



Appeal Decision

Site visit made on 23 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal Ref: APP/T5720/C/23/3320345

Land known as the Burn Bullock Public House, 315 London Road, Mitcham CR4 4BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Feisal Sheikh of Phoenix GRP Investments Limited against an enforcement notice issued by the Council of the London Borough of Merton.
 - The notice was issued on 27 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission: The unauthorised material change of use of the public house main building and ancillary car parking to a large House of Multiple Occupation ("HMO"), car-repair and cleaning workshop, storage, scrapyard and stationing of mobile homes for residential accommodation (sui-generis) and installation of portacabins.
 - The requirements of the notice are to:
 1. Permanently cease the unauthorised material change of use of the former public house main building and ancillary car parking to a House of Multiple Occupation within the main building on the Land.
 2. Permanently cease the unauthorised material change of use of the car park on the land for storage, car-repair & cleaning workshop, scrapyard and stationing of mobile homes for residential accommodation (sui-generis) on the Land.
 3. Completely remove all of the vehicles stored on site for commercial purposes on the Land.
 4. Completely remove all of the scrap car parts, sofas, pallets, waste, and general rubbish on the Land.
 5. Completely remove all of the portacabins, non-functioning vehicles, trailers, forklift and caravans on the Land.
 6. Completely remove the caravans, trailers, vans and trucks used for mobile homes on the Land.
 7. Completely remove from the Land all associated materials, fixtures, fittings and debris and take off site on the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Deleting the allegation in section three of the enforcement notice (the breach of planning control alleged) and replacing it with the following:
Without planning permission, the material change of use of the public house main building and ancillary car park to a mixed use as a public house, car-repair and cleaning workshop, storage, scrapyard and for stationing of mobile homes for residential accommodation and installation of portacabins.

2) The deletion of requirement number one in section five of the enforcement notice and renumbering accordingly.

2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

3. The land outlined in red on the plan attached to the enforcement notice, includes the public house, the alleged car-repair and cleaning workshop, storage, scrapyards, and mobile homes. Given the physical relationship between the uses, it appears the land identified in the notice is in a mixed use.
4. The allegation should refer to all the components of the mixed use even if only one is required to cease. This is because, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities. Even if the additional components are lawful, the enforcement notice should be corrected, if possible, to describe the mixed use properly.
5. The allegation and requirements can be corrected as set out in my decision above, without injustice to the main parties, since this neither enlarges nor reduces the scope of the notice.

The appeal on ground (b)

6. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
7. Since the enforcement notice was issued, the public house has been subject of an extensive fire and is no longer occupied. However, the question is whether the breach had occurred by the date of issue of the enforcement notice. If the alleged use had occurred, an appeal on ground (b) cannot succeed simply on the basis that the use had ceased.
8. The appellant's case on this ground relates to the alleged HMO use only. They stated that the property does not meet all the conditions required for the property to be an HMO and the occupants are squatters and do not pay rent.
9. The Council stated that the public house was closed in September 2013 and the site was not secured properly which allowed people to move in. It is acknowledged that the circumstances about how they moved in is uncertain, but it is stated that they appeared to be squatters.
10. Throughout their submissions the Council refer to the occupants as squatters but considered this is irrelevant if the occupation meets the criteria in the Housing Act 2004.
11. The definition of an HMO contained in the Housing Act 2004 states that a building or a part of a building meets the standard test (and is therefore an HMO), subject to a number of criteria - including that rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

12. The term squatting generally refers to a situation where land/property is occupied without permission.
13. The appellant stated that there is no gas, water or electricity connected and the Council also stated there was no electricity. Whilst I noted reference to an occupant having a fully working toilet, there is no evidence of any other amenities in the property. There are limited photographs of the inside of the building, but those submitted show a significant state of dereliction.
14. Given the condition of the building, including that it was unsecured and the Council's acknowledgement that the occupants appeared to be squatters, it is more likely than not, that the occupants would not have paid rent, nor made other arrangements with the owner. Accordingly, the accommodation would not meet the 'standard test' and is not an HMO.
15. As already stated, in an appeal on this ground, the onus of proof is on the appellant. Their evidence is limited; however, it does not need to be corroborated by independent evidence to be accepted especially where there is no evidence to contradict it.
16. I conclude from the evidence before me and on the balance of probability that the alleged breach of planning control comprising the material change of use of the public house to an HMO has not occurred.
17. The allegation can be corrected as set out in my decision, without injustice to the parties. To this limited extent the appeal on ground (b) succeeds.

The appeal on ground (f)

18. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the 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)).
19. As the enforcement notice, as corrected, requires the use of the car park for storage, car-repair and cleaning workshop, scrapyard and stationing of mobile homes for residential accommodation to permanently cease, and all associated materials, vehicles, portacabins and items to be removed, I find the purpose is to remedy the breach of planning control.
20. The appellant did not suggest any lesser steps but referred to *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784. This judgement considered the circumstances in which an enforcement notice issued against an unlawful change of use could require the removal of structures connected with that unlawful use.
21. The appellant did not explain the relevance of the judgment to this case. Accordingly and since it is not excessive in order to remedy the breach of planning control, to require the use of the car park for storage, car-repair and cleaning workshop, scrapyard and stationing of mobile homes for residential accommodation to permanently cease, and all associated materials, vehicles, portacabins and items to be removed, the appeal on ground (f) fails.

The appeal on ground (g)

22. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.

23. The appellant's case is that the extent of works required will include issuing court proceedings to evict the squatters from the property and may take longer than three months. They considered a period of six months is required.
24. I have corrected the allegation and varied the requirements such that the notice is no longer targeted at an HMO use. In the absence of substantive explanation, I consider the period of three months, as specified in the notice, is proportionate to the breach of planning control that has occurred.
25. Accordingly, the appeal on ground (g) therefore fails.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Felicity Thompson

INSPECTOR