



Appeal Decision

Site visit made on 16 September 2025

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2025

Appeal Ref: APP/W0910/C/23/3327678

Land at 26-28 Portland Walk, Barrow-in-Furness, Cumbria, LA14 1DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Brijesh Patel against an enforcement notice issued by Westmorland and Furness Council.
 - The notice was issued on 11 July 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use with the conversion of first floor retail space to 8 No. 1 bed flats and the creation of windows to the north western rear and side elevations.
 - The requirements of the notice are: to removal all internal works that have taken place in connection with the creation of the unauthorised 8 flats and to return the internal layout of the first floor to its former retail layout. To remove all waste created by the above actions from the site and to depose of in a lawful manner.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Decision

1. It is directed that the enforcement notice is:
 - corrected by the deletion of the requirements in paragraph 5 and their replacement with “cease the use of the property as 8 no. 1 bedroom flats. Remove all internal works that have taken place in connection with the creation of the flats and return the internal layout of the first floor to its former retail layout. Remove from the land and dispose of in a lawful manner all waste created by the above actions”; and
 - varied by the deletion of “6 months” from paragraph 6 and its replacement with “9 months” as the period for compliance.
2. Subject to this correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The revised National Planning Policy Framework (the Framework) was published in December 2024. This does not raise any matters that require me to seek representations from the main parties in this case.

Matters concerning the notice

4. The notice alleges the material change of use of the first floor retail space to 8 no. flats. However, the requirements of the notice do not state that this use must cease.

Under section 176(1) of the Town and Country Planning Act 1990, an Inspector may correct any error, defect or misdescription in an enforcement notice provided that it will cause no injustice to the appellant or the Council. The notice can be corrected to require the use to cease without causing injustice as it is clear from the appellant's case that they are fully aware of what the notice seeks to achieve and they have responded accordingly. I can also correct the typographical errors referring to "To removal" and "to depose" without injustice. The notice will be made more precise for the Council's purposes but no more onerous from the appellant's perspective.

The appeal on ground (a) and the deemed planning application

5. An appeal on ground (a) is that planning permission ought to be granted for what is alleged in the notice.
6. The main issue in this case is whether the development provides for acceptable living conditions for existing and future residents, with particular regard to noise and disturbance, daylight, sunlight, outlook and ventilation.
7. 26-28 Portland Walk are mid terraced properties fronting onto a pedestrianised shopping street in Barrow-in-Furness Town Centre. The unauthorised development relates to the first floor of the building, where 8 flats have been created. The ground floor below has been retained in retail use. Although not clear from the plans, the main entrance to the flats is via a separate door and staircase from Portland Walk, and there is also a fire exit to the rear onto Preston Street. The Council refused planning permission for the conversion of the first floor retail space to 8 no. 1 bed studio flats in February 2021 (the 2021 application)¹. That application broadly corresponds to the development the subject of the notice, with some minor alterations as detailed on the plans submitted with the appeal.
8. There are 4 flats at the front and 4 at the rear of the building. Internally the flats are relatively long and narrow, but they are of sufficient size and comply with the minimum floor area standards for either 1 or 2 person units, as set out in the Technical housing standards – nationally described space standard (2015).
9. The Council says that some of the bedrooms have a narrow walkway through to the living rooms, but I observed that the bedrooms are of satisfactory size. However, none of the bedrooms or bathrooms are served by windows. There is some light from the living room windows but they are too distant and some are not in a line of sight through the intervening doors, to provide sufficient levels of daylight, sunlight and outlook to the bedrooms. The sun pipes provide minimal light to the bedrooms and afford no outlook. Consequently, the bedrooms and bathrooms are gloomy and oppressive spaces and lack natural ventilation. Ventilation has been addressed through mechanical ventilation and trickle vents. However, the lack of daylight, sunlight and outlook means that the bedrooms and bathrooms are heavily reliant on artificial light which does not provide for high quality living accommodation and is unacceptable given that the occupiers are likely to spend a significant amount of time in the bedrooms.
10. Although Portland Walk is a busy, pedestrianised shopping street, it is unlikely that there is significant noise and disturbance to residents of the front facing flats, particularly given the daytime opening hours of the retail units located here.

¹ Council ref. B18/2020/0822

However, there are several late-night licensed premises on Preston Street, William Street and Cavendish Street which are within proximity of the rear flats. These include the Cross Keys Hotel which the evidence indicates has a premises licence to operate until 0400 hours each day, together with several hot food takeaways which also open late at night. The main entrance to the Cross Keys is on Preston Street within close proximity of the rear flats. New windows have been inserted to serve the rear flats which face towards either Preston Street or William Street.

11. These late-night premises are a source of potential noise given their proximity to the first floor flats. Activity and noise outside of the nearby public house and nearby takeaways, caused primarily by patrons entering or leaving the premises but potentially also from live music, and from plant noise from the takeaways, could result in unacceptable noise disturbance to the occupiers of the rear flats. This is of particular concern during busier times at weekends or late at night when residents would reasonably expect some peace and quiet.
12. The appellant's noise impact assessment recorded noise at the north elevation of the building from road traffic and plant noise from nearby takeaways. However, a significant limitation of the assessment is that it was undertaken during the Covid-19 pandemic when the nearby commercial premises would not have been fully operational due to the restrictions that were in place at the time. Given this it is unlikely that the noise environment recorded by the noise assessment is representative of typical noise conditions in this area due to reduced opening times of nearby premises and smaller numbers of customers.
13. Therefore, I cannot be sure that the recommended measures outlined in the assessment would adequately mitigate internal noise levels in the flats. Furthermore, the noise assessment recommends that to satisfy internal noise criteria it is necessary to incorporate appropriate glazing, but it does not appear that these recommendations have been implemented. The strategy seems to be for the windows to be sealed shut, but this is contradicted by the submitted plans, which indicate openable windows, and I observed on site that they are currently openable. Consequently, the noise assessment does not provide sufficient clarity and robustness to enable me to conclude that the internal noise levels within the flats is acceptable.
14. Moreover, the need to keep windows closed to avoid exposure to unacceptable levels of noise would create an oppressive internal environment, which I have already found to be oppressive due to inadequate light and outlook. Residents would have a reasonable expectation that they would be able to open their windows without being subjected to unacceptable noise. The parties have referred to various appeal decisions where the matter of non-openable windows was considered. However, I do not have the substantive details or planning history of these cases before me and so cannot be sure that they are comparable to the appeal development which I have considered on its own merits. Although non-openable windows might be acceptable in some cases, in this instance their use would add to my concerns regarding the oppressive living conditions for residents. Therefore, the condition suggested by the appellant to ensure that the windows be replaced with sealed units would not overcome my concerns.
15. For the above reasons, I conclude that the development fails to provide for acceptable living conditions for existing and future residents, having particular regard to noise and disturbance, daylight, sunlight and outlook. It conflicts with

Policies H7, DS2 and DS5 of the Barrow Borough Local Plan 2016-2031 which, amongst other things, seek to ensure that residential development provides an acceptable standard of amenity for residents in terms of sunlight, daylight, outlook and noise. It also conflicts with the Framework, including paragraph 135, where this seeks a high standard of amenity for existing and future users, and paragraph 200 which states that planning decisions should ensure that new development can be integrated effectively with existing business and community facilities.

Other matters

16. The flats are for short term lets of between 3 and 6 months and are intended to cater for contract workers, rather than for long term occupation. However, even if a shorter occupancy period could be restricted by condition, neither this nor the town centre location of the development provide compelling justification for a lower standard of amenity. A 6 month occupancy is still a lengthy period in sub-standard accommodation and is not conducive to the occupiers' health and well-being. The appellant says that the proposed use class C5 would best describe these flats, but this use has not yet been introduced and is not therefore determinative in this case.
17. The development contributes to the Council's housing supply and provides affordable living accommodation in an accessible location, to which I afford moderate weight. The appellant says that the flats provide accommodation for contract workers and are an alternative to staying in holiday lets or hotels. However, there is no substantive evidence before me to suggest that there is a shortage of smaller, rental units within the area, which limits the weight that I attach to this matter. The benefits of the scheme do not outweigh the harm that I have identified.
18. I agree that there is no harm to highway safety from the unauthorised use and that matters of waste storage and collection could have been addressed by means of a condition. However, these are neutral factors in my consideration of the appeal.

Conclusion on ground (a) and the deemed planning application

19. The material change of use subject to this appeal does not provide for acceptable living conditions for existing and future residents. The development therefore conflicts with the development plan as a whole and there are no material considerations to indicate that the decision should be taken otherwise than in accordance with this.
20. I am mindful that dismissing the appeal and upholding the notice will result in the loss of the occupiers' homes and interfere with their rights under Article 8 of the Human Rights Act which states that everyone has a right to respect for private and family life, their home and correspondence. However, this is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Given the harm identified, the action is in accordance with the law and is necessary and proportionate to the situation.
21. Therefore, the appeal on ground (a) does not succeed and the deemed planning application should be refused.

The appeal on ground (g)

22. The purpose of the time period within the notice is to allow for the unauthorised use to cease and the associated physical works to be completed. An appeal on ground (g) is that the period given for compliance with the notice falls short of what should

reasonably be allowed. In this case the compliance period is 6 months. The appellant considers that a 12 month compliance period would be reasonable.

23. Given that the tenancy agreements are typically issued for periods of between 3 and 6 months, a 6 month compliance period may be insufficient to allow the tenants to find new homes and then for the internal works to be completed. However, a 12 month period has not been adequately justified and I am mindful of the need to ensure that the harm to the living conditions of the occupiers is not prolonged unnecessarily. I therefore consider a period of 9 months would strike an appropriate balance in this instance, as this should give the tenants sufficient time to secure alternative accommodation and for the works to be carried out.
24. The appeal on ground (g) therefore succeeds, and I will vary the enforcement notice by changing the compliance period to 9 months.

Conclusion

25. For the reasons given above, I conclude that the appeal on ground (a) fails but that the appeal on ground (g) succeeds. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Ollerenshaw

INSPECTOR