



Appeal Decision

No site visit made

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2024

Appeal Ref: APP/R4408/C/24/3338746

98 Manchester Road, Thurlstone, Sheffield, S36 9RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Mark Wetton on behalf of the Trustees of Mr Steven Wetton against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 16 January 2024.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to use as two residential dwellings arising from the use of a detached garage (shown edged/coloured blue on the attached plan) as a separate a residential dwellinghouse (C3: dwellinghouse use class).
 - The requirements of the notice are to (i) cease the unauthorised change of use of the detached garage as a residential dwellinghouse, (ii) restore the garage to its previous condition prior to the change of use taking place; including the restoration of the previous internal configuration, (iii) remove all waste materials from the land as the result of carrying out the works cited in paragraph 5(ii), and (iv) removal from the land all domestic paraphernalia associated with the use of the garage as a dwellinghouse.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d) and (e) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words "*Without planning permission the material change of use of the land to use as two residential dwellings arising from the use of a detached garage (shown edged/coloured blue on the attached plan) as a separate a residential dwellinghouse (C3: dwellinghouse use class)*" in section 3 and the substitution of the words "*Without planning permission the material change of use of the land to use as two residential dwellings arising from the use of a detached garage (shown edged/coloured blue on the attached plan) as a separate a residential dwellinghouse (C3: dwellinghouse use class)*". Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. The breach of planning control includes the words '*as a separate a residential dwellinghouse (C3: dwellinghouse use class)*'. It is clear that a typographical error has occurred in so far that there is a superfluous 'a'. I shall therefore correct the breach of planning control, without injustice being caused to the main parties, so that it reads '*Without planning permission the material change of use of the land to use as two residential dwellings arising from the use of a detached garage (shown edged/coloured blue on the attached plan) as a separate a residential dwellinghouse (C3: dwellinghouse use class)*'.

Ground (e) appeal

3. The appeal on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act.
4. The appellant states that the notice was served on Mr Andrew Karl Darlow and that he does not own or control the building which is the subject of the notice. It is claimed that the local planning authority (LPA) did not undertake a thorough land registry search.
5. Notwithstanding the above, the evidence is that the LPA did carry out a land registry search prior to issuing the notice and investigations also took place as part of discussions with the Council's Council Tax service. I am satisfied that the LPA did all that it could to establish the whereabouts of Mr Andrew Karl Darlow prior to issuing the notice. This included serving a Planning Contravention Notice on Mr Andrew Karl Darlow. If it is the case that Mr Andrew Karl Darlow no longer has an interest in the land to which the breach of planning control relates, then serving him with a notice would not in itself have led to any prejudice from the point of view of other relevant interested parties being able to lodge an appeal.
6. I am satisfied that the LPA did take all reasonable steps to serve a copy of the notice on the owner and occupiers of the site and everyone with an interest in the land that would be materially affected by such a notice as required by section 172 of the Act. This included obtaining land registry details. Therefore, I conclude that the ground (e) appeal fails.

Ground (b) appeal

7. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. In other words, the ground (b) appeal is made by the appellant on the basis that when the notice was issued the appeal building was not in use as a self-contained residential unit.
8. The onus is on the appellant to make a case on legal grounds. The appellant does not actually claim that when the notice was issued the building had not been used as a separate dwellinghouse to No. 98 Manchester Road. In fact, the appellant's claim is that the building has been used as a separate 'flat' for the last twenty years.
9. The Council states that the outbuilding contains roof lights, outside lighting, its own washing line, a separate utility connection and a post-box affixed to the external wall and with the address of '17 Saville Lane'. The appellant does not dispute the comments made by the Council, and nor does he dispute the Council's claim that when the notice was issued, the building was not being used for a purpose that was incidental to the enjoyment of No. 98 Manchester Road as a dwellinghouse.
10. The appellant has not provided sufficient evidence to substantiate the claim that when the notice was issued, the building was not in use as a separate and independent dwellinghouse. Therefore, the ground (b) appeal fails.

Ground (c) appeal

11. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant states under ground (c) that the '*change of use occurred 20 plus years ago and the flat has been used continuously as a separate dwelling*'. This is not a matter to be considered under ground (c) and instead is relevant to the consideration of a ground (d) appeal as addressed below.
12. On the evidence that is before me, I find that the planning unit for No. 98 Manchester Road comprises a dwellinghouse on higher ground and the appeal building on lower ground. In the context of the identified planning unit, use of the appeal building as a separate dwellinghouse constitutes a material change of use of the land from one dwelling to two dwellings. In other words, the evidence is that the material change of use of the land has resulted in the creation of two planning units.
13. The material change of use of the land amounts to development by virtue of section 55(1) of the Act. In the absence of planning permission being approved for the material change of use, the development amounts to a breach of planning control. Consequently, I conclude that the ground (c) appeal fails.

Ground (d) appeal

14. The appeal made on ground (d) is that at the date when 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
15. The appellant claims that the '*change of use occurred 20 plus years ago and the flat has been used continuously as a separate dwelling*'. The appellant states that the building was constructed over 20 years ago and was occupied by Mr and Mrs Wetton until August/September 2016. From that date until March 2022, the appellant asserts that it was occupied for residential purposes by Mr Oliver Robinson and his partner until 2022. The latter comment was made as part of final comments and differs from the comment made at statement of case stage that occupation of the building was for '*several years*'. The appellant claims that Mrs Wetton has occupied the building since 2022 and remains in residence. It is claimed that part of the building has '*remained in commercial use*'.
16. The burden of proving relevant facts is on the appellant in respect of the ground (d) appeal. The claims made by the appellant are not substantiated with any objective or precise evidence of a continuous four-year use of the appeal building as a separate dwellinghouse. There are, for example, no statutory declarations, dated photographs, witness statements, dated utility bills, signed tenancy agreements, or Council tax records.
17. On the balance of probability, I do not find that the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. Furthermore, no objective or persuasive evidence is before me to substantiate the claim made that any part of the building has

'remained in commercial use'. I therefore conclude that the ground (d) appeal fails.

Conclusion

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

D Hartley

INSPECTOR