



Appeal Decision

Site visit made on 21 May 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 May 2026

Appeal Ref: APP/V2004/C/25/3359093

113 Spring Bank, Hull, HU3 1BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mahmood M Mohammadi against an enforcement notice issued by Kingston-Upon-Hull City Council.
 - The notice was issued on 3 December 2024.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised change of use of the Premises from offices to flats.
 - The requirements of the notice are to (i) cease the use of the property as flats and revert back to offices; and (ii) remove from the Premises all building materials and rubble arising from compliance with requirement (i) above.
 - The period for compliance with the requirement is 6 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by the deletion of the words *"without planning permission: the unauthorised change of use of the Premises from offices to flats"* in section 3, and their substitution of the words *"without planning permission: the unauthorised material change of use of the Premises from offices to flats"*, and the deletion of the words *"Cease the use of the property as flats and revert back to offices"* in section 5(i), and their substitution with the words *"Cease the use of the Premises as flats"*. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. On my site visit, the appellant could not give me access into the flats in the main part of the building, or in the rear buildings. He indicated that this was not possible as he had not served notice on the tenants. Nonetheless, the main parties did agree on the site visit that the main part of the building contained three flats and the buildings to the rear respectively contained two flats. I observed that work was in the process of being carried out to the upper floor flat of the main part of the building, and it is understood that a new roof dormer had been constructed. The roof dormer does not form part of the notice which is the subject of this appeal.

The Notice

3. Section 3 of the notice refers to the breach of planning control as *'without planning permission: the unauthorised change of use of the Premises from offices to flats'*. Section 55 of the Act provides a definition of development and specifically states *'the making of any material change in the use of any buildings or other land'*. In the

interests of precision, I shall include the word '*material*' before '*change*' in section 3 of the notice and, in doing so, no injustice would be caused to the main parties.

Ground (e) appeal

4. The appeal on ground (e) is made on the basis that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act. Section 172(2) of the Act provides that a copy of an enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants, and sub-tenants, being an interest which, in the opinion of the local planning authority, is materially affected.
5. The appellant's claim on ground (e) is that the address of the notice is 113 Spring Bank '*which is classified as a commercial property and operates as a shop location*'. He states that 113A Spring Bank is a residential complex and '*has been in use as such since I purchased the property*'. The Council's evidence, which has not been disputed by the appellant, is that Land Registry title notes refer to the property as 113 Spring Bank only and that Council tax records indicate that all the flats are associated with 113 Spring Bank, for example '*Flat 2, 113 Spring Bank*'. The evidence is that only one flat is associated with 113A Spring Bank and which is the appellant's billing address and the only record which refers to this address. While this is not a matter that is directly relevant to the ground (e) appeal, the appellant's evidence is not sufficiently precise or unambiguous to counter the Council's evidence above.
6. On the evidence that is before me, I am satisfied that 113 Spring Bank is the correct postal address from the point of view of the breach of planning control. I do, however, acknowledge that at some point the appellant has referred to '*Mahmood Apartments 113A Spring Bank*' on the shop front fascia and on a front door of the Premises. Moreover, and, in any event, it is clear from the evidence that the appellant is fully aware of what part of the Premises the breach of planning control is concerned with and which falls within the red edged site location plan attached to the notice.
7. In respect of the appeal made on ground (e), it is noteworthy that the appellant does not actually make a claim that the notice was not properly served in accordance with the requirements of section 172(2) of the Act. Indeed, the evidence in the form of the Council's certificate of service (including photographs) demonstrates that a copy of the notice was emailed directly to the appellant and that separate copies were also posted to the occupier of each flat. I therefore conclude that the ground (e) appeal fails.

Ground (b) appeal

8. The appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The onus is on the appellant to make a case on the legal grounds of appeal. In this case, the appellant has not provided any evidence to counter the position of the Council that when the notice was issued, the premises (i.e., 113 Spring Bank) was in use as flats. The appellant's claim is that Council tax is paid in respect of residential use of the building. That indicates to me that when the notice was issued, the property was in use as flats.
9. For the above reasons, I conclude that the ground (b) appeal fails.

Ground (c) appeal

10. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
11. The appellant claims that ‘applications’ have been submitted to the Council in respect of the breach of planning control. I do not have details of the submitted applications but, in any event, the appellant does not dispute the Council’s comment that any such applications were invalid owing to the requirement for additional information. The material change of use of the premises from offices to flats constitutes an act of development by virtue of section 55 of the Act. The material change of use of the premises from offices to flats does not fall to be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
12. On the evidence that is before me, I conclude that the matters alleged do constitute a breach of planning control. Therefore, the ground (c) appeal fails.

Ground (d) appeal

13. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
14. The evidence is that the appellant purchased the property in 2022. He states that *‘since acquiring the property, I have made a few changes to renovate and improve it. However, these changes were not intended to alter the existing classifications but to enhance the property’s condition and usability’*. The appellant has not provided precise and unambiguous evidence to substantiate the claims made above.
15. The Council’s evidence is that the material change of use of the premises from offices to flats commenced sometime *‘from/after 2018’* and following the refusal of a planning application in 2018. The Council also refer to the payment of Council tax for the flats from 2022.
16. Even if the flats were in use from 2018 (there is no precise and unambiguous evidence from the appellant to support any such claim), given section 171(B) of the Act a period of ten years has not passed between 2018 and the date of the notice, i.e., 3 December 2024. A continuous period of ten years use of the Premises as flats would need be proven, on the balance of probability, to equate to an immunity from enforcement action. Such evidence is not before me and immunity from enforcement action cannot therefore be concluded.
17. For the above reasons, and, on the balance of probability, I conclude that when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. Therefore, the ground (d) appeal fails.

Ground (f) appeal

18. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is

necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

19. The appellant considers that the requirement is excessive and that instead his submitted planning applications be considered and, if needed, that the submitted plans be amended. I do not have details of any of the submitted planning applications, or the details of an alternative development proposal. Moreover, such considerations would be relevant to the consideration of a ground (a) appeal and a deemed planning application. A ground (a) appeal is not before me.
20. The purpose of the notice is to remedy the breach of planning control. Ceasing the use of the property as flats is not an excessive requirement as it remedies the breach of planning control. It is not, however, necessary for the notice to require the property to '*revert back to offices*'. That exceeds what is necessary to remedy the breach of planning control, although I emphasise that section 57(4) of the Act affords a right of reversion to a lawful use.
21. I shall therefore vary section 5(1) of the notice, without injustice being caused to the main parties, by deleting the words '*and revert back to offices*'. To this extent, I conclude that the ground (f) appeal succeeds.

Ground (g) appeal

22. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
23. The appellant makes the claim that a period of 12 months as distinct from 6 months is needed so that he can engage further with the Council and to prepare revised planning applications. The evidence is that while planning applications may have been submitted to the Council, they were not registered. There is no indication that the appellant has sought to provide the necessary information to ensure that any such planning application(s) can be registered. In the absence of a ground (a) appeal and a deemed planning application, it must be conclusively presumed that the planning harm has been caused as outlined in the reasons for issuing the notice.
24. I acknowledge that upholding the notice would result in the existing residents being made homeless. In this regard, it is necessary that I have regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
25. In this case, I find that a period of six months strikes a reasonable and proportionate balance between bringing the harmful development to an end in the public interest, affording a reasonable amount of time for existing residents to find alternative accommodation, and ensuring full compliance with the varied requirements of the notice.
26. For the above reasons, I conclude that the ground (g) appeal fails.

Overall Conclusion

27. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall correct and vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

D Hartley

INSPECTOR