



Appeal Decision

Site visit made on 12 September 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH SEPTEMBER 2023

Appeal Ref: APP/P4415/C/23/3320379

Land at 52 Wellgate, Rotherham S60 2LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mrs Rukhsana Bashir, Keighley Broking Services Limited against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 30 March 2023.
 - The breach of planning control as alleged in the notice is the material alteration to the appearance of the front of the property, including the creation of shop fronts and erection of external shutters.
 - The requirements of the notice are to:
 - (i) Remove the external shutters and shutter housing along the front elevation of the property, and remove resulting waste from site; and
 - (ii) Restore the building to its former appearance, including restoration of original door and window openings and surrounds, using matching materials.
 - The period for compliance with the requirements is: 6 months from the date the notice comes into effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The breach of planning control as alleged in the notice is the material alteration to the appearance of the front of the property, including the creation of shop fronts and erection of external shutters. There is no dispute between the parties on the alleged breach of planning control. However, as I saw the external shutters incorporate shutter housing above, on each of the shop fronts along the front elevation of the building. Therefore, for clarity, I have taken the shutter housing to be also as part of the alleged breach, and I shall refer to the external shutters and shutter housing together as 'the shutters' in the decision.

The appeal on ground (d)

3. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the material alteration to the appearance of the front of the property, including the creation of shop fronts and the erection of the shutters was substantially completed more than 4 years before the date on which the notice was issued. The relevant date therefore is 30 March 2019. For this legal ground of appeal, the Courts have

established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities².

4. The Council's evidence as set out in their statement of case at Appendix 1, includes Google images of the appeal site, showing the original property in April 2019 in its former appearance without the works being carried out. The latter images show that operational development had clearly commenced at the property sometime between December 2020 and August 2022, and that the works were not substantially completed on or before the relevant date.
5. Much of the appellant's evidence relates to the handling of business rates and the Council's approach. These matters are not relevant to an appeal on ground (d). In addition, whether the property had been 2 shops since April 2019 has no bearing on the enforcement notice, as the breach of planning control alleges operational development and does not relate to any material change of use of the building/land. Matters relating to the planning merits and the appearance of the shutters, I cannot consider since an appeal under ground (a)³ has not been made.
6. Moreover, the requirement for ground (d) in the case of building operations, the whole of the alleged development must be 'substantially completed' more than 4 years before the date on which the notice was issued. The appellant's own evidence accepts they moved into the premises as occupiers in September 2022.
7. For these reasons, I conclude, on the balance of probabilities, that the development was not substantially completed more than 4 years before the notice was issued. Therefore, it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

The appeal on ground (f)

8. This ground of appeal is that the steps required to be taken by the 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 removal of the shutters, and to restore the building to its former appearance the purpose is clearly to fully remedy the breach. Consequently, the appellant has not produced evidence that the notice's requirements exceed what is necessary to remedy the breach, or identified any alternative steps that would do so.
9. Instead, the appellant's case is that they cannot accept any disruption to the business and raises concerns over the Council's handling of investigations. The appellant has not provided any substantive evidence to support their ground (f) appeal and that any lesser steps would remedy the breach. The matter of the Council's handling of the investigation does not relate to the steps required to achieve the requirements of the notice, and there is no scope to consider whether the requirements are excessive in terms of their impact on an individual for an appeal made on ground (f).

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasylvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ That, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

10. For the above reasons, I conclude that the ground (f) appeal fails.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

KA Taylor

INSPECTOR