel and that the Council has taken a cautionary approach through its planning policies relating to unstable land. The appellant explains the reason for not submitting a planning application or appealing on ground (a) is due to

anticipating a refusal of permission because of conflict with the policy. Whether this would be the case is not a matter for me to determine in this appeal in the absence of a ground (a) appeal. However, although the appellant has had a considerable amount of time to submit an application, I propose to extend the period of compliance from 6 months to 12 months. This will allow adequate time for the remedial works to be completed and for a planning application to be submitted and determined.

37. The appeal on ground (g) succeeds to this extent.

Conclusion

38. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice with correction prior to upholding it. The appeal on ground (g) succeed to that extent.

P N Jarratt

INSPECTOR

Plan

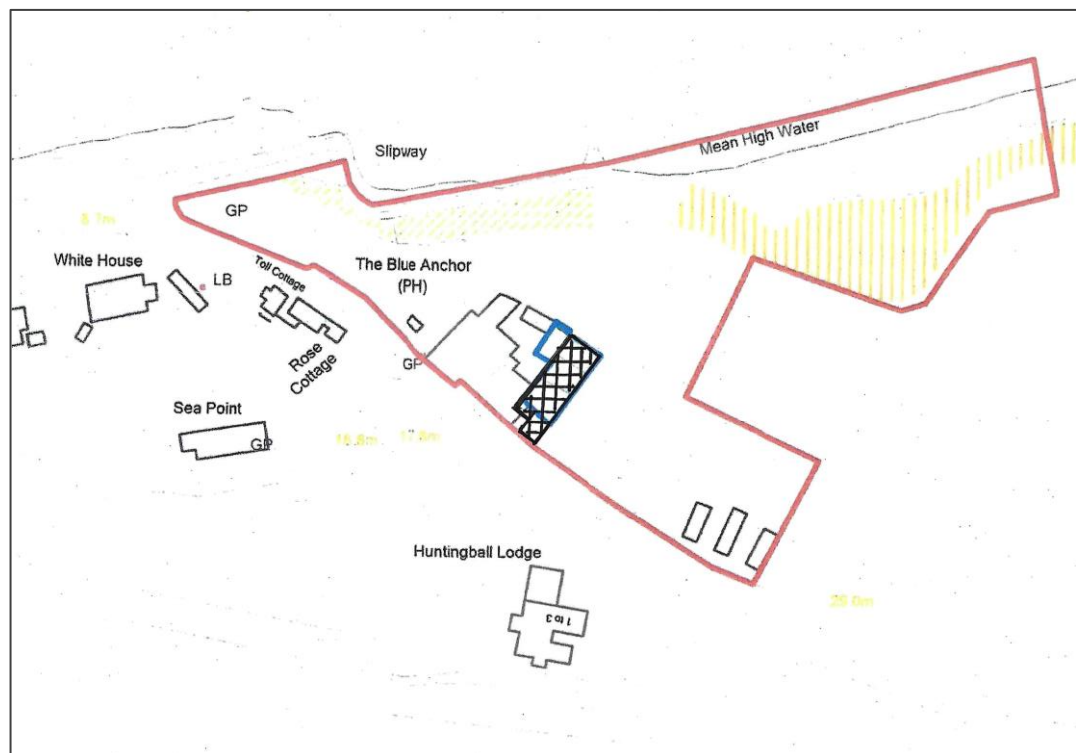
This is the plan referred to in the decision letter dated: []

by P N Jarratt BA (Hons) DipTP MRTPI

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Scale: Not to Scale



Note : The hatched area indicates the basement and ground floor areas of the hotel in which part or all of the alleged change of use has occurred, based on the greyline plans submitted by the appellant as Appendix B of the statement of case.

P N Jarratt

Inspector