Planning Inspectorate

Appeal Decisions

Site visit made on 12 March 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 MARCH 2025

Appeal A Ref: APP/C3430/C/24/3350826
Appeal B Ref: APP/C3430/C/24/3350827
Appeal C Ref: APP/C3430/C/24/3350828
15 Sytch Lane, Wombourne, Wolverhampton, WV5 0NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal A is made by Ms Jules Tustin, Appeal B is made by Ms Julie Tustin, and Appeal C is made by Mr Warren Davies against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 31 July 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from a dwellinghouse to a mixed use as a dwellinghouse and food preparation associated with food delivery business which includes the production, distribution and storage of cobs.
- The requirements of the notice are to cease the use of the Land for the purposes of food preparation in association with a food delivery business including the production, distribution and storage of cobs.
- The period for compliance with the requirement is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c), (d), (e) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. The appeals are dismissed, and the enforcement notice is upheld.

Reasons

Appeals on ground (e)

2. An appeal made on ground (e) is 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 requires that a copy of the notice should be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

3. The evidence is that the appeal land is occupied by tenants and that the proprietor is Mr David Ian Cartwright. Prior to the notice being issued, the local planning authority (LPA) sought to undertake a land registry check of the appeal land. This identified the name of the proprietor and his address as 15 Sytch Lane, Wombourne (i.e., the appeal land). While the appellants make the claim that a notice was not properly served on Mr David Ian Cartwright, as he allegedly does not live at the appeal address, the courts have held that a land registry proprietor address constitutes proper service if the LPA has not been given any other address.

4. It is noteworthy that the appellants state that Mr David Ian Cartwright does not live at the appeal address and has not done so since 6 November 2021. However, and despite the landlord relationship, they do not say where he is now living.

5. There is no evidence to suggest that the LPA would have known that Mr David Ian Cartwright was not living at the appeal address when the notice was issued. For the purposes of section 172 of the Act, the courts[1] have held that the LPA does not need to check the records of other Council departments whether that be say Council tax or electoral services: the statutory framework points to the knowledge of the LPA as relevant for the service of the notice. In this regard, an up-to-date check of land registry details constitutes adequate prior investigation for the purposes of section 172 of the Act and hence a properly served notice.

6. I acknowledge that electoral register information provided by the appellants, and dated August 2024, does not include Mr David Ian Cartwright as being registered at the appeal address. However, this is not necessarily conclusive proof of all occupiers of the property as it relates to only those that have *'registered to vote at this address'.*

7. In any event, the evidence is that the LPA did serve a copy of the notice on Mr David Ian Cartwright in so far as using the address of 15 Sytch Lane as displayed on the land registry documentation. I can only assume that a copy of that letter is still at the appeal address, unless of course the tenants have forwarded it on to the proprietor or it has been collected by him. There is no evidence to suggest that the LPA could have reasonably known the whereabouts of Mr David Ian Cartwright if the appellants' claim is correct that he did not live at the appeal property when the notice was issued.

8. I am satisfied that the Council did take all reasonable steps to serve a copy of the notice on the owner and occupiers of the site and everyone with an interest in the land that would be materially affected by such a notice as required by section 172 of the Act. This included obtaining land registry details. Therefore, I conclude that the ground (e) appeals fail.

Appeals on ground (c)

9. An appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.

10. The notice alleges use of a lawful/approved domestic and ancillary outbuilding to the rear of the site for food preparation in association with a food delivery business. It includes the production, distribution and storage of cobs. It is noteworthy that there is no appeal made on ground (b) of section 174(2) of the Act, i.e., that the outbuilding has not been used as detailed above. The collective email evidence between the parties, and the photographs taken by the Council, indicate that the outbuilding has been used as described below.

11. The email evidence (5 April 2024) from the appellants is that there are nine members of staff that work in the business, five of which are family and four other members of staff. It is stated that the cobs are made on the premises three times a week which are Tuesday, Thursday and Saturday between 0900 and 13.00 hours. Cobs are delivered to a local business three times a week in a van which leaves

[1] Newham LBC v Miah [2016] EWHC 1043 (Admin)

the property between 0700 and 0800 hours three times per week on a Tuesday, Thursday and Saturday. Moreover, a delivery of salad, ham and cheese is made the property twice per week on a Tuesday and Thursday.

12. In addition to the above, the LPA states that in 2022 information from the Food Safety and Licensing Officer found that there were approximately 1000 cobs produced on each working day. I am not entirely certain if that number of cobs were being produced when the notice was issued, although such a matter is not specifically disputed by the appellant in respect of this ground (c) appeal. That suggests to me that there are likely to be several comings and goings associated with the loading up of the van prior to the delivery of cobs to the local business elsewhere.

13. The appellants make the claim that *'the property named above, has permitted rights as a business to sell/retail food'* and that '*this dates back to the sale of the property from the Earl of Dudley to the Cartwright family, going back over 10 years ago plus*' and '*the land and building was a farm, trading which sold market gardening and sales of vegetables'*. In addition to the above, an agent acting for the appellants commented to the LPA officer on 29 February 2024 *'Hi Warren and Julie, the property you rent from me has always had a commercial permission to creative a livelihood, as passed down in the deeds from the Earl of Dudley Estate from whom the property was purchased'.*

14. The onus is on the appellants to make a case on any legal grounds of appeal. There is no objective evidence before me that the planning unit includes a lawful farming, agricultural or retailing enterprise. It is important to emphasise that the deeds to the land, which may include controls relating to what can and cannot take place, is entirely separate from the need or otherwise to obtain planning permission for development on such land.

15. The evidence is that the lawful and primary use of the land relates to a dwellinghouse falling within a single planning unit. There is no precise, objective and unambiguous evidence before me to support any claim that the sale or retailing of food from the appeal land/planning unit is permitted development as part of the alleged unauthorised mixed use. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not confer such permitted development rights.

16. While a breach of condition notice has not been issued, it is nonetheless noteworthy that the planning permission for the outbuilding[2] included a condition (No. 3) that the *'garage shall be used only for purposes incidental to, and in connection with, the use of the site as a dwelling'*. Use of the outbuilding for a business that is not incidental to the primary use of the site as a dwellinghouse would be in breach of condition No. 3. Moreover, and, in any event, it is relevant that I consider section 55(2)(d) of the Act which states that the development of land does not include *'the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'.*

17. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have

[2] Planning permission 00/00614/FUL

occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

18. While the outbuilding falls within the curtilage of dwellinghouse, its use for the said business activity, which includes some staff members that are not connected with the use of the property for residential purposes, coupled with the extent and frequency of vehicular and pedestrian comings and goings associated with the business use (as well as that combined with the separate day to day residential use of the property), has, in my judgement, and, as a matter of fact and degree, resulted in a material change in the overall character of the activities being undertaken to and from the land.

19. In reaching the above conclusion, and, noting that my site visit was only a snapshot in time, it revealed a relatively peaceful and predominantly residential area and where the level of activity and comings and goings associated with surrounding properties was not very significant. In this context, and, as a matter of fact and degree, I find that the unauthorised mixed use has significantly changed the character of activities from what has gone on previously.

20. In reaching the above finding, I acknowledge the appellants' comment that there are grocery and on-line deliveries that occur in respect of the surrounding dwellinghouses. Such grocery and on-line deliveries are of course possible in respect of the lawful use of the dwellinghouses. However, I find that the degree and frequency of additional vehicular and pedestrian comings and goings associated with the use of the outbuilding for business purposes, is such that, as a matter of fact and degree, it makes a significant difference in the character of the activities from what has gone on previously.

21. I therefore find that a material change of use of the land has occurred. The business use of the outbuilding is not subsidiary to the primary use of the land as a dwellinghouse. Put another way, it is not incidental to the enjoyment of the primary use of the land as a dwellinghouse within the planning unit. Therefore, it cannot be claimed that it is not development under section 55(2)(d) of the Act.

22. I conclude that a material change of use of the land has occurred. It constitutes an act of development given section 55 of the Act. Planning permission is required for the unauthorised mixed use of the land. I therefore find that the matters alleged in the notice constitute a breach of planning control. Therefore, the ground (c) appeals fail.

Appeals on ground (d)

23. An 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.

24. The appellants do not provide objective, precise and unambiguous evidence to demonstrate that the breach of planning control (i.e., mixed dwellinghouse and food preparation and delivery business use) has occurred continuously for at least ten years (as per section 171(B) of the Act) and hence is immune from enforcement action. Moreover, I have dealt with the matter relating to the

alleged history of the site relating to the sale of food in association with a farm, and also the deeds of the property, as part of the consideration of the ground (c) appeals. This does not provide the necessary precise and unambiguous evidence to demonstrate, on the balance of probability, ten years continuous use of the land for the mixed use which is the subject of the notice.

25. On the evidence that is before me, 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 mixed-use breach of planning control. Therefore, the ground (d) appeals fail.

Conclusions

26. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

D Hartley

INSPECTOR