



Appeal Decision

Site visit made on 4 June 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2024

Appeal Ref: APP/J2373/C/23/3333983

8 Gynn Avenue, Blackpool FY1 2LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ian Roche against an enforcement notice issued by Blackpool Council.
 - The notice was issued on 19 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from a hotel (Use Class C1) to five self-contained permanent flats (Use Class C3).
 - The requirements of the notice are to: cease the use of the property as permanent self-contained flats.
 - The period for compliance with the requirement is: three months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (g) 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.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of the words "without planning permission, the material change of use of the property from a hotel (Use Class C1) to five self-contained permanent flats (Use Class C3)" from paragraph 3 and their substitution with the words "without planning permission, the material change of use of the property from a hotel (Use Class C1) to two self-contained permanent flats (Use Class C3)"; and
 - the deletion of "three months" from paragraph 6 and its substitution with "nine months" as the period for compliance.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The appeal on ground (b)

3. An appeal under ground (b) is that those matters as stated in the notice have not occurred.
4. The appellant says that only two of the five alleged self-contained flats have been completed and rented out with the three remaining flats under refurbishment and construction due to the condition of the hotel. On that basis, they contend that the change of use of three of the flats has not occurred.

5. Section 173(1)(a) of the Act sets out that an enforcement notice must state "the matters which appear to the local planning authority to constitute the breach of planning control." An enforcement notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are. In deciding whether a notice satisfies the statutory requirement, a test is applied to determine whether the notice fairly tells the recipient what they have done wrong and what they must do to remedy it. The recipient must also be able to find out from within the four corners of the document what they are required to do. The requirements should square up with and follow logically from the allegation.
6. Under s176(1) of the Act, it is open to me to correct any defect, error, or misdescription in the enforcement notice or to vary its terms, provided I am satisfied that the correction or variation will not cause any injustice. This power extends to the substitution of the plan, providing any amendments would similarly cause no injustice. The Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
7. Neither the Act nor The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) define the term 'dwelling' or 'dwellinghouse'. The UCO categorises the uses of land and buildings. A change of use can take place within the same use class or from one use class to another. Such changes, which may otherwise be deemed to be material, are not considered to constitute 'development' under section 55(2)(f) of the Act. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.
8. The terms 'dwelling' and 'dwellinghouse' refer to a unit of residential accommodation that provides the facilities needed for day-to-day private domestic existence. Flats 3 (1st floor) and 5 (2nd floor) have all the necessary facilities for day-to-day private domestic existence, and they have the physical characteristics of a dwellinghouse, having regard to *Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P & CR 142*. Those are the two flats that the appellant accepts are completed and rented out.
9. The other three alleged self-contained flats are in different states of construction. Internal works are not 'development' according to s55(2)(a) of the Act. All these units are not finished or occupied. Nor do they have the necessary facilities for day-to-day private domestic existence as either or both the kitchen and bathroom are not present, complete, or connected. The units do not also have beds, finished flooring, or ceilings, and it is difficult to get into one of the units due to items being stored in connection with the works that have been undertaken. Therefore, the three units do not have the physical characteristics of a dwellinghouse, having regard to *Gravesham*.
10. The appellant says that the previous use of the appeal property was a Class C3 use. However, this is out of kilter with their acceptance that the property offered was previously a hotel / offered bed and breakfast accommodation. Just because there may not be a planning record of the property changing from Class C3 to Class C1 does not mean that the use did not occur and that it is the lawful use of the property.

11. The onus lies with the appellant to demonstrate the previous use of the appeal property. The Council explains that the property has been used as a guest house known as 'The Pool'. The Pool offered bed and breakfast accommodation.
12. The appellant says that there was a manager's flat on the top floor of the property. However, the plan from a 1982 planning application only shows three bedrooms, storage, and bathroom facilities. The plan does not confirm whether the top floor accommodation had all the necessary facilities for day-to-day domestic existence and was therefore a dwellinghouse.
13. Given the previous known name of the property and evidence from both parties, I have no reason to doubt, on the balance of probabilities, the last lawful use of the appeal property was as a bed and breakfast. Given the lack of clarity about the facilities on the top floor, the occupants of this accommodation could have, in some form, been dependent on facilities that I would typically expect to find elsewhere in a bed and breakfast. It also seems highly likely that the manager's accommodation would have been ancillary to bed and breakfast use. Either way, the lawful use of the appeal property would have been in Use Class C1 not C3. This is because a bed and breakfast would not be the sole or main residence of every occupant; it would not comprise of people living as a single household; and it would not be a use that would solely be used by a single person or family.
14. A Class C3 use is materially different in terms of the character of activities that take place, as there are multiple self-contained residential units of accommodation that operate independently of each other but within the same building. The comings and goings linked with a Class C3 use are, or could be, different from a Class C1 use.
15. There is no permitted change through the UCO that enables a change from Class C1 to Class C3. Hence, a change between these two use classes would be development. The allegation is therefore correct insofar as the material change of use that is taking place. The appellant has clearly intended to form five self-contained flats, but evidently only two have the necessary facilities and characteristics of a dwellinghouse. Therefore, the allegation is incorrect in terms of the number of self-contained flats within the appeal property.
16. As a result, I have had regard to the parties' comments about the allegation, whether any changes were necessary, and if, as a result, any injustice would be caused.
17. I disagree with the appellant's view that the notice is a nullity. While it incorrectly identifies the number of self-contained flats, it does correctly identify the alleged material change of the appeal property's use. This reflects the appellant's case and the situation on the ground. The allegation is not therefore wholly unclear, ambiguous, or uncertain. There is no uncertainty about the notice's requirement. The notice must, however, fairly tell the appellant what they have done wrong, and correcting the allegation to refer to the correct number of self-contained flats would reflect the appellant's case and my observations of the appeal property. In doing so, the correction would put the notice in order, and that would not cause injustice to the appellant as the change is not substantial and is part of the breach alleged by the notice.
18. I have had regard to the Council's suggested correction to the allegation, but if I were to use this, there would be reference to an unspecified use, and it would

be inconsistent with the evidence about the three units not being self-contained flats. Injustice would be caused if the allegation was corrected in this manner as it is unclear whether those matters constitute the breach of planning control. But even if they do, the parties have not made their cases on that basis.

19. A fee has been paid by the appellant in respect of the appeal on ground (a). The fee paid is a procedural matter, and I have no jurisdiction over that. However, for the reasons explained, there has been partial success on the appeal made on ground (b) relating to the number of self-contained flats, and I have used my powers to correct the notice under s176(1) as no injustice would be caused. The fee is a matter for the parties to resolve.
20. I conclude that, for the reasons set out, the appeal on ground (b) succeeds in part. The corrected allegation is the basis for my subsequent findings.

The appeal on ground (d)

21. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
22. Section 171B(2) of the Act says that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Hence, if the alleged material change of use had already occurred before 19 October 2019 and that use had been continuous since that time (and possible for the Council to have taken action in respect to it) then the appeal should succeed under ground (d), providing that the use had not been superseded by a new chapter in the land's planning history.
23. The appellant's evidence about one of the flats being the original manager's accommodation is not conclusive in terms of the facilities it had. Nor is there any explanation of how the bed and breakfast / owner's accommodation was used and how this may differ from the common arrangement found in bed and breakfasts, whereby the owner / manager of the property/business lives on site to manage the accommodation.
24. Flat 5 has been occupied for 3 years and 6 months, according to the appellant. Some of this period is after the notice was issued, but either way, the Class C3 use had not taken place, even if continuously, for the relevant time period and still falls short of the time limit required to be immune from enforcement action. Therefore, on the balance of probabilities, I am satisfied that, at the date that the notice was issued, enforcement action could be taken in respect of the breach of planning control constituted by the matters stated in the notice. Thus, the appeal on ground (d) does not succeed.

The appeal on ground (a)

25. The main issues are: the effect of the change of use on the provision of holiday accommodation and Blackpool's tourism offer; and whether occupiers and future occupiers of flats 3 and 5 benefit from an adequate standard of living accommodation.

Holiday accommodation

26. Policy CS of the Blackpool Local Plan Part 1: Core Strategy (2012 – 2027) (CS) explains that to support Blackpool's future growth, development and investment will be focussed on inner area regeneration, comprising: the resort

core, containing the promenade and the majority of resort attractions and facilities, holiday accommodation, and major points of arrival.

27. Holiday accommodation is an integral part of Blackpool's tourism offer and is vital to the resort's visitor economy. However, over the years, tourism has changed, and although more visitors have come to the resort, the number of people staying overnight has declined. Therefore, Blackpool has been left with too many holiday bed spaces. To achieve an economically viable level of quality holiday accommodation CS Policy CS23 explains that there will be a managed approach to reduce the oversupply of poor-quality holiday bed-spaces. Policy DM5 of the Blackpool Local Plan Part 2: Site Allocations and Development Management Policies (SADMP) outlines that proposals for change of use of existing buildings for residential use will only be permitted where the building is not safeguarded for an alternative use under another policy in the Local Plan.
28. The Holiday Accommodation Supplementary Planning Document (SPD) defines the main holiday accommodation areas (MHAA). The appeal property lies within MHAA 2 (MH2) according to the SPD. Consequently, CS Policy CS23 states that existing holiday accommodation will be safeguarded and a change of use from holiday accommodation or the loss of the sites used or last used as holiday accommodation will be resisted unless exceptional circumstances are demonstrated in accordance with the SPD.
29. Prior to the change of use to Class C3 the appeal property was used as bed and breakfast accommodation (Use Class C1). The proposal has resulted in the loss of that accommodation close to the promenade within an established MHAA containing a cluster of other holiday accommodation. If the appeal is allowed, then that accommodation would be permanently lost.
30. The property may well have been vacant and in a state of disrepair, but there is no substantive viability evidence to support a view that holiday accommodation use is not viable here. I note the Holiday Accommodation Area SPD Review 2016/17: Plan 2b which indicates that a couple of holiday flats/hotel or guest houses are not trading and that three others on Gynn Avenue have been on the market for over 2 or 5 years. However, that is not the whole story, as there are many other properties along Gynn Avenue that offer holiday accommodation. It is also the predominant use found on the road, hence why it is identified in the SPD as a MHAA.
31. Tourism accommodation may result in more seasonal occupation, but there is no evidence before me to suggest that this pattern of use is affecting the vibrancy and security of existing holiday accommodation in Gynn Avenue or elsewhere in the resort.
32. Therefore, the exceptional circumstances laid out in the SPD have not been demonstrated. This means that the proposal would result in the loss of holiday accommodation in an area that is safeguarded to manage the overall provision of such accommodation in the resort for tourist purposes. As such, the proposal would not support Blackpool's future growth and development.
33. CS Policy CS2 seeks to deliver new homes in Blackpool in specific areas. The appeal site is not in one of those locations. The SPD identifies MHAA's and MHAA's with a Promenade Frontage. Those areas cover specific parts of the resort, and there are areas near them that could offer residential accommodation for people working in the tourism industry. If the proposal

were considered a windfall site, the provision of the two new units would add to the housing mix and supply. Further, I recognise the investment that the appellant has made into the appeal property. However, these matters do not outweigh the harm that is caused to the delivery of Blackpool's tourism accommodation or its regeneration agenda.

34. The appellant says that the appeal property could be converted to a state funded school using permitted development rights. Those rights would also potentially enable a change to a registered nursery. Either would, however, require the appellant to seek the prior approval of the local planning authority. There is no specific information before me about any potential state funded school or registered nursery. Nor is there any indication about a prior approval application being submitted. Therefore, there is no real prospect of the fallback position occurring.
35. However, even if it is a possibility, and the appellant submitted a prior approval, the Council would need to consider that scheme's impacts on transport and highways, noise, and contamination risks on the site. I do not know the Council's potential view on those matters, but the property is part of a terrace, and with the adjoining tourism accommodation on either side, there is a strong potential for noise to transmit and impact persons using that accommodation. Furthermore, there are double yellow lines on one side of the road, which limits on-street parking near the property. With either potential use, given the size of the property, there is the potential for a good number of vehicular movements. Although the appellant may provide the Council with information as part of a prior approval application, I am not certain that the Council would not elect to refuse that application for transport/highway and noise grounds. As such, there is no real prospect of the fallback taking place. It therefore carries no weight.
36. I conclude, on this issue, that the proposal affects the provision of holiday accommodation and Blackpool's tourism offer in conflict with CS Policies CS1, CS2, CS23, SADMP Policy DM5 and the SPD. These policies jointly seek to support Blackpool's future growth, development, and investment, to manage and safeguard the provision of holiday accommodation. Although the proposal would add to the mix and number of homes in Blackpool, in doing so, the proposal would not support the policies in place to support Blackpool's tourism offer and the approach taken to manage that and secure growth and regeneration. Hence, the proposal would not accord with Chapters 5, 6 and 7 of the National Planning Policy Framework.
37. The appellant considers that these policies are out of date due to changes to the UCO that permits a change to a state funded school or nursery. I disagree as that change is subject to the prior approval process and the policies are consistent with Framework's aims in respect of the economy, the vitality of town centres and setting a clear vision and strategy.

Living conditions

38. SADMP Policy DM5 explains that proposals for the change of use of existing buildings for residential use will only be permitted where: the proposed units are all fully self-contained and satisfy the Nationally Described Space Standards (NDSS) and the Council's adopted floorspace and amenity standards, the size and layout of properties proposed for single family use is consistent with such occupation. This is to ensure a good standard of residential accommodation.

39. The proposal does not involve any extensions or material alterations to the property. However, there are no floor plans of the two self-contained flats or details of the size of the rooms within them. The appellant says that the two flats generally accord with the NDSS, but they have not provided any substantive evidence to support that assessment. I could see on my visit that both flats had kitchen/dining/lounge facilities, and a bedroom with an en-suite bathroom. One of the flats also had further bedrooms. However, in at least one of the flats, the occupants were using a bathroom for storage. As part of the NDSS standards, a minimum built-in storage provision is necessary. Evidently, that is either not available or the flat is not laid out to provide that.
40. Without evidence to confirm that the occupiers and any future occupiers have, and would have, a good standard of residential accommodation, I cannot be sure that the amenities of occupiers are not adversely affected.
41. I conclude, on this issue that the occupiers and future occupiers of flats 3 and 5 do not and would not benefit from an adequate standard of living accommodation. The proposal conflicts with CS Policy CS7 and SADMP Policy DM5 together with the NDSS. Collectively, these seek to ensure residents have a good standard of accommodation.

Other considerations

Personal circumstances and best interests of the children

42. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. As the notice would require the Class C3 use to cease, the effect of this would be to potentially make the current occupiers homeless.
43. Article 1 of the HRA sets out that everyone is entitled to the peaceful enjoyment of their possessions. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. In considering this, the best interests of the child must be a primary consideration. I have therefore kept these interests at the forefront of my mind. However, these are qualified rights, and interference may be justified where in the public interest. The concept of proportionality is key.
44. Flat 3 is occupied by one person, and I have had regard to the health information provided by the appellant about them. Having a settled base would allow them to live in a stable environment. That would be beneficial for them. Having to move would be a change for them and lead to stress of finding suitable alternative accommodation.
45. Flat 5 is occupied by two adults and two children, although one is approaching adult age. One of the children is young. These individuals live as a single-family unit. I do not, however, know, despite multiple requests, whether there are any specific circumstances relating to each occupier. Having a settled base would allow the family unit to all reside on the same site and provide a stable environment for all the children. I do not know if the eldest child is in education or not, or whether there are any educational needs.
46. That said, everyone has protected characteristics and benefits from the PSED. As such, I have had due regard to the protected characteristics of flats 3 and 5 for the purposes of the PSED and the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

47. The appellant claims that any alternative accommodation would need to be high quality and affordable. Both are important considerations for any resident. But neither party has provided any specific evidence of suitable alternative accommodation available within the area for the occupiers of flats 3 and 5. That includes any affordable home. Nevertheless, I have no reason to doubt the Council's explanation that this area of Blackpool offers a lot of comparable accommodation with flats making up 49.3% of the total stock and one bed units comprising 35%. This type of provision is considerably higher than the regional and UK averages.
48. Having to potentially move away from the appeal site to another site within the Borough would be a change for the occupiers of flats 3 and 5. That would be disruptive to their stable living environment. It could also cause some inconvenience to the family in flat 3, especially the children, particularly if the eldest attends school or college. Although there may be a lack of alternatives identified, there appears to be a stock of alternative flats in the area. However, for reasons outlined above and those which I explore as part of the ground (g) appeal below, I consider that it would be reasonable and necessary to provide more time for the notice's requirement to be complied with. For the factors that I outline below, a period of 9 months would provide the occupiers of flats 3 and 5 a reasonable period of time to find alternative accommodation, while striking a proportionate and reasonable balance with the best interests of the children so that they have a settled base.

Other Matter

49. Even though the proposal may accord with SADMP Policy DM5 d. and e., this does not alter or outweigh my findings against the remaining parts of this policy or the other development plan policies that I have identified conflict with.

Planning Balance and Conclusion on ground (a)

50. I have identified harm on both main issues and conflict with CS Policies CS1, CS2, CS7, CS23, SADMP Policy DM5 and the SPD. I have also identified conflict with the Framework and the NDSS.
51. Balanced against this are the personal circumstances of the current occupiers and the best interests of the children. Both weigh in favour of the proposal. However, the personal circumstances do not indicate that I should take a decision other than in accordance with the development plan, even when I take account of the other considerations raised in this case. Therefore, I shall not grant permanent planning permission for the proposal.
52. A temporary planning permission has not been suggested by either party, but I have considered this as a possibility given the occupiers' circumstances and the effect that the notice would have on them. But, for the reasons explained, there is a likelihood of alternative accommodation being secured by them in the area. By extending the compliance period for the reasons outlined in the appeal on ground (g), the occupiers of flats 3 and 5 would be afforded time to do so without needing to impose a temporary planning permission.
53. For the reasons explained, the appeal on ground (a) fails, and planning permission is refused. In doing so and upholding the notice with a correction and a variation, I recognise that it would result in the loss of a home for the occupiers of flats 3 and 5. This would cause an infringement of their rights under Article 8 of the HRA, but the harm that I have identified is of such weight that upholding the corrected and varied notice and refusing planning

permission is a proportionate, legitimate, and necessary response that would not violate those persons' rights under Article 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

The appeal on ground (g)

54. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
55. The appellant seeks a longer compliance period as the self-contained flats are normally let to tenants on a 6 or 12 month basis. They say that a period of 12 months with a minimum of 6 months would be a reasonable compliance period.
56. The notice requires the use to cease. I do not have any details of the tenancy agreements that the current occupiers have entered into, or the length of their tenancy. I do not, therefore, know how much notice they or the appellant needs to give without penalty.
57. I am mindful that a longer compliance period would be akin to a temporary planning permission. However, for the reasons set out, a longer compliance period would enable the occupants, albeit without certainty, to look for alternative accommodation. Given their circumstances, a longer compliance period is reasonable, necessary, and proportionate in this case. This centres particularly on the stability that the appeal site affords the children, but also on the social and health considerations of each of the occupants. While I recognise that these could be secured at alternative accommodation, there would be inconvenience and an unsettled period, nonetheless.
58. Varying the compliance period would achieve this and take into account the need for an alternative site to be found, and the personal circumstances of the occupants, including the children. In the round, I consider that the compliance period should be nine months, as this would strike a fair and proportionate balance between the need to remedy the breach of planning control and the public interest and the interference with the Article 8 rights of the family.
59. On this basis, I conclude that the appeal on ground (g) succeeds. I shall therefore vary the notice by changing the compliance period to nine months. This would not cause injustice to either of the main parties.

Conclusion

60. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR