



Appeal Decision

Site visit made on 3 March 2025

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/J2373/C/23/3328376

**Land and building known as Moreton Grange (land adjacent to Fernbank),
Division Lane, Blackpool FY4 5DZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Philip Hough against an enforcement notice issued by Blackpool Council.
- The notice was issued on 21 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the use of the land adjacent to Fernbank, Division Lane, known as Moreton Grange for residential purposes.
- The requirements of the notice are to cease to use of the land for residential purposes.
- The period for compliance with the requirement is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Summary of Decision: The appeal is allowed, subject to corrections the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The Notice

1. The enforcement notice (the notice) alleges 'the use of land...for residential purposes'. The land affected by the notice in section 2 of the notice refers to 'Land and building known as...'. Based on the parties' evidence, the 'building' in section 2 of the notice refers to the building that is currently being used as a dwelling.
2. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Whilst s171B(2) has been amended recently, these amendments do not apply where the breach occurred before 25 April 2024. It is not disputed that the alleged breach took place before 25 April 2024.
3. The notice refers to the breach of planning control taking place within the last 10 years. However, the period of immunity from enforcement action for the material change of use of the building is four years. The Council's statement of case is based on it being four years for the building. Nevertheless, the period of immunity for the land surrounding the building, within the red edged area attached to the notice, is ten years.

The ground (d) appeal

4. The onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie

that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

5. The appellant contends that the use of the building as a dwelling commenced in July/August 2018, shortly after the existing tenants (Mr and Mrs Frankland) took over the lease on 1 December 2017. Mrs Frankland's Statutory Declaration states they moved onto the appeal site on 30 April 2018, initially living in a caravan on the site, using it for a bedroom and kitchen and using the building for a bathroom and living area. Following renovation works to the building, they moved into it by July/August 2018.
6. Mr Frankland's Statutory Declaration supports Mrs Frankland's declaration. It also includes a number of documents seeking to support it. The 'Licence to Occupy' dated 1 December 2017 indicates that Stephen Frankland was the licensee from that date. However, it makes no reference to the use of the site for residential purposes or the use of the building as a dwelling.
7. There are a number of letters from various businesses and Abbey-Dale Medical Centre addressed to Mr Frankland and Mrs Frankland at Moreton Grange. However, none of these letters make any reference to either of the tenants living in the building. It's reasonable to conclude that the same address would have been used when they were living in the caravan.
8. A Council officer visited the appeal site in May 2019 and found the site was used for repairing vehicles, which supports Mr Frankland's case that he used the site for such activities. However, the Council also state there were some signs of residential use of the building in question at that time. Having questioned the occupants, the Council Officer was told the building was used by numerous people who work for the appellant about 2-3 times a week and the rest of the week it was empty. They also confirmed their home address was in Fleetwood. In order to be satisfied the building was not used for residential purposes, the Council requested the beds were removed from it.
9. The appellant confirms the occupants at the time were the current tenants, Mr and Mrs Frankland and that they recall this visit. They argue they did not have a house in Fleetwood and the appellant confirms they never had employees staying at the property. Although they do not recall what was said at the visit, it is unusual they do not recall the nature of the visit. I note they do not dispute that it was requested that the beds were removed.
10. The following visit by a Council Officer on 23 July 2019 confirmed the beds had been removed from the building and the matter was resolved. Mr and Mrs Frankland do not recall this second visit. Whilst the Council have not provided any case notes of this visit, it would be unlikely that they would request the beds to be removed and then consider the matter resolved without a further visit to check the beds had actually been removed. I note the timing corresponds with Mr and Mrs Frankland stating the car repairs had ceased in June 2019, which was shortly after the Council Officer's visit in May 2019.
11. I note 23 July 2019 encroaches into the four year period of immunity by only three days. However, there is nothing to suggest this is not merely coincidental.

It is a reasonable period of time after the visit in May to check to see if what was requested was carried out.

12. I have had regard to the letters received in support for the appellant's case. However, they make no reference to Mr and Mrs Frankland living in the building.
13. Notwithstanding the discrepancies between the tenants' Statutory Declarations and the Council's statement, there is a lack of evidence that could support the appellant's case. I acknowledge they have not registered for Council tax because they want to keep a low profile. Nevertheless, there is no evidence before me such as electricity and water bills. Moreover, there is no evidence of a lease agreement for the tenants to live at the appeal site, as opposed to the 2017 agreement for its use solely for offices associated with the business.
14. I acknowledge the appellant's argument that there is inconsistency in the Council's recollection of the condition of the building from previous visits. Visits were carried out on 5 and 13 January 2011 for planning application reference 10/1423. The Officer's report for this visit noted 'A significant portion of this building has been finished to near residential standard, but there is no evidence of residential occupation and some sections retain rough floors and walls'. The application was subsequently refused and the appeal against it¹ dismissed. The Council's statement of case for the appeal states 'parts of the main building have been upgraded to near residential standard, however, the building does not offer self-contained accommodation and some sections retain rough walls and floors'. Neither of these descriptions of the building state what 'near residential standard' consisted of.
15. Further site visits were carried out on 17 October 2011 and 16 July 2012. The Council state that at both visits '...the building in question was not laid out nor in use as residential accommodation; it comprised stables and storage'. I do not find this conflicts with the findings of the January 2011 visit. In the January 2011 visit, there is no mention of the building being laid out for residential use, only that it was 'near residential standard', which is not qualified. Moreover, there is no mention of the building being in residential use at that time. The identical wording of the findings for the October 2011 and July 2012 visits suggests the author was simply stating that the building was not in use as residential accommodation and that its lawful use was stables and storage, as per the 1996 planning permission for the building².
16. I find therefore, based on the evidence before me, it has not been sufficiently demonstrated that, on the balance of probabilities, the building in question has been in residential use continuously for a period of four years prior to the notice being issued. Furthermore, it has not been sufficiently demonstrated that the land surrounding the building has been in continuous residential use for a period of 10 years prior to the date the notice was issued.
17. The ground (d) appeal therefore fails.

¹ Appeal reference APP/J2373/A/11/2157460

² Council reference 96/0420

The ground (a) and the deemed planning application

Procedural Matter

18. The ground (a) appeal and the deemed planning application is made on the basis that planning permission is sought for the change of use of the land and building to a single dwellinghouse and associated residential curtilage. This clearly forms part of the matters alleged and therefore I shall determine the ground (a) appeal and the deemed planning application on this basis. However, as 'residential curtilage' is not a land use, I shall amend this to 'residential amenity area'.

Main Issues

19. The main issues are whether the development is located in a suitable location having regard to the Council's spatial strategy; and, whether the dwelling provides adequate living conditions for existing and future occupants, with regard to internal layout, daylight, private amenity space, parking and refuse storage.

Location

20. Policy CS1 of the Blackpool Local Plan Part 1: Core Strategy 2016 (LP1) states supporting growth in South Blackpool will be promoted to help meet wider housing and employment needs, whilst recognising the important character of remaining lands at Marton Moss, identified as a strategic site. Policy CS2 of the LP1 sets out that provision will be made for the delivery of 4,200 new homes in Blackpool between 2012 – 2027, which will be located on identified sites and windfall sites.
21. Policy HSA1 of the Blackpool Local Plan Part 2: Development Management Policies (2023) (LP2) identifies the sites allocated for housing. The appeal site does not fall within any of these sites. Nevertheless, it could be considered on the basis of a windfall site.
22. Policy CS26 of the LP1 has specific regard to Marton Moss and has two parts. Part 1 states that a neighbourhood planning approach will be promoted for this area. Part 2 sets out the approach to be taken prior to a neighbourhood plan being developed. The Marton Moss Neighbourhood Plan 2023 (MMNP) has since been adopted and therefore part 2 of Policy CS2 of the LP1 is no longer relevant.
23. Policy MM5 of the MMNP allows for housing development on land not allocated for housing provided it is a small gap in an otherwise built-up street frontage; or, land currently or recently occupied by buildings.
24. Notwithstanding whether the site is an infill plot, it is land that is currently occupied by buildings and therefore satisfies criterion b. In terms of the effect on the open character of the area, the development utilises an existing building.
25. Policy MM5 goes on to state 'and the scheme would not significantly reduce the open character of the immediate locality or undermine the intentions of Policy MM2.'

26. There is no proposed additional buildings or extensions to what is already on the site. The site is located on a predominantly residential road in between two other developed plots, Fernbank and Charnwood House. Whilst the residential use of the site would introduce cars and domestic paraphernalia and activities to the site, given its position nestled between two properties and the existing buildings on the site already being present, this would not have a harmful effect on the open character of the area.
27. Policy MM2 of the MMNP safeguards three areas as Major Open Land. The appeal site is not located in any of these three areas and therefore there is no conflict with Policy MM2.
28. The supporting text to Policy MM5 of the MMNP states that all windfall housing proposals, to be acceptable, must accord with the basic standard construction requirements (as set out in the Local Plan and other relevant documents) that are applicable to all developments and be appropriate in terms of all the relevant policies of this Plan and the Design Code, such as in terms of building densities. However, this does not mean that if windfall development does not meet these requirements, then it fails to comply with Policy MM5. It is simply referring to requirements in addition to compliance with Policy MM5.
29. I find therefore, the development is located in a suitable location having regard to the Council's spatial strategy. As such, it complies with Policies CS1, CS2 and CS26 of the LP1; Policy HSA1 of the LP2; and, Policy MM5 of the MMNP.

Living Conditions

30. The Council argue the dwelling does not meet the 'Technical housing standards – national described space standard'. Although they do not explicitly state why it does not, they cite the standards requirement for a 1 storey dwelling for 1 bedroom, 2 persons to have a minimum 50 sqm for gross internal floor areas and storage. Notwithstanding the drawings submitted with the appeal depict the building as having 3 bedrooms, and therefore it is not clear why the Council refer to the requirements for a 1 bedroom, 2 persons dwelling, the dwelling has a gross internal floor area of approximately 110sqm. This far exceeds the requirements for a 3 bedroom, 4 person dwelling, let alone a 1 bedroom, 2 person dwelling. Moreover, all of the bedrooms exceed 2.7m wide, with bedroom 3 totalling approximately 33sqm. This far exceeds the national standards requirement for bedroom standards. The Council has not disputed the drawings.
31. For the same reasons, the dwelling also satisfies the requirement for a double bedroom room size as set out in The Blackpool Council New Homes from Old Places Supplementary Planning Document 2011 (SPD), which is 12sqm and 2.7m wide. Moreover, the 2.4m width of the kitchen exceeds the SPD minimum requirement of 2.3m; the 3.5m width of the living room exceeds the SPD minimum requirement of 2.9m wide; and, the total aggregate floor area of the living room, kitchen and snug far exceeds the minimum requirement of 25sqm for a 2 person dwelling or even the minimum 29sqm for a 4 person dwelling.
32. At the time of my site visit all of the bedrooms had a window. I also note the drawings submitted with the appeal depict each room as having a window. Accordingly, I am satisfied the dwelling provides adequate natural light for all living accommodation.

33. Although the building is simple in its design, it is clearly read as a single-storey bungalow. There is a driveway leading up to the dwelling with a lawn and pond to the front and a hardstanding yard to the rear, providing ample parking provision and refuse storage for its occupants.
34. I find therefore, the dwelling provides adequate living conditions for existing and future occupants, with regard to internal layout, daylight, private amenity space, parking and refuse storage. As such, it complies with Policy CS7 of the LP1 and Policy DM5 of the LP2, which seek to ensure development provides adequate amenities for its occupants; satisfy local and national standards; and, establish residential character and maximise residential amenity.

Other Matters

35. The appeal site is located within the Marton Moss Conservation Area (CA). Although the Council cite Policy DM27 of the LP2, which seeks to protect Conservation Areas, within their reasons for issuing the notice, they confirm the development would not 'devalue' the CA and raise no objection in this regard. Nevertheless, I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
36. The Blackpool Council Marton Moss Conservation Area Appraisal 2018 describes the CA as one of a small piecemeal post-medieval enclosure surrounded by busy arterial routes. It consists of the earliest cobbled buildings through to modern detached bungalows and comprises an enclosed leafy landscape based around lanes, rectangular fields and drains. Its significance derives from its historical architectural and landscape context.
37. The appeal development utilises an existing building and land that previously formed part of land associated with the adjacent dwelling, Fernbank. The use of the land and building for residential purposes has no harmful effect on the character or appearance of the CA. I therefore find the development has a neutral effect, and therefore preserves, the character and appearance of the CA. As such, it complies with Policy DM27 of the LP2.
38. I have had regard to the 2016 appeal decision³ for the change of use of the building to a single dwelling. However, that was determined against the context of a different development plan than what currently exists. Notably, the MMNP was not adopted at that time. Therefore, there is sufficiently different evidence between what the previous Inspector had before them and what is before me in this appeal to justify a different decision.

Conditions

39. In the event I allow the ground (a) appeal and grant planning permission for the deemed planning application, the Council has suggested a number of conditions be imposed.
40. It is suggested a condition is imposed regarding a scheme for external alterations. However, the appeal proposes no external alterations. Accordingly, such a condition would be unnecessary and unreasonable.

³ Appeal reference APP/J2373/W/15/3132688

41. Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. No justification has been provided to explain why a condition that would effectively remove permitted development rights pertaining to the enlargement of the dwelling should be imposed. Accordingly, I find no reason why such a condition should be imposed. Therefore, it would be unnecessary and unreasonable to do so.
42. For the same reason, I find no reason to impose a condition restricting the use to use Class C3 only. If a material change of use occurs and the property is used for some other use, then planning permission would be required.
43. Given there is ample space for car parking and refuse waste storage within the site it is not necessary to identify where such provision would be located.
44. Moreover, no justification has been provided to explain why a landscaping scheme is required. There is established vegetation on site and the dwelling is well-screened from the road. It is not clear why further landscaping is required for a single dwelling. Such a condition would therefore be unnecessary and unreasonable.

Conclusion

45. For the reasons given above, having considered the development plan as a whole and all material considerations, the appeal should succeed on ground (a) and planning permission will be granted for the change of use of the land and building to a single dwellinghouse and associated residential amenity area. The enforcement notice will be quashed. Given the success on the ground (a) appeal there is no need to go on to consider the ground (g) appeal.

Formal Decision

46. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the land and building to a single dwellinghouse and associated residential amenity area at Land and building known as Moreton Grange (land adjacent to Fernbank), Division Lane, Blackpool FY4 5DZ.

A Walker

INSPECTOR