

Appeal Decision

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 September 2024

Appeal Ref: APP/J4423/C/24/3342409

Parson Cross Hotel, Deerlands Avenue, Sheffield S5 8AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the 1990 Act).
- The appeal is made by Mr Mohammed Shabere against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 20 March 2024.
- The breach of planning control as alleged in the notice is the material change of use of the Land to a mixed use that includes hand car wash, motor vehicle repairs, parking of vehicles and recovery lorries associated with the motor vehicle repair use, and the execution of the following associated operational development associated with the material change of use; the erection of a carwash / valet bay, erection of boundary fencing and display of adverts, shown in The Plan and shown in the images at The Appendix to this notice.
- The requirements of the notice are:
 - i. Cease the use of the Land for hand car washing and valeting;
 - ii. Cease the use of the Land for vehicle repairs, with associated recovery and vehicle parking;
 - iii. Remove vehicles and all equipment and materials associated with the vehicle repairs use from the Land;
 - iv. Demolish the car wash and valeting bay;
 - v. Remove the perimeter fence from the Land;
 - vi. Remove all materials resulting from compliance with (iv) and (v) above from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the 1990 Act. 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 enforcement notice is quashed.

Preliminary Matter

1. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

The Enforcement Notice

2. The allegation is the material change of use of the Land to a mixed use "that includes" a hand car wash, motor vehicle repairs and the parking of vehicles

and recovery lorries, associated operational development and the display of adverts.

3. The Council explains in its statement that - "At the time the use started, the Land was in use as a House in Multiple Occupation [HMO] on the upper floors and part of the ground floor of the former pub. The last authorised use of the entire Land was a public house, with a manager's living accommodation and a car park. In 2012 the manager's living accommodation was changed to a house in multiple occupation, which was not considered to be a material change". It continues - "The upper floors of the pub are now used as an HMO in a manner that was deemed (2012) not to be a material change of use from the previous large pub manager's living accommodation. The pub use ceased, and the current use [the alleged unauthorised use] is operating from part of the car park and the front porch entrance".
4. The Land is identified in the plan as the former Parsons Cross Hotel and its surrounding hardstanding / car park.
5. Firstly, I have considered whether a separate planning unit has been created in the car park. The car wash seems to be dependent on the water supply from the building, and the operatives use a sitting area within the building at break times. The fencing encloses the whole site, which is in single ownership. It appears that there is a physical and functional connection, therefore, and the Land forms one single planning unit in a mixed use. A mixed use being two or more primary uses operating within the same planning unit.
6. In cases where there is a mixed use, the allegation should refer to all the components of the mixed use, even if only one is required to cease. It is not open to the local planning authority to decouple elements of the mixed use because the use is a single mixed use with all its component activities, even if some elements are considered lawful.
7. Following my initial queries, the Council has agreed that the allegation is inaccurate about the residential use that is taking place at the site. It explains "there is an omission in the description of the use of the site. Therefore, in response the Council would agree that the notice should be varied to include the residential component of the mixed use, subject to the fact that the Council does not consider that part of the mixed use to be unlawful".
8. It is understood that the manager's accommodation, was incidental to the last lawful use of the land as a public house. The change to an HMO was not considered to be a material change of use. However, the public house closed in 2012 and the HMO use continued. The residential use could not be incidental to a primary use if that primary use, a public house, was not operating.
9. The Council has agreed that the HMO use could not be incidental to the lawful use of the land. Nonetheless, it is maintained that it would be lawful due to the passage of time. This is because the material change of use to a mixed use as a public house and an HMO took place in or around 2012 when the public house use ceased. Even if accept this assumption, I must have regard to when the alleged further material change of use took place that is the subject of the notice.

10. The Council is of the opinion that the material change of use to a mixed use including the hand car wash use commenced around April 2017. A further material change of use then took place to include the vehicle repairs. That being the case, the previous mixed use as a public house and an HMO would not have acquired immunity from enforcement action as it could not have continued for 10 years after the date of change without significant interruption.
11. In view of the above, I consider that the allegation should be corrected along the lines of – The material change of use of the Land to a mixed use comprising a public house, a house in multiple occupation, a hand car wash, motor vehicle repairs and the associated parking of vehicles and recovery lorries, facilitated by the erection of a car wash / valet bay, boundary fencing and the display of advertisements.
12. The requirements would then be to:
- 1) Cease the mixed use of the Land by ceasing the use as a house in multiple occupation, a hand car wash, motor vehicle repairs and the associated parking of vehicles and recovery lorries.
 - 2) Remove all vehicles associated with the motor vehicle repairs from the Land.
 - 3) Demolish the car wash / valet bay.
 - 4) Remove the boundary fencing.
 - 5) Remove the advertisements associated with the hand car wash and motor vehicle repairs.
 - 6) Remove all materials resulting from compliance with the above steps from the Land.
13. There is no requirement to cease the use as a public house. This is because Section 57(4) of the 1990 Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. Thus, the last lawful use as a public house may resume without this constituting a further breach of planning control.
14. The Council does not agree to the requirement to cease the use as an HMO. However, I must have regard to Section 173(11) of the 1990 Act. This provides that (a) where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of Section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
15. Whether a notice could have required activities to cease is contingent on the terms of the allegation. Consequently, if there is no requirement to cease the

use as an HMO, then that element of the mixed use will benefit from planning permission, if the requirements of the notice are complied with.

16. There may be no injustice to the main parties if the notice is corrected as the Council suggests, which would be as above but without the requirement to cease the use as an HMO. However, I must also have regard to the principles of natural justice. Enabling a planning permission for the use of the former public house as an HMO, albeit as part of a mixed use, would have planning consequences. Not least for any effects on those people living nearby who may wish to comment on any such proposal and would be denied this opportunity. On this basis, I consider the requirement to cease the use as an HMO would be necessary.

17. I have a duty to 'get the notice in order' and correct any errors or misdescriptions. However, the correction that I propose would fundamentally change the terms of the notice. The inclusion of the HMO into the alleged mixed use would affect the majority of the appellant's grounds of appeal. The appellant has not had the opportunity to provide evidence in relation to the HMO use as this was not in issue as far as the Council was concerned. I consider, therefore, that the corrections proposed would cause injustice to the appellant.

Conclusion

18. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

19. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the 1990 Act, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

20. The enforcement notice is quashed.

D Moore

Inspector