
Appeal Decisions

Site visit made on 1 April 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 April 2025

Appeal A Ref: APP/U2750/C/24/3347048

The Moorcock Inn, Garsdale, Sedburgh LA10 5PU

- 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 Mrs Joanne Cox against an enforcement notice issued by Yorkshire Dales National Park Authority.
 - The enforcement notice, numbered Notice A, was issued on 17 May 2024.
 - The breach of planning control as alleged in the notice as, without planning permission, the material change of use of the building from use as a public house to use as single dwelling house (Use Class C3) including internal alterations to the building comprising the erection of two partition walls on the ground floor and additional staircase to facilitate the change of use.
 - The requirements of the notice are:
 - (i) Stop using the building as a single dwelling house
 - (ii) Remove the two partition walls and staircase constructed to facilitate the change of use referred to in paragraph 3 of the notice.
 - (iii) Remove from the bar and public areas of the ground floor of the building all fixtures and fittings associated with the use of the building as a single dwellinghouse
 - (iv) Remove from the land all materials and waste resulting from compliance with requirements (ii) and (iii).
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
-

Appeal B Ref: APP/U2750/C/24/3347051

The Moorcock Inn, Garsdale, Sedburgh LA10 5PU

- 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 Mrs Joanne Cox against an enforcement notice issued by Yorkshire Dales National Park Authority.
 - The enforcement notice, numbered Notice B, was issued on 17 May 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the building to the following uses:
 - (i) Use of part of the building as a Tea Room.
 - (ii) Use of part of the building as a self-contained unit of residential accommodation for short term holiday letting purposes (Use Class C3).Including associated development comprising the erection of timber fencing adjacent to the northern and western elevations of the building to create separate enclosed seating areas for the uses referred to above.
 - The requirements of the notice are:
 - (i) Stop using part of the building as a Tea Room.
 - (ii) Stop using part of the building as a self-contained unit of residential accommodation.
-

- (iii) Remove from the building all fixtures and fittings associated with use of part of the building as a Tea Room.
 - (iv) Dismantle and remove the fencing from the land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
-

Summary Decisions

Appeal A is dismissed and the Enforcement Notice is upheld.

Appeal B is dismissed and the Enforcement Notice is upheld.

Procedural matters

1. In the interest of clarity and expediency, the description of the breach of planning control that is alleged in the notices and the requirements to comply with them have been simplified in the header above. In particular, I have omitted reference to the plans that are attached the notices which identify the parts of the building to which the notices relate shown hatched in various colours. I am satisfied that when read alongside the notices themselves, this does not cause any confusion.
2. The appeals have been made on ground (b) and/or ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). In her appeal statement, the appellant refers to moving some internal walls and installing an additional staircase within the building, and erecting a new garden fence externally. The appellant expresses the view that none of works require planning permission and, in her view, cannot form the basis of any valid complaint from the local planning authority.
3. On my reading, although not expressed in these terms, those comments constitute an appeal under ground (f) as set out in section 174(2) of the 1990 Act, namely that the requirements of the notice exceed what is necessary. I will therefore treat these comments as if an appeal on ground (f) had been made. The Yorkshire Dales National Park Authority makes express reference to these matters in paragraphs 5.4 and 5.9 of its appeal statement. I am therefore satisfied that no injustice is caused by doing so.

The planning unit

4. Where a notice alleges a material change of use, it is first necessary to identify the planning unit in which that material change of use is alleged to have taken place.
5. Prior to the works described in the notice taking place, the appeal property comprised a traditional two-storey public house, with the bar area on the ground floor and with en-suite letting bedrooms on the first floor. Guests would take their meals on the ground floor public house area. In October 2013, full planning permission was granted for the erection of a rear extension to provide living accommodation for the manager of the public house (Authority Ref: R/56/154E). The occupation of the extension was tied through a section 106 Agreement attached to that permission to a person wholly or mainly employed at The Moorcock Inn.

6. From the evidence that is before me, it appears that the public house, en-suite letting rooms, manager's accommodation and the external areas (car park) all formed a single unit of occupation. All these areas were physically and functionally linked. Consequently, as a matter of fact and degree, I consider that a single planning unit was formed by the entirety of the property.
7. The primary use of that planning unit was as a public house, which is a *sui generis* use. All the other uses (the en-suite letting rooms, the manager's accommodation and the external areas) were ancillary to that primary use.

Appeal A: the appeal on ground (b)

8. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
9. The appellant's case on this ground of appeal is that The Moorcock Inn has always been a mixed-use property, being part licensed property and part private dwelling. Similarly, the appellant maintains that the property has always been used for the provision of food and drink, as well as offering bed & breakfast accommodation. The appellant explains that the property is still being used for these purposes.
10. The breach of planning control alleged in the notice is, without planning permission, the material change of use of the building from use as a public house to use as single dwelling house (Use Class C3). For the purposes of this ground of appeal, it matters not if other parts of the building are being used for different purposes. I am only concerned here with whether this part of the building is now a dwelling.
11. I noted on my site visit that the ground floor of the building, which had previously been used as the bar area for the public house, is now fitted out as living accommodation. This included sofas, a dining table and a fully equipped kitchen. The new staircase leads to bedroom and bathroom facilities. In combination, this part of the building provides all the facilities necessary for daily domestic existence. It is, as a matter of fact and degree, a dwelling.
12. I understand that the appellants intend that some of the bedroom accommodation is to be used to provide bed & breakfast accommodation. However, I have no firm evidence to that effect. I have therefore determined this ground of appeal on the basis of what I observed at my site visit.
13. I conclude, on the balance of probability, that the change of use of the building from use as a public house to use as a single dwelling house (Use Class C3) has occurred. Accordingly, the appeal on ground (b) fails.

Appeals A and B: the appeals on ground (c)

14. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

15. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added)

16. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach adopted by the courts is that, for a material change of use to have occurred, there must as a matter of fact and degree be some significant difference in the character of the activities from what has gone on previously.
17. The starting point with both appeals is therefore the use of the appeal property prior to the works taking place. The primary use was as a public house, to which all the other uses were ancillary. It was therefore not a mixed use.
18. In relation to Appeal A, I have found that the accommodation provided in this part of the building constitutes a dwelling. Residential accommodation may have been a component of the use of the appeal property in the past, albeit latterly that use was limited through the section 106 Agreement to persons wholly or mainly employed at The Moorcock Inn. Moreover, that only related to another part of the building. The salient point is that this residential use was an ancillary use, and not the primary use of this part of the building.
19. As a matter of fact and degree, the change of use from a public house to that of a dwelling results in a significant difference in the character of the activities from what has gone on previously. For example, in terms of the level of activity and the number of vehicular/pedestrian movements generated by the respective uses. I therefore consider that, on the balance of probability, a material change of use has occurred in this respect.
20. In relation to Appeal B, the breach of planning control as alleged in the notice is, without planning permission, the material change of use of the building to use of part of the building as a Tea Room and use of part of the building as a self-contained unit of residential accommodation for short term holiday letting purposes (Use Class C3). Absent an appeal on ground (b) in these respects, it is reasonable to conclude that the appellant accepts that these uses have occurred.
21. I recognise that use of part of the building as a Tea Room would generate a pattern of activity that in some respects is similar to that of a public house. However, in the absence of detailed evidence to the contrary, based on the respective floor space and the nature of the respective uses it is reasonable to conclude that the number of movements (vehicular and pedestrian) generated by use of the appeal property as a public house would be greater than for the use as Tea Rooms. The pattern of movements, include the times of the day/night at which those movements take place, is also more likely than not to be very different.
22. Consequently, as a matter of fact and degree, the change of use from a public house to that of a Tea Room has resulted in a significant difference in the character of the activities from what has gone on previously. I therefore conclude that, on the balance of probability, a material change of use has occurred in this respect.

23. Similarly, in relation to use of part of the building as a self-contained unit of residential accommodation for short term holiday letting purposes, I recognise that this type of use has historically been part of the use of The Moorcock Inn. However, that was as an ancillary use to the primary use of the premises as a public house.
24. Compared with the primary use of The Moorcock Inn as a public house with ancillary short term holiday letting accommodation, the use of part of the building as a self-contained unit of residential accommodation for short term holiday letting purposes as a primary use has, as a matter of fact and degree, resulted in a significant difference in the character of the activities from what has gone on previously. This is again based primarily on the number and pattern of vehicular and pedestrian movements associated with the respective uses. I therefore conclude that, on the balance of probability, a material change of use has occurred in this respect also.

Conclusion on ground (c)

25. Section 55(1) of the 1990 Act states that the making of any material change in the use of any building or other land constitutes development for the purposes of that Act. Section 57 of the 1990 Act states that planning permission is required for development. There is no planning permission in place, deemed or otherwise, for the breach of planning control that is alleged in Notice A or Notice B (Appeal A and Appeal B respectively).
26. I therefore conclude that the matters stated in Notice A and Notice B do constitute a breach of planning control. Accordingly, the appeals on ground (c) fail.

Appeals A and B: the appeals on ground (f)

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notices include to cease the use of parts of the building as a dwelling, as a Tea Room and as a self-contained unit of residential accommodation. The purpose of the notices must therefore be to remedy the breach of planning control that has occurred.
28. Section 173(4)(a) of the 1990 Act provides that an enforcement notice may require that the breach of planning control is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place, while section 173(5) of that Act gives power to require the alteration or removal of buildings or works, or the carrying out of any building or other operations. It is settled case law that an enforcement notice issued in respect of a material change of use, and where works were carried out to facilitate the material change of use, the enforcement notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach of planning control is remedied.

29. In relation to Notice A, the enforcement notice requires the removal of the two partition walls and staircase constructed to facilitate the change of use and the removal from the bar and public areas of the ground floor of the building all fixtures and fittings associated with the use of the building as a single dwellinghouse. In both respects, I am satisfied that the works are ancillary or incidental to the change of use that has taken place. The removal of these works is necessary to achieve the purpose of the notice and is in accordance with sections 173(4)(a) and 173(5) of the 1990 Act. I am therefore satisfied that the enforcement notice can require the removal of these works.
30. In relation to Notice B, the enforcement notice requires the fencing to be dismantled and removed from the land. The purpose of this fencing is to provide privacy for customers and an element of protection from the elements. I am therefore satisfied that this fencing is ancillary or incidental to the material change(s) of use alleged in the notice. The removal of this fencing is necessary to achieve the purpose of the notice, and is in accordance with sections 173(4)(a) and 173(5) of the 1990 Act. Consequently, in accordance with settled case law, the enforcement notice can require the removal of this fencing.
31. I conclude that the requirements of the notices are necessary to achieve the purpose of those notices, and as such are not excessive. Accordingly, the appeals on ground (f) fail.

Conclusion

32. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold both enforcement notices.

Formal Decisions

Appeal A Ref: APP/U2750/C/24/3347048

33. The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/U2750/C/24/3347051

34. The appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR