



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/M4320/C/23/3315793

79 Scarisbrick New Road, Southport, PR8 6LJ

- 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 Vincent Luke, ife - audio against an enforcement notice issued by Sefton Metropolitan Borough Council (the LPA).
- The enforcement notice was issued on 10 January 2023.
- The breach of planning control as alleged in the notice is – unauthorised change of use of a residential dwellinghouse and outbuilding to commercial offices and for the storage and distribution of goods associated with the business operating from the property.
- The requirements of the notice are:
 1. Cease the use of the residential dwellinghouse and outbuilding as commercial offices and for the storage and distribution of goods associated with the business operating from the property.
 2. Only use the dwellinghouse and outbuilding for residential purposes.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Costs

1. An application for costs was made by Mr Vincent Luke, ife – audio, against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. The LPA's statement refers to an appeal on ground (e) of S174(2) of the Act. No ground (e) appeal has been made, however. Nonetheless, the appellant has made submissions regarding defects in the notice in respect of the list of persons served. Those submissions go to the validity of the notice rather than a ground (e) appeal. I have dealt with them accordingly.

The Enforcement Notice

3. An enforcement notice is a nullity if it is defective on its face, usually by missing some vital element that a notice should include under S173 of the Act. It is a fundamental error in the notice which renders it a nullity as there is, in effect, no enforcement notice as such.

4. S173 of the Act sets out the content that an enforcement notice shall include. S173(10) states that a notice shall specify such additional matters as may be prescribed. Regulations may require every copy of an enforcement notice served under S172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under S174 of the Act.
5. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR) sets out those additional matters. Regulation 5 sets out that every enforcement notice served under S172(2) of the Act shall be accompanied by an explanatory note.
6. ENAR5(a) says the note shall include a copy or summary of S171A, S171B and S172-S177 of the Act. ENAR5(a)(iii) states the note shall include the grounds under S174 on which an appeal can be brought. ENAR5(b) states the notice shall include the requirement on appeal to give the Secretary of State a statement in writing specifying the grounds on which a person is appealing and the facts on which they rely. ENAR5(c) states that a notice shall include a list of names and addresses of the persons on whom a copy of the enforcement notice has been served.
7. The enforcement notice here contains some form of an explanatory note, including that there is a right of appeal, that it shall be made to the Secretary of State, the date by which it shall be made and the fee.
8. However, the notice does not contain a copy or summary of the relevant sections of the Act specified by ENAR5(a) nor does it contain the grounds of appeal under S174. Likewise, it does not contain a note explaining the need to provide a written statement to the Secretary of State on appeal in accordance with ENAR5(b). Finally, there is no list of the names and addresses of those on who the enforcement notice was served.
9. The notice is thus flawed. Nonetheless, I do not consider the omission of the requirements of ENAR 5(a), ENAR 5(a)(iii), ENAR 5(b) and ENAR 5(c) to be a fundamental error which renders the notice null. Nor is it flawed sufficient to render the notice invalid. Ultimately, an appeal has been validly made and the appellant has not thus suffered injustice or prejudice by the omission of the information. Moreover, the LPA has provided the list of persons on which the notice was served which was simply omitted from the notice. Since an appeal has been made, there is no need to correct the notice to include the relevant parts of the explanatory note.
10. The appellant also argues that the notice is defective because it is said planning permission has previously been granted for the alleged use of the outbuilding. However, such a point does not go to the validity of the notice. Rather, it is an argument that what is alleged to constitute a breach of planning control, is not a breach of planning control. Whilst ground (c) was not selected on the appeal form, the appellant's submissions on this matter effectively pertain to an appeal on ground (c) and I will deal with them accordingly.
11. There are two further defects in the notice which the parties have not identified. Firstly, the heading of the notice states it relates to operational development. However, the alleged breach is a material change of use. It is clear from the four corners of the notice that it is directed against a material change of use. I can therefore correct the notice to replace the words in the heading without injustice to the appellant or the LPA.

12. Secondly, the notice is directed against a change of use. However, it is a material change of use which is defined as development in the Act. The alleged breach should refer to it as such to reflect the terminology in statute. I can correct the notice to insert the word “material” without injustice to the appellant or the LPA.

The appeal on ground (c)

13. An appeal on ground (c) is made on the basis that those matters stated in the notice as constituting a breach of planning control, do not constitute a breach of planning control.
14. The appellant submits that the alleged use of the outbuilding does not constitute a breach of planning control, since planning permission was granted for it in 2021¹. The 2021 permission granted approval for the erection of a detached workshop to the rear of the dwellinghouse, following the demolition of existing workshop. The planning permission does not specify the use of the workshop, either expressly or by condition. The LPA’s statement indicates that the previous workshop was demolished. The notice is directed against the use of the new detached workshop for which planning permission was granted.
15. The LPA argue, however, that, at the time the planning permission was granted, the Land was a single planning unit in residential use and thus, the planning permission was granted for a detached workshop which is incidental to the enjoyment of the dwellinghouse.
16. The appellant argues that, if the planning permission was for a building incidental to the primary residential use of the planning unit, then it would have stated so. It is said that there is a long history of commercial activity on the footprint of the former workshop. The LPA indicates that a previous workshop existed for which a lawful development certificate was granted for the manufacture of garden and household furniture in 1996.
17. For the 2021 permission to have granted the workshop for commercial use, then that part of the Land would have had to have been in lawful commercial use, either as a separate planning unit to the dwelling, or within a single planning unit put to a mixed use comprising residential and commercial.
18. However, beyond the aforementioned statements from the appellant and the LPA, no further evidence of the historic use of this part of the Land is offered by the parties. The evidence is thus not sufficiently precise or unambiguous to determine, on the balance of probabilities, whether the 2021 permission granted planning permission for the erection of a workshop with lawful commercial use as opposed to residential use.
19. In any event, even if the 2021 permission was granted for a commercial workshop in accordance with the previous lawful use for the manufacture of furniture, that could be materially different from the alleged use of the workshop as a commercial office with associated storage and distribution.
20. Ultimately, the onus is on the appellant to prove their case, on the balance of probabilities. In this instance, the evidence is not sufficiently precise or unambiguous to conclude that the alleged material change of use of the

¹ LPA Ref: DC/2022/01587

outbuilding to a use for commercial offices and storage and distribution of goods does not amount to a breach of planning control.

21. The appeal on ground (c) therefore fails.

The appeal on ground (a)

22. An appeal on ground (a) is brought on the grounds 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. Where an appeal is brought on ground (a), an application for planning permission is deemed to have been made. Planning permission may only be granted for the matters stated in the alleged breach, in whole or in part.

Main Issue

23. The main issue is the effect of the material change of use to offices and storage and distribution on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

24. The Land comprises a detached building between two detached properties in residential use, 77 and 81 Scarisbrick Road. The adjacent properties contain front and rear gardens which adjoin those of the Land.

25. The LPA's reason for issuing the notice is that the use of the Land as an office would give rise to unacceptable impacts on the living conditions of the occupiers of the neighbouring properties. The notice was issued following the refusal on planning permission on 5 December 2022 for the change of use of the dwellinghouse and outbuilding to an office². At the time the notice was issued and consideration of the previous application, no noise assessment report was before the LPA. A noise survey and additional information in relation to the outbuilding and parking provision was subsequently submitted in support of this appeal.

26. In response the LPA states that the noise assessment uses inappropriate criteria, standards and methodology on which to base its conclusion that the development does not cause noise pollution.

27. However, the LPA does state that, subject to conditions restricting the use of the Land to an office use within Class E(g)(i) and (ii) of Part A of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 and restricting the hours the use can operate to between 0800 and 1830 Mondays to Fridays, the development would be acceptable. Both on the evidence before me and from what I was able to observe on my site visit, I see no reason to disagree.

28. Ultimately, the conditions would ensure that the use would solely be for the office and storage use specified in the breach and could not be changed under S55(2)(f) to another potentially more harmful use in Class E of the UCO. They would also ensure that adjacent residents would not be subject to noise from the property on weekends, early mornings or an evening, when occupiers would have reasonable expectations for quieter background noise levels.

² LPA Ref: DC/2022/01587

29. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise. Consequently, the development complies with Policy HC3 of the Local Plan for Sefton April 2017 (the LP) which states that non-residential development will be permitted in Primarily Residential Areas where it will not have an unacceptable impact on the living conditions of neighbouring properties. It will also comply with Policy EQ4 of the LP which states that development should demonstrate that risks of adverse impacts in terms of noise have been evaluated and appropriate measures taken to minimise those impacts.

Conditions

30. As set out above, the LPA has suggested a condition is imposed to restrict the hours of use of the property between 0800 and 1830 Mondays to Fridays. I agree such a condition is necessary to prevent harm to the living conditions of neighbouring residents. Likewise, a condition restricting the use of the Land to a use within Class E(g)(i) and (ii) is necessary to prevent harmful noise impacts on neighbouring residents.

31. The appellant also submits that a condition restricting noise levels to the rear of the building to 55db is necessary. However, the submitted noise assessment indicates that noise levels recorded to the rear at no time exceeded recommended thresholds to maintain living conditions of neighbours. Moreover, the LPA indicate that such a restriction would be unnecessary as the 55db level would potentially be harmful. In any event, the hours and use restrictions imposed would prevent harmful noise levels on neighbouring residents. On that basis, a condition restricting noise levels would not be necessary.

Conclusions

32. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected.

33. The appeal on ground (f) does not fall to be considered.

Formal Decision

34. It is directed that the enforcement notice is corrected by:

- deleting the words, "operational development" from the header of the notice and substituting them with the words, "material change of use"; and,
- inserting the word, "material" between the words, "unauthorised" and "change", in section 3 of the notice.

35. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under S177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of a residential dwellinghouse and outbuilding to commercial offices and for the storage and distribution of goods associated with the business operating from the property at 79 Scarisbrick New Road, Southport, PR8 6LJ as shown on the plan attached to the notice and subject to the following conditions:

- 1) The use hereby permitted shall only take place between the following hours: 0800 to 1830 on Mondays to Fridays.
- 2) The premises shall be used for Class E(g)(i) and Class E(g)(ii) use only and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

J Whitfield

INSPECTOR