

Appeal Decision

Site visit made on 29 November 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 12 December 2016

Appeal Ref: APP/M9496/C/16/3151187

Holiday Let at 4 court Lane, Ashford in the Water DE45 1QG

- 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 Mr Andrew Holland against an enforcement notice issued by the Peak District National Park Authority (PDNPA).
 - The enforcement notice was issued on 11 March 2016.
 - The breach of planning control as alleged in the notice is: the material change of use of the outbuilding known as 'The Stables', shown hatched black on the attached plan, to an unlawful use as a separate unit of residential occupation.
 - The requirements of the notice are as follows:
 - (a) Cease the use of the stables as a separate unit of accommodation.
 - (b) Remove from 'The Stables' all fixtures, fittings and alterations that have been installed that directly support its use as a separate unit of residential accommodation.
 - The period for compliance for both requirements is six months.
 - The appeal is proceeding on grounds (a) and (d) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (a). See formal decision below.

The site, matters of clarification and background information

2. The appeal building, known as 'The Stables', is a former single-storey outbuilding attached to the two-storey cottage at No 4 Court Lane. It is described as an 'Annex' building to the property. Both the cottage and the 'Annex' are in the ownership of the Appellant and are located within the Ashford in the Water Conservation Area (AIWCA). The cottage is a traditional stone-built dwelling and is located on the north side of Court Lane, between the Grade II listed Holy Trinity Church and the public car park. The single storey 'Annex' is of similar construction.
3. The cottage has a small garden to the south, fronting the Lane and there is a small triangular area to the front of 'Annex'. The garden to the cottage and the area in front of the 'Annex' are separated from the lane by a stone wall. There is a hardstanding on the triangular area which is just large enough to accommodate one car. This area has a gated access on to the Lane. To the north of the stables there is a small enclosed yard and adjacent to that there is a walled off electricity sub-station. Beyond that there are public conveniences and a small public car park.
4. The 'Annex' appears to be roughly the same age as the cottage and the PDNPA understands that it had been used as an ancillary building to the cottage and was used as a workshop until 2008. Just after that time the PDNPA indicates that building works to 'The Stables' were carried out which, they contend, were done with the intention of creating a separate unit of accommodation. These works

would appear to afford all of the necessary facilities which would ordinarily be required for day-to-day living, albeit by people on holiday rather than on a permanent basis by a single household.

5. In May 2009 the PDNPA received information that the former workshop was being used as a holiday let without planning permission. This was indeed the case and this is not disputed by the appellant. An enforcement file was opened. However enforcement action was not taken and, following discussions and correspondence between the appellant and the authority, it was concluded that the residential use at that time was ancillary to the main dwelling house and that the use of the 'Annex' as a separate holiday let had ceased. In February 2011 the owners confirmed that they were living in the 'Annex' due to the flooding of the main house. In January 2014 the PDNPA records (delegated report for the LDC application) indicates that *'now it is hardly used at all except for guests'*.

6. Between March 2011 and October 2015, several enquiries and pre-application advice requests were made by the appellant to the PDNPA (30/1/14; 11/3/15; 21/9/15). These related to the possibility of creating two separate dwellings from the two buildings; carrying out alterations to the cottage; the creation of a new vehicular access and hardstanding (including part demolition of the boundary wall) and a rear extension to 'The Stables'. The outcome was that the PDNPA advised the appellant that the proposal for two separate dwellings would not be likely to comply with the relevant housing policies and that the removal of part of the boundary wall would also be open to objection.

7. In January 2016 the appellant submitted an application under section 191(1)(a) for a Certificate of Lawful development (LDC) in respect of the existing use of the 'Annex' or 'The Stables' as a holiday let. The agent confirmed to the PDNPA that the application sought to formalise the use of the building as a C3 dwellinghouse. The LDC application was refused by the PDNPA on 29 April 2016 on the basis that there was insufficient evidence that the unit had been in a continuous separate residential use since March 2012.

8. It is acknowledged by both parties that the LDC application sought to claim a lawful use in respect of the use of the building as a separate unit of residential accommodation. This is the same use to which the enforcement notice is directed. The refusal of the LDC application was not appealed.

The validity of the notice

9. The appellant has challenged the validity of the enforcement notice on the basis that the PDNPA has alleged that the change of use relates to the use of the building as a separate unit of residential accommodation. The appellant challenges the wording and indicates that the unit has never been in use as a separate unit of residential accommodation and nor is it the intention to seek to use the property in this way, except in relation to a holiday let use. In response the PDNPA indicates that the use of a building as a holiday let is no different to use as an unrestricted dwelling, unless a condition restricting the use is attached to a planning permission.

10. This is indeed the case and the courts have held that whether the use of a dwelling house for holiday letting purposes amounts to a material change of use will be a question of fact and degree in each case. In this case the change of use relates to that part of the dwelling house at No 4 which forms the 'Annex'. It is clear that works have been carried out to the 'Annex' which affords all the facilities for day-to-day living. The Appellants are seeking, (through the two grounds pleaded that, first, the use as a holiday let is lawful and, secondly, if that is not

accepted) then planning permission should be granted for use of the 'Annex' as a separate holiday let residential unit.

11. On the basis of the submissions, therefore I consider that no injustice will be caused if I amend the allegation as set out in the notice to make it clear what the appellant's stance is, as well as indicating what the PDNPA is enforcing against. In essence the representations indicate that both parties refer to a separate use of the 'Annex' for residential purposes as a holiday let, as opposed to the 'Annex' simply being considered as a permanent dwelling, not associated with any holiday letting. It is on this basis, therefore, that I have dealt with this appeal. My decision to deal with it in this way is reinforced by LDC application, as well as by the fact that the applicant confirms that it is a holiday let that is applied for (paragraph 5.15 of the appeal statement) and that a restrictive condition would be acceptable.

12. I shall, therefore, deal with the allegation on the basis that it should read '*for a holiday let*' after the words '*as a separate unit of accommodation*' (*THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL*). I now turn to the grounds (d) and (a) as pleaded.

The appeal on ground (d)

13. To be successful on this ground it must be shown that the PDNPA was precluded from issuing the enforcement notice because the alleged change of use was not unlawful at the time the notice was issued (11 March 2016).

14. I have concluded above that the alleged changed of use should now read as '*the material change of use of the outbuilding known as 'The Stables', shown hatched black on the attached plan, to an unlawful use as a separate unit of residential occupation as a separate unit of accommodation for a holiday let*'.

15. The appellant relies on section 171B(2) of the Act and a 4 year time limit from the date of the alleged breach (the date of issue of the notice) for the PDNPA to take enforcement action. On behalf of the appellant it is argued that the 'Annex' has been used continuously for a period of 4 years (prior to the date of issue of the enforcement notice) as a separate unit of residential holiday let accommodation.

16. It is stated that at no point during the period from 11 March 2012 has the property been in anything other than residential use. The case of *Gravesham BC v SSE [1984] P&CR 142* is referred to including the fact that the court rejected the notion that a building which had the characteristics of a dwelling house ceased to be such because it was only occupied for a part or parts of a year. It is indicated that the property has been in use as a holiday let since October 2011, although the appellant does not contest that there are limited periods during this time when the property was not occupied. It is indicated that it is not uncommon for holiday lets to be unoccupied, particularly during the winter months.

17. It is further argued that, in the context of the Gravesham case, during the periods that the property was not used as a holiday let it was not used for any other use that would constitute a material change of use from a dwelling house thereby affording the PDNPA the opportunity to take enforcement action .

18. The evidence shows that a Mr Pitchford booked the holiday cottage between October 2011 and January 2012 to provide accommodation for trial bike enthusiasts. The evidence also shows that under the management of 'Derbyshire Cottages' the 'Annex' was then used as a holiday let for various periods in 2012, 2013, 2014 and 2015 with the last confirmed date of 18 June 2016. During these periods there were gaps in the usage shown as 'Available' and use by the owner referred to as 'Owner Booking'.

19. However, as referred to by the PDNPA, the booking chart shows periods when the 'Annex' was reserved '*by agency for owner*'. The PDNPA also indicates that the property was not in use as a holiday let on the date that the LDC application was made (22 January 2016). There were two periods between February 2013 and September 2013 where, although the property was occupied, there is no firm evidence of a rental being paid or evidence that this use continued the earlier and later holiday lets. Furthermore, when the owner used the 'Annex', any holiday let use ceased for those periods. Thus, on all of the evidence I consider that between 11 March 2011 and 11 March 2016 the use of the 'Annex' fluctuated between being an ancillary 'Annex' to the main dwelling house at No 4 and a separate unit of holiday let residential accommodation. Each of these changes in my view constituted a material change in use of exactly how the 'Annex' was used.

20. I agree with the PDNPA that, in relation to the LDC application, there were periods of time, more than temporary 'stop-start' or 'de-minimis' (or other use) which counts towards the use of the 'Annex' as a separate residential unit for short-term or holiday accommodation. The same argument applies in relation to this ground (d) appeal and I conclude that the PDNPA could have taken enforcement action at times during the 4 year period commencing on 11 March 2011. Although there was residential use for a four year period the residential use was not a continuous residential use as a holiday let. It follows in my view that, on the balance of probabilities, the use of the 'Annex' as a separate residential unit for holiday let purposes was not continuous for the necessary 4 year period. The appeal fails, therefore, on ground (d).

The appeal on ground (a)

21. I have set out above my intention to clarify and correct the allegation as set out in the notice. Thus it follows that I must now consider whether or not planning permission should be granted for use of the 'Annex' as a separate unit of residential occupation for holiday let purposes.

22. The main issues in this appeal are as follows;

- The effect of the separate residential holiday let use on the character and appearance of this part of the PDNPA and the AITWCA.
- The effect on residential amenity in this part of Ashford in the Water, and
- The effect relating to access and parking.

23. The PDNPA refers to policies HC1, HC2 and DS1 of the Peak District Local Development Framework Core Strategy (CS). However these relate to new housing provisions and conversions of buildings to dwellings within PDNPA area. I do not consider that these policies are relevant in relation to a change of use to a residential unit for holiday let purposes.

24. The most relevant policies are CS RT2 (Hotels, Bed and Breakfast and self-catering accommodation) and saved policies LC2 (Local Plan Settlements) and LT18 (Traffic Infrastructure and Management) of the Peak District National Park Local Plan (LP).

25. The National Planning Policy Framework (NPPF) is a major material consideration and sets out a presumption in favour of sustainable development. It also seeks to ensure that positive planning solutions are found to ensure that economic development is brought forward. It sets out the three dimensions to sustainable development; these being *the economic role* (includes the need to build a strong, responsive and competitive economy; *the social role* (includes the need to support strong vibrant and healthy communities) and *the environmental role*

(includes the need to protect and enhance the natural, built and historic environment).

26. In reaching my conclusions I have had regard to the policies set out in the NPPF and in particular to the core planning principles and section 12 (Conserving and enhancing the natural environment). Because the properties lie within the AITWCA I have paid special attention to the requirements of section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

The effect on the character and appearance of the PDNPA and the AIWCA

27. I agree with the argument put forward on behalf of the appellant that policies HC1 and HC2 are not relevant. The relevant policy is RT2 of the CS and it is evident that no alterations have been carried out to the external appearance of the 'Annex' building. It clearly does not result in a situation whereby it has created an '*unacceptable landscape impact in the open countryside*'. Having seen the traditional stone building from both near and distant viewpoints it has the appearance and character of many similar buildings within the AIWCA.

28. The change of use is not, therefore, contrary to policy RT2 of the CS. In terms of its effect on the conservation area, there is no obvious change as to how this use, as opposed to an ancillary 'Annex' use, would affect the character and appearance of this part of Ashford in the Water. I consider that the character and appearance of conservation area would be preserved by a continued holiday let use.

29. I also consider that the change of use accords with the NPPF in that is sustainable with regard to the economic, social and environmental strands of the document. Paragraph 55, as quoted by the PDNPA, relates to new homes in rural areas and this is not a new isolated house in the countryside. In my view this modest holiday let property will contribute positively to the economy of the area; it will contribute to the vibrant community of Ashford in the Water and, although it will increase car usage to and from the area, I consider that the overall environmental impact will still protect the historic asset of the AIWCA. The appeal, therefore, succeeds on this first issue.

The effect on residential amenity

30. Clearly the pattern of usage, as a separate holiday let, has been, and will continue to be, different to an ancillary residential use. However, in my view the modest size of the unit will hardly make a difference to the comings and goings of people using the 'Annex'. For example when used by the family it is clear that the appellant's son occupied the unit, presumably whilst other family members stayed in the main house.

31. I have noted that the Parish Council had concerns about it being advertised and used as a separate holiday let, but there is no evidence to suggest that the use has been detrimental to the living conditions of nearby residents. There is no question of loss of privacy for any residents and the only issue might relate to undue noise and disturbance. However, again there is no evidence that those using the unit as a holiday let have detrimentally affected existing residents' living conditions. I also find in the appellant's favour in relation to this issue.

Access and Parking

32. With regard to access and parking, I acknowledge that the site is tight. However there is a gated access on to the hardstanding in front of the 'Annex' and this is adequate space for one vehicle. As indicated on behalf of the appellant there is also one space available to the rear of the property that is also suitable for the

parking of one car and during my site visit I noted the public car park behind No 4 and the 'Annex'. The appellant also indicates that there have not been any complaints relating to traffic movements associated with the 'Annex'.

33. Having seen the site and having walked around the village, I do not consider that a separate use of the 'Annex' as a holiday let will cause any undue harm with regard to traffic access to the site and parking. Again I acknowledge that the access is tight but I noted many similar situations regarding access to garages and parking to other dwellings within the village.

34. The fact that the 'Annex' will normally only accommodate two people reinforces my view that the parking provision is adequate and that the use would not be contrary to policy LT18 of the LP. The characteristics of the area are conserved by the parking area; the use will not affect access for emergency vehicles and there will be no undue risk to highway safety. The appeal also succeeds on this third issue and in line with my conclusions on the other main issues I shall grant permission for the change of use, as set out in the corrected allegation.

Conditions

35. I do consider, however, that the two conditions set out by the PDNPA are relevant and necessary in relation to this use. The appellant has indicated that that he is willing to accept conditions that would restrict the use of the property to a holiday let use only to prevent the house from a traditional permanent residential dwelling. I consider that it is necessary to retain the parking space to the front of the 'Annex' to avoid the necessity to park on the highway.

Other Matters

36. In reaching my conclusions I have taken into account all of the other matters raised by the PDNPA and those made by and on behalf of the appellant. These include the detailed planning history; the grounds of appeal; the PDNPA appeal statement; the two delegated reports (LDC application and Enforcement action); the detailed letting information and the other appendices submitted. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that planning permission should be granted for this change of use.

Formal Decision

38. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted for *'the change of use of the outbuilding known as 'The Stables', Holiday Let, 4 Court Lane, Ashford in the Water DE45 1Q, to a residential use for short-let holiday use only,* subject to the following conditions:

1. This permission relates solely to the use of the premises hereby approved for short-let holiday residential use ancillary to the dwelling house at 4 Court Lane, Ashford in the Water. The property shall not be occupied as a permanent dwelling and shall not be occupied by any one person for a period exceeding 28 days in any calendar year. The existing house and the approved holiday accommodation shall be maintained as a single planning unit. The owner shall maintain a register of occupants for each calendar year which shall be made available for inspection by the National Park Authority on request.
2. The existing car park shall remain unobstructed for use at all times in association with the short-let holiday residential use hereby permitted.

Anthony J Wharton
Inspector