

Appeal Decision

Site visit made on 24 June 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/W4705/C/23/3331179

Land at 40 Laisteridge Lane, Bradford BD7 1QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by AG Capital Ventures Ltd. against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The notice was issued on 31 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the property, as shown in the attached photographs, from a House of Multiple Occupation (HMO) into four apartments.
- The requirements of the notice are to:
 - i. Cease the unauthorised use of the building as four apartments,
 - ii. Use the whole of the building as a House of Multiple Occupation.
- The period for compliance with the requirements is:
Six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

The deletion of the words '*6 calendar months*' and their substitution with the words '*12 calendar months*' as the period for compliance at section 6 of the ('Time for Compliance').

Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Planning permission has been sought twice, retrospectively,¹ for the change of use of the appeal property from a House in Multiple Occupation (HMO) to 4no self-contained apartments. Planning permission was refused in both instances and, in the case of the first² of those applications, subsequently dismissed at appeal³.

¹ LPA Ref Nos: 21/05393/FUL & 23/02782/FUL

² LPA Ref No: 21/05393/FUL

³ APP/W4705/W/22/3294941

3. The appeal now before me is made on the grounds set out in the banner heading, above. The planning merits of the appeal scheme are not therefore before me.

The appeal on ground (e)

4. An appeal on ground (e) may be made if it is felt that copies of the enforcement notice have not been served as required by section 172 of the Town and Country Planning Act 1990 (as amended) (the Act). Section 172(2) requires that a copy of an enforcement notice be served on (a) the owner and on the occupiers of the land to which it relates; and (b) on any other person having an interest in the land which, in the opinion of the local planning authority, is materially affected by the notice.
5. The appellant states that the notice served upon AG Capital Ventures Limited was not served at the correct address and was instead delivered 'to one of' the neighbouring properties to that of the company's registered address at 36 Thorndene Way, Bradford. Which neighbouring property is not stated. The notice was received by the appellant on 8 September 2023.
6. However, the Council's schedule of service confirms the correct address for the appellant company, whilst in its 'Statement of Case' the registered address property is identified, the door to the property highlighted and it is clearly stated that the notice was sent to, amongst other addresses and persons, No. 36. Whilst the date of service is stated as 'deemed to be' 6 September 2023, it is also explained in the Council's 'Statement of Case' that the notice was hand delivered to No. 36 on 8 September 2023.
7. I have carefully considered the signed declarations⁴ provided by the appellant in this regard. It is not stated to which neighbouring property the notice was delivered, nor is it entirely clear whether the notice that the appellant did receive on 8 September 2023 was that which was 're-directed' by a neighbour, or which was hand delivered on behalf of the Council. Either way, it is clear that the notice was received on 8 September 2023, just two days after the 'deemed' date of service.
8. This is not inconsistent with the requirements of section 172(3) of the Town and Country Planning Act 1990 (as amended) (the Act), which requires that a notice shall be served not more than 28 days after its date of issue (s172(3)(a)), and not less than 28 days before the specified date upon which it is to take effect (s172(3)(b)). This being the case, I am satisfied that, in terms of its timing, the service of the notice was consistent with the relevant provisions of the Act and I am not persuaded that the appellant has been substantially prejudiced in this respect.
9. In the second of the appellant's declarations (that of Kalpu Gandhi) the signatory is identified as a 'senior lender' to the appellant company with a stated United Kingdom correspondence address of 55 Boggs Lane, Harrogate. However, the declaration was made in Dubai, where the signatory also states their address as being.
10. The appellant seeks to rely on the signatory's inclusion in a loan agreement registered within the appellant company's book of accounts lodged with

⁴ Appendices 1 (Pushpa Patel) and 2 (Kalpu Gandhi)

HMRC as being sufficient to require the Council to serve a copy of the notice upon Kalpu Gandhi. The implication of the appellant's submission is that the Council should have been aware of this financial interest and, thus, served the notice accordingly. However, although I have not been provided with a copy of the returned section 330 notice response, the Council contend that they were not provided with the details of any other persons with an interest in the land in the response to that notice. Even if I were to accept the appellant's implication that the Council have access to such financial information, it would equally have been incumbent upon the appellant to provide such information in response to questions posed within the section 330 notice. I find no fault with the Council's approach in this respect.

11. Even if the notice had not been correctly served on either of the two main grounds argued by the appellant in respect of the ground (e) appeal, section 176(5) of the Act provides that failure to serve may be disregarded if an appellant has not been substantially prejudiced by the failure to correctly serve. In this instance, I am satisfied that as the appellant has been able to submit an appeal against the notice, within the statutory time period and to argue the case in the course of this appeal, this has not been the case. It cannot, therefore, be said that the appellant has suffered prejudice as a result of any failure to comply with the rules concerning service. There is no suggestion that any other person may have been prejudiced.
12. Thus, I conclude that in the circumstances of this case the Council correctly served the notice and, even if I were to conclude to the contrary, any failure by the Council in terms of service of the enforcement notice may be disregarded as no party has been prejudiced. Consequently, the appeal on ground (e) therefore fails.

The appeal on ground (g)

13. The notice sets out a period of six calendar months for compliance with its requirements to cease the use of the building as four apartments and to return it to that as an HMO. However, due to the change in living circumstances for the current tenants brought about by the notice's requirements, the appellant seeks a longer period of 12 months within which to comply. In setting out this argument, the appellant cites the 'ongoing housing crisis compounded by the cost of living crisis' as making it difficult for residents to find suitable and affordable accommodation. There are also, I am led to understand, children presently residing within the appeal building.
14. The Council does not object to the appellant's request for a longer, 12 month, period for compliance with the notice's requirements. The notice's requirements nevertheless amount to interference with the residents' convention rights under Article 8 of the European Convention on Human Rights⁵, including those of children in the context of Article 3 of the United Nations Convention on the Rights of the Child which whilst not incorporated into UK law is nevertheless pertinent and which requires a child's best interests to be a primary consideration.

⁵ As set out within the Human Rights Act 1998

15. Given the harm identified in the reasons for issuing the notice, I am satisfied that the requirements set out pursue the legitimate aim of regulating the use of land in the public interest. The action is both necessary and proportionate. However, a period of 6 months is, in the particular circumstances of this appeal, unduly short and I am satisfied that a period of 12 months would provide a more appropriate period of time for compliance with the notice. I am satisfied therefore that a period of 12 months within which to comply with the notice is both reasonable and proportionate to the situation and the appeal on ground (g) should succeed in this respect.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation as a consequence of the outcome of the appeal under ground (g).

G Robbie

INSPECTOR