



Appeal Decision

Site visit made on 27 February 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 12th March 2024

Appeal Ref: APP/J2373/C/23/3318621

271a Midgeland Road, Blackpool FY4 5JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Gary Stanley against an enforcement notice issued by Blackpool Borough Council (the LPA).
 - The enforcement notice was issued on 2 February 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a single storey outbuilding to a single private dwelling house (known as 271A Midgeland Road0>
 - The requirements of the notice are:
 1. Cease the use of the single storey outbuilding as a single private dwelling house (known as 271a Midgeland Road).
 2. Remove all kitchen fixtures and fittings from the single storey outbuilding (known as 271a Midgeland Road).
 3. Remove all bathroom fixtures and fittings from the single storey outbuilding (known as 271a Midgeland Road).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

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

Appeal on ground (d)

2. An appeal on ground (d) is made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice.
3. S171B(2) of the Act states that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
4. For the appeal on ground (d) to succeed, it is therefore necessary for the appellant to demonstrate, on the balance of probabilities, that the material change of use of the outbuilding to a single private dwellinghouse took place on or before 2 February 2019 and continued thereafter for four years, such that the LPA could have taken enforcement action at any point during the four year period.

5. The appellant's case is supported by Statutory Declarations made by the appellant and E Hislop, a former occupier of the building. There are also a number of bills and letters addressed to the property submitted in support.
6. The erection of the outbuilding is said to have been substantially complete in 2005. A planning application for the change of use of the outbuilding to a single private dwellinghouse was made to the LPA on 8 February 2017¹. The LPA subsequently refused the application on 4 April 2017.
7. Notwithstanding the refusal of permission, physical works commenced in July 2017 to provide the necessary facilities for use of the outbuilding as a dwellinghouse. The works were completed in January 2018. There are no invoices or receipts which evidence what was done. There are photographs before me but they are undated.
8. However, the courts have held that, if there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. The appellant's evidence is that, as of January 2018, the building had the necessary fixtures and fittings to afford to those who used it the facilities required for day-to-day private domestic existence. The LPA has not provided contradictory evidence to that point. Indeed, its first internal inspection of the building did not take place until 4 December 2020. Whilst the LPA was informed the kitchen was not connected on that date, it does not state that no such kitchen was in existence or incapable of being used. Moreover, the LPA identifies the building contained a bathroom/shower room, bedroom/living area, two storage rooms, a large open sitting area with a newly installed kitchen, a cinema room and a garage.
9. To that end, the LPA has not provided sufficient evidence to contradict the appellant's version of events regarding when the material change of use took place. That version of events is given significant weight since it has been duly made in two Statutory Declarations. I am satisfied therefore, on the balance of probabilities, that the building was capable of being used as a dwellinghouse, as a matter of fact and degree, as of 1 February 2018.
10. In February 2018 an Assured Shorthold Tenancy (AST) was created for a E Hislop to occupy the building. The AST set out the use of the building as a single private dwelling by E Hislop with a rent payable of £1000 per calendar month.
11. The appellant's statement says the AST was signed on 17 January 2018. The appellant's Statutory Declaration says the tenancy commenced on 1 February 2018. This is supported by E Hislop's Statutory Declaration which says they moved into the building on 1 February 2018. A copy of the AST is provided which is dated 17 January 2018, with a commencement date of 1 February 2018.
12. Again, the LPA has not provided evidence which makes the appellant's version of events less than probable. The appellant's version of events in respect of when the occupancy commenced is sufficiently precise and unambiguous.
13. On the evidence before me, I am satisfied the appellant has demonstrated, on the balance of probabilities, that the material change of use of the building to a residential dwelling took place on 1 February 2018.

¹ LPA Ref: 17/0094

14. It was held in *Thurrock*² that a use can only be come lawful if it continues throughout the relevant immunity period, such that the LPA could have taken enforcement action at any time.
15. E Hislop states in their Statutory Declaration that they lived at the property from 1 February 2018, continuously as their sole residence and they were living there at the date they signed their Statutory Declaration on 28 March 2022. It is said their occupation ended on 27 January 2023. Their occupation therefore would cover the relevant four-year period from 1 February 2018. It is said that a new tenant, M Skelly moved into the property on 28 January 2023.
16. In support of the declaration regarding E Hislop's occupation, a number of contemporaneous records have been provided. Before me is a letter from Digby Brown Solicitors addressed to E Hislop at 271a Midgeland Road dated 1 Feb 2018. In addition, there is an invoice dated 27 March 2018 from Deuba Germany to E Hislop at 271a Midgeland Road.
17. I also have before me car insurance letters regarding a policy for cars being kept at the property dated 25 April 2018 and 8 June 2018. Both letters are addressed to E Hislop at 271a Midgeland Road. There is also a Retention Document from the DVLA dated 7 September 2018 which identifies E Hislop at the address. In addition, there is a credit note addressed to E Hislop at 271a Midgeland Road, dated 22 November 2018 from National Insulation Ltd.
18. The evidence therefore supports E Hislop's continuous occupation of the property from 1 February 2018, throughout the rest of 2018. However, beyond November 2018, the recorded evidence is limited. There is only an image of a driving licence, which is dated to commence from 10 March 2019 in the name of E Hislop with the address as 271 Midgeland Road and a letter relating to a new bank card dated 7 October 2020 to E Hislop at the address. The letter has no heading indicating which bank it is from.
19. Thus, there is little evidence to support E Hislop's declaration that they lived there continuously from 1 February 2018 for more than four years. Indeed, there are substantial gaps in the evidence. In particular there is only the driving licence for the whole of 2019 and the single letter relating to the bank card for 2020. There is no supporting evidence at all for occupation in 2021, 2022 or indeed into 2023.
20. Moreover, the LPA states that, at the time of their internal site visit on 4 December 2020, E Hislop was present. They informed the LPA that they were using the main house to cook, eat and wash their clothes rather than the building. The LPA also claims that E Hislop indicated that their occupation was a temporary measure and that they had a permanent, alternative address elsewhere, to which they would be returning following the Covid19 restrictions then in place.
21. The LPA could not therefore have taken enforcement action at the time of their site visit on the basis of the evidence before them. Furthermore, the LPA states that, at the time of an external inspection on 15 August 2018, it was able to see that part of the outbuilding was being used for business purposes as a number of desks were present and staff were working at them at the time. It points to three businesses linked to the property through Companies House

² *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

from 13 February 2019, all of which had E Hislop as a director. It is noted that the home address for E Hislop given was not 271a Midgeland Road. As such, given the paucity of contemporaneous evidence that the property was occupied as a dwelling post 2018, and the evidence that was available to the LPA at the time, I find it could not have taken enforcement action during those periods.

22. I conclude, therefore, that it has not been demonstrated, on the balance of probabilities, that the use of the building as a dwelling was continuous such that the LPA could have taken enforcement action against it at any point in the four-year period. As a result, it was not immune from enforcement action at the date the notice was issued.

23. The appeal on ground (d) therefore fails.

The appeal on ground (f)

24. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

25. S173(4) of the Act sets out that purpose of an enforcement notice is either (a) to remedy the breach of planning control; or (b) remedy any injury to amenity which has been caused by the breach.

26. The notice does not state which of the two purposes it seeks to achieve. Nonetheless, the notice requires the use to cease and the kitchen and bathroom fixtures and fittings to be removed. It therefore seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the Land to its condition before the breach took place.

27. The appellant's case on ground (f) is that the requirements of the notice are excessive as simply removing the fitted kitchen would remedy the alleged breach.

28. However, the requirement to cease the use does not go beyond what is necessary to remedy the breach by discontinuing the use of the land, as set out under S173(4) of the Act.

29. In terms of the requirement to remove the bathroom fixtures and fittings, the appellant states that internal works were completed in January 2018 to facilitate use of the building as a separate dwellinghouse. They do not say what those works involved. However, the LPA's officer report in respect of the 2017 application which pre-dated the breach does not indicate any evidence of a kitchen or bathrooms in the building. Moreover, the LPA's statement to this appeal indicates that an LPA officer had visited the building prior to 27 March 2018 when the building was used solely for storage. Whilst the LPA does not state if that pre-dates the breach, the appellant suggests that visit must have been before January 2018 when the works were completed. I see no reason to disagree.

30. Furthermore, whilst the plans which supported the application are not before me, the LPA's officer report from the 2017 application indicates that it was proposed to provide 5 double bedrooms, all with en-suite facilities, in the dwelling.

31. Consequently, the evidence indicates that the bathroom fixtures and fittings were installed in the building as part of the works which were completed in January 2018. Those works have, as a matter of fact and degree, facilitated the material change of use of the building to a single private dwelling house. Furthermore, the lawful use of the building as an outbuilding which is incidental to the enjoyment of the dwellinghouse, could be reasonably sustained without the bathroom fixtures and fittings.
32. As a result, the requirements to remove all bathroom fixtures and fittings from the building do not exceed what is necessary to remedy the breach of planning control.
33. The appeal on ground (f) therefore fails.

J Whitfield

INSPECTOR