



Appeal Decisions

Site visit made on 5 November 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9 January 2025

Appeal Ref: APP/J4423/C/23/3323148 ('Appeal A') **249-251 Pitsmoor Road, Sheffield S3 9AQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Hussein against an enforcement notice issued by Sheffield City Council.
- The enforcement notice was issued on 25 April 2023.
- The breach of planning control as alleged in the notice is *Within the last 10 years and without planning permission the material change of use of the Land, from two dwellinghouses in multiple occupation to an unauthorised mixed use of two dwellinghouses in multiple occupation and storage, display and sale of motor vehicles, caravan together with associated sales office and display of advertisements.*
- The requirements of the notice are to (i) cease the use of the Land for the display, storage and sale of motor vehicles; (ii) remove the sales office... from the Land; (iii) remove all advertisements/signage from the Lane connected with the unauthorised use...; and (iv) remove all the vehicles and caravan associated with the unauthorised use from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal Ref: APP/J4423/C/23/3323281 ('Appeal B') **249-251 Pitsmoor Road, Sheffield S3 9AQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Hussein against an enforcement notice issued by Sheffield City Council.
- The enforcement notice was issued on 25 April 2023.
- The breach of planning control as alleged in the notice is *Within the last 4 years and without planning permission the alteration, extension and material change of use of the garage block... to form 8 flats and a shop unit and the formation of concrete hard surfaces.*
- The requirements of the notice are to (i) cease the use of the building for residential accommodation; (ii) cease the use of the building for a shop unit; (iii) remove all the unauthorised development... from the land, including (a) the extension to the building, (b) the concrete hard surfaces, (c) the external additions and alterations to the building, (d) all the internal fittings from the building that form the living accommodation and the shop unit, such as kitchens, shower rooms, cupboards, internal walls... (iv) restore the external appearance of the building to its former condition before the development was carried out...(v) following completion of step (iii), restore the land to its former level and shape by utilising the excavation material (that was removed from the site of the unauthorised development and deposited adjacent to the driveway at no. 251...) to back fill the removed development; and (vi) following completion of step (v) remove any

remaining material... from the land.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. Following receipt of the parties' appeal documents it was apparent that further 'hidden' grounds of appeal were being pursued, and that the Council has recently determined applications for lawful development certificates in similar terms to the developments that are the subjects of the appeals here. No appeals have been made against those refusals. In respect of Appeal B, the appellant contends that the residential use of the building in question constitutes its use as a house in multiple occupation ('HMO'), rather than as individual flats (and shop), thus raising the prospect of an appeal on ground (b). In respect of both developments it is contended by the appellant that the relevant use is of such longstanding that the Council are too late to take enforcement action, thus raising appeals on ground (d). Further time was given to each party in order to further address these grounds.
2. Additionally, upon visiting the site it appeared to me that the 'car sales' use was clearly demarcated and distinct from the HMO use (whether of the building in Appeal B or the uncontested HMO use of the principal building on the wider site comprising nos 249 and 251 Pitsmoor Road). At the time of my visit (although not necessarily at the time of the issuing of the notice) it appeared potentially to constitute a different planning unit. The parties were accordingly asked to address the accuracy of the allegation and any injustice that might arise if the notice were to be corrected.
3. Both notices raise the effects on heritage assets, including the building comprising 249 and 251 Pitsmoor Road, as an issue for consideration. In order to assess the heritage value of that asset I sought clarification about the regularity of the present window openings. The listing description mentions a '10 window range of plain sashes' but what I saw on site were not sash windows but what appear to be bottom-opening UPVC frames that considerably detract from the appearance of the listed building. I wished to know whether they were in situ at the time of listing or the subject of any later consent and thus part of the building's 'baseline' heritage value for assessment.
4. The parties' responses to these matters, where given, are considered in my assessment of the appeals below. The appellant responded with an e.mail containing hyperlinks to some evidence. However, as set out in the Planning Inspectorate's guidance note concerning electronic communications, hyperlinks to documents or websites are not accepted. The appellant also indicated that updated appeal statements would be submitted by the deadline given. These were received late, and accepted for consideration with the Council being given an extended period in which to comment on them.

Main Issues

Appeal A

5. The main issues arising in respect of the car sales notice are, firstly, the correctness of the allegation describing a mixed use of the site. An additional issue is raised by the appellant's additional statement, seeking to raise matters

under ground (b). Pursuant to the ground (d) appeal it is then necessary to decide whether the use had been continuing for a period of at least 10 years at the date of issuing the enforcement notice. The onus of proof lies upon the appellant to demonstrate this to the standard of probability. If that is not satisfied, it is necessary for me to decide whether to grant planning permission for the use. The ground (a) appeal raises a number of issues, as referred to by the Council in the notice. They are whether the use is in keeping with the residential character of the area; whether it is detrimental to the setting of the listed buildings at 249, 251, 253 Pitsmoor Road and Christ Church; whether it is harmful to the residential amenity of occupiers of nearby residential property by way of commercial traffic, noise, fumes and general commercial and customer activity; and whether it results in acceptable residential garden amenity space to the occupiers of the houses in multiple occupation at 249 and 251.

Appeal B

6. The first issue arising for consideration in Appeal B is whether the use was accurately described by the Council at the time when the notice was issued, or whether the building is instead in use as a house in multiple occupation, as contended for by the appellant. This is the 'hidden' appeal on ground (b). It is then necessary, pursuant to the ground (d) appeal, to decide whether the building works had taken place, and the use had been going on for so long by the time the enforcement notice was issued that the Council were precluded from taking enforcement action. Again the onus of proof in relation to both of these matters lies upon the appellant, who must demonstrate the facts for which he contends to be probably true.
7. If either or both of those grounds of appeal fail, it is necessary to decide whether to grant planning permission for the use, and for the operational development involved in converting and extending the building. The Council identify the main issues as the development's effects on the character and appearance of the area; its effects on the adjacent listed buildings; and its effects on residential amenity. The latter issue involves considering whether the development provides an acceptable standard of living for its occupants.

Reasons

Appeal A

The allegation

8. Although the car sales use appeared to me readily demarcated from the remainder of the site at the time of my site visit, giving rise to a question as to the identification of the relevant planning unit, I have no information upon which to conclude that this was the case at the time the notice was issued. The fencing erected to surround the cars for sale on the land was of a temporary nature and no information has been supplied about how long it has been there. Other matters relevant to considering the relevant planning unit, such as ownership or occupation, have not received detailed attention. Therefore I have no reason to conclude that the Council's allegation of a mixed use is incorrect.
9. The appellant's updated statement purported to address an appeal on ground (b), but this was not discernible from the appellant's original documents and was not a ground considered, in relation to Appeal A, by my questions on the

case. The appellant now contends that neither storage containers nor a caravan were present upon the site at the time the notice was issued, and therefore that the allegation is wrong in these respects.

10. This is to introduce a new matter, rather than to offer clarity on the existing matters I sought, and I am not prepared to entertain an appeal on ground (b) in relation to Appeal A. Nonetheless, were I to do so, the question arising would be whether the matters alleged by the notice had occurred at all; it is not limited to whether those matters were occurring at the precise date the notice was issued. There is no denial by the appellant that either storage containers or a caravan had been present at some point: in fact a caravan was also present at the time of my site visit. Thus any ground (b) appeal would not succeed.

When the use began

11. The principal building on the site consists of the Grade II Listed 249-251 Pitsmoor Road, used as offices since around 1980 but converted back to a residential use in around 2006, and regularised by a planning permission. The use as houses in multiple occupation, its present use, followed later and I understand that now to be the underlying lawful use of the site, and licensed as such by the local housing authority (also the Council) since around 2007.
12. The appellant points to a building present on the site in around 2008, later removed as a result of enforcement action, that he states was used for car repairs and for sales. He also refers to a tenancy agreement dated 2008. That tenancy relates to '249-251 Pitsmoor Road car pitch'. It does not expressly say what the premises were to be used for, but it apparently granted exclusive possession of the 'car pitch' to the tenant. Even if the 'car pitch' was exclusively used for car sales, that would not have been consistent with the mixed use of the entire site now alleged by the Council. No further details are given of the tenancy and how long it lasted, what activities took place or where exactly upon the property the 'car pitch' was located. Although granted for a fixed period of five years, it was terminable upon six months' notice.
13. A summary of a further lease of a 'car pitch', dated January 2013 and to a different tenant, is supplied. That lease was terminable on 30 days' notice. No details of what the land was to be used for are given. Again the 'car pitch' is not physically identified, but again it appears that the lease granted exclusive possession of it to the tenant. Again, this would not be consistent with a mixed use of the site, as described in the Council's uncontested allegation.
14. The appellant refers to the appearance of cars on the site since 2008 with 'up to 20 cars in view'. Some cars on the site would be consistent with the authorised residential (or former office) use of it. The Council also refer to enforcement investigations in 2007 concerning the use of the land for commercial car parking. The relevant planning contravention notice then served was not responded to by the landowner and it is not clear to me when any such use ceased. Reference is also made to a former (unauthorised) garage building being used for car repairs at some point. In the absence of any contemporaneous contention or other evidence that the cars on the land were referable to a car sales use, rather than to commercial car parking, car repairs or simply parking by the occupiers of the building, I am not prepared to infer that the use was occurring at that time.

15. The appellant also submits a statutory declaration containing the bare statement by the declarant that he can “confirm that since in or around 2008, the land at the front of both 249-251 Pitsmoor, Sheffield, has been used for the Storage or Sale of Motor Vehicles”. That is unilluminating as to the nature and intensity of any such use. The declarant gives a different address and does not explain the extent of his involvement with the appeal site, save to say that he owns it.
16. It is said that the tenant’s current lease began in January 2013 and that he incorporated his business in 2016. An accountant’s letter is provided to this effect. Some business invoices are also supplied. Before 2016 only four invoices relating to car sales are supplied, and one of those was to a residential occupant of the same site. No invoices pre-date 25 April 2013, the date by which the use must have begun if it is to be immune from enforcement action, and the first invoice is not dated until June 2014, over a year later. There is no explanation provided about whether these invoices consist of a full sales record, but on the evidence provided it does not appear to me, on the evidenced scale of any use, that the Council can reasonably have come to the view that an unauthorised car sales use was taking place on the land until at least 2016.
17. Therefore I conclude that the appellant has not demonstrated, on the balance of probabilities as he is required to do, that any car sales use was occurring on the land for a continuous period of at least 10 years prior to the issuing of the enforcement notice. Therefore the appeal on ground (d) fails.

Whether planning permission should be granted

18. The Listed Building has a substantial frontage, set away from the road on rising ground in generally verdant surroundings. Its setting is commensurate with the other buildings, some listed including the one next door at 253, on the western side of Pitsmoor Road to the north of the site. To the south that building line is lost with a large modern building fronting Woodside Lane, which the site also adjoins in part, the entrance to the car sales part of the site being taken close to the junction of the two roads. Opposite the site lies the listed Christ Church.
19. The building is looking somewhat sorry for itself with the current fenestration details which I understand from the Council to be unauthorised and potentially susceptible to enforcement action (which is not time limited) at some point. Nonetheless it retains its imposing aspect as a significant pre-Victorian building in this part of Sheffield. I understand that frontage trees have been lost at some point, which distinguishes it from its northern neighbours as it has a very open aspect with clear views up to the house from the road, although there has for many years been a single storey building to the very front of the site (about which more when I consider Appeal B).
20. This open setting has been affected by the introduction of the car sales element of the mixed use, by the keeping on the site of a large number of cars for sale that are parked on what was once the large front lawn. Additional aspects of the use included conspicuous signage and a portacabin that adjoins Woodside Lane close to the site’s southern boundary. Although the vehicles for sale are each themselves transient, the permanent nature of the use has resulted in a degradation of the building’s setting by the introduction of this incongruous use that bears no obvious functional connection to the residential use of the building. Therefore I share the Council’s concerns about the impact of the use

on the setting of this listed building. It affects the setting of the neighbouring property, by disrupting the established building line forward of which the other properties have largely undeveloped gardens. It also generally degrades the views of the listed church where there is intervisibility.

21. The Council's Unitary Development Plan ('UDP') dates from 1998, but in respect of listed buildings it is largely consistent with national policy (the National Planning Policy Framework, or 'the Framework') in that it seeks, consistently with legislative requirements, to protect the setting of listed buildings. The car sales element of the use fails this policy requirement.
22. The UDP designates this part of Sheffield as an Area of Special Character and seeks to protect such areas in that regard. Because the area has not subsequently been designated a Conservation Area, I pay little weight to the relevant policies in this respect. Nonetheless, other development policies in the area, including BE5 and H14, seek to achieve good design that complements the character of neighbouring buildings. The car sales element of the use does not complement the building here, but significantly detracts from it. The greenery surrounding the site to the west of Pitsmoor Road, from the properties north of the site to the extensive parkland from the south side of Woodside Lane to the A61, is interrupted by the commercial use taking place here which appears most out of character with the remainder of the local area as it adjoins Pitsmoor Road.
23. In the context of the adjoining commercial premises to the south on Woodside Lane, which are not readily visible from Pitsmoor Road but which are close to residential properties, I do not consider the commercial use of the site here to unduly affect the amenities of neighbouring residents. The Council alert me to matters such as the comings and goings of customers, and the effects of the cleaning of vehicles. With the exception of the residential occupiers with which Appeal B is concerned, the use appears to me sufficiently distant from residential properties to enable the preservation of their amenities, having regard to the noise already emitted from the site next door. Nonetheless the use does adversely affect the outlook of the residential occupiers of 249-51, and removes their ability to use the front garden for their own enjoyment. The building is otherwise surrounded by a relatively small area of hardstanding to the front and the loss of the lawn area is in conflict with policy H14.
24. For these reasons the development conflicts with the development plan for the area, as well as with important aspects of national policy seeking to preserve the setting of listed buildings and to achieve good quality places.
25. The appellant's case for nonetheless permitting the development is somewhat scant. My attention is drawn to the differing land levels and to the light industrial units nearby on Woodside Lane. I do not find the rising land level to the building to compensate adequately for the impact of the use upon it. Whilst the adjoining industrial buildings on Woodside Lane are undoubtedly part of the area, they are not prominent to Pitsmoor Road and do not affect the otherwise verdant frontage.
26. It is also suggested that conditions requiring boundary treatments and for the replacement of the portacabin with a building could be imposed to overcome concerns about the use. Whilst a more sympathetic boundary treatment than the current temporary fencing could be achieved, this would not overcome the issue of the site having been severed by the new use and the expansive setting

of the listed building being adversely affected by that severance. It would not be possible to impose a planning condition requiring a new building to replace the portacabin, as any such building would require an express grant of planning permission.

27. There are no other material considerations brought to my attention suggesting that a decision should be made otherwise than in accordance with the development plan for the area. As the development conflicts with the provisions of the development in a number of important respects, the ground (a) appeal will fail and permission will be refused.

Appeal B

The allegation

28. The appellant describes the building to the front of the site, consisting of an altered and extended former row of garages, as a house in multiple occupation. This is a qualitatively different use from that alleged in the notice, which is as eight flats and a shop unit.
29. At my site visit I observed that the building contains eight residential units each with their own independent cooking and washing facilities. Those I observed contained these as well as beds and in some cases a small sitting area. Each is accessed from a communal hallway with exterior doors at each end of the building.
30. The unit furthest south is not so furnished: it is presently a kitchen and sitting area apparently made available to all the occupants. That may be the case, but it does not affect the self-contained nature of the living accommodation that each occupant also has. I understand this unit to have been the 'shop' alleged by the notice, and that it has more recently been converted. The appellant denies that it was ever a shop, although it appeared as such in earlier application drawings.
31. A statutory declaration supplied by the owner of the property, who himself gives a different address and does not describe the extent of his involvement, refers only to the use of the building for 'residential purposes'. This does not assist in determining the precise nature of the residential use. However, a number of assured shorthold tenancy agreements have been supplied. These expressly grant tenancies over one or other of the flats. No reference is made to any right of access to any communal areas. If these tenancy agreements do refer to flats in this building, rather than of the main property, then it is clear that each tenant has been granted exclusive possession of their own flat.
32. Having regard to the current physical layout of the premises and to the tenancy agreements, and all other evidence in the case, the appellant has not discharged the burden of proof upon him to demonstrate, on the balance of probabilities, that the Council's allegation is incorrect. Therefore the appeal on ground (b) will fail.

When the use began

33. The Council suggest that a 10 year limitation period should apply to enforcement here, but given the nature of the use as flats I find that a four year period is applicable. A 10 year period would apply to the shop, but that use has since been superseded.

34. In as much as the use as flats has resulted from the change of use of the (former) building, section 171B(2) of the 1990 Act provided, at the relevant time, that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach, where that breach consists of the change of use of a building to a single dwellinghouse. Each of the flats would be considered such a dwellinghouse.
35. In as much as the flats have resulted from building operations, as applies to the three flats to the rear, those operations would themselves become immune from enforcement action after four years. There is then a question whether the use would also become immune, but in this case it is an academic one given my overall findings.
36. I am informed by the appellant that a residential use began in 2012, with three of the original garages being used to provide sleeping accommodation to homeless persons or persons on benefits. A communal space was then provided in the fourth garage. From this it is not at all clear what the nature of the sleeping accommodation was, and whether each garage was equipped with the facilities of a dwellinghouse. On balance I consider not, because of the reference to the communal space in the fourth garage and the appellant's reference to the later refurbishment of the three garages to provide 5 'sleeping accommodations with ensuites and kitchenettes'. Thus, although a residential use of some sort may have begun in 2012, it has not been demonstrated that it was of the same nature – i.e. as residential self-contained flats – that is now alleged by the notice. It appears that as the result of the refurbishment works a further material change of use has arisen, to that now enforced against.
37. The appellant contends that the refurbishment works were begun in 2017 and completed in 2018. This is not supported by other evidence in the case. The Council have supplied a Google photograph taken in May 2019 showing the front of the previous building to have a partially-completed breeze block wall and to be open to the elements. The Council received complaints of the works in late 2019 and they were said to have begun in around July of that year. That is largely consistent with the photographic evidence supplied. The appellant refers to a new round of leases having been signed in May 2019.
38. Therefore on the balance of probability I conclude that the conversion and use of each of the flats found in the original building did not begin until at least May 2019. That precedes the issuing of the enforcement notice by less than four years. Building works to the extension remained incomplete at the time of the Council's enforcement officer's visit in October 2019 and the use of those flats is likely to have begun later. Either way, four years did not elapse between the start of the use and the issuing of the Council's enforcement notice.
39. Therefore the appeal on ground (d) will fail.

Whether planning permission should be granted

40. It is fair to say that the pre-existing garage building was not particularly attractive; but its function, as an adjunct to the then-residential use of the principal building at the time of its construction, was apparent. Notwithstanding the physical changes to the building, the nature of its conversion to a residential use itself detracts from the setting of the listed building. One would not expect such a handsome and imposing building to have a row of bedsits in its front garden, and to find them there is a somewhat jarring imposition.

41. It is also the case that the physical works to the building have not improved the area's character or the setting of the host listed building. The building has been rendered and finished in a battleship grey, with white PVC windows inserted to the front and rear. This is in an unfortunate contrast to the natural, if unprepossessing, brick work formerly found. The works have also extended the building. Whilst the extensions are to the rear, they serve to obscure views into and out of the site alongside the secondary entrance drive and are particularly conspicuous from Woodside Lane.
42. That the living conditions of the occupants would be unacceptably cramped is plain. The front five flats each comprise no more than 13 square metres, each with a single east-facing window found in the sleeping area looking out onto a busy road. The rear flats are somewhat larger, with their single windows found in the kitchen area, but at 26 square metres still too small to result in an acceptable standard of living even for a single person. There appears no realistically useable outdoor amenity space, with the car sales use taking place to one end of the building and the secondary driveway adjoining its other end.
43. The appellant draws my attention to the provision of much-needed housing in the area, provided here for what are described as vulnerable persons. The Council does not object in principle to a residential use. However, the contribution of the site to providing much-needed housing does not remotely overcome the other objections to it. It is housing of an unacceptable standard, in a building that harms the character of the area in which it is located, and which unacceptably detracts from the setting of the listed building in whose grounds it stands.
44. I therefore find that the development conflicts with the relevant provisions of the development plan for the area. Specifically, UDP policies BE15 and BE19 require the protection of heritage assets including the setting of listed buildings. Policies BE5 and H14 require good design giving rise to acceptable standards of amenity. None of these policy criteria are met by the development. The harm caused is not outweighed by the contribution to the local housing supply, and it cannot be overcome by the appellant's suggested conditions as to boundary treatments or re-rendering the building. The appeal on ground (a) will fail, and I shall refuse to grant planning permission.

Conclusions

Appeal A

45. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

46. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeal A

47. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

48. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR