The Planning Inspectorate

Appeal Decision

Site visit made on 30 March 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 03 May 2017

Appeal Ref: APP/Y3615/C/16/3158799
Land at The Laurels, Woollards Road & 46 Wharf Road, Ash Vale, GU12 5AY

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Alan Chandler against an enforcement notice issued by the Council of the Borough of Guildford.
- The notice was issued on 22 July 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the building edged with a broken blue line on Plan A from the use as one dwellinghouse to the use as two dwellinghouses.
- The requirements of the notice are:
  - (i) Cease using the property edged with a broken blue line on plan A as two separate units of accommodation.
  - (ii) Remove the kitchen, including all kitchen fittings and equipment, from the property now known as The Laurels.
  - (iii) Remove the wall between points A and B on plan B to allow internal access from the property currently known as 46 Wharf Road to the property currently known as The Laurels.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in s174(2)(c) of the Act.

Decision

1. It is directed that the enforcement notice be corrected, in paragraph 2, by the insertion of "Ash Vale, GU12 5JX" after "Woollards Road".

   Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. There is a separate postcode for each of the two properties comprised in the appeal site.[1] The postcode given in paragraph 2 of the notice is correct insofar as it relates to 46 Wharf Road. However, there is an omission of the postcode relating to The Laurels. I shall correct the notice, under the available powers of s176(1)(a), by inserting the missing postcode. I am satisfied that no injustice will arise to either party in me so doing.

[1] The appellant has pointed out that each dwelling has a separate postcode.

3. Whilst the appeal is proceeding on ground (c)[2], essentially the appellant's case is that there has been no change of use because the property was built as two dwellings in the first instance. Ordinarily such a matter would be dealt with under ground (b), that the matter alleged has not occurred as a matter of fact. I shall consider this matter under the heading *"The implied appeal on ground (b)"*.

4. Additionally, (and in the alternative) the appellant has argued that the property had been used as two dwellings for "many years" and "for a long time" before it fell into disrepair. These arguments would normally be dealt with under ground (d), that at the time the notice was issued it was too late to take enforcement action. I shall consider this matter under the heading *"The implied appeal on ground (d)".*

5. Grounds (b), (c) and (d) are amongst those known as the "legal grounds". In a legal ground of appeal there is no consideration of the development on its planning merits. The grounds strictly concern matters of evidential fact and planning law. Where there is unclear or contradictory evidence, the test of the evidence is one of balance of probability.[3] The burden of proof is upon the appellant.

The implied appeal on ground (b)

6. The appellant says that the appeal property was constructed approximately 70 years ago. Elsewhere in the evidence it is suggested that the property was built in 1858.[4] Whilst the exact date of its construction is unclear, from what I saw at my site visit, and from the other evidence, I consider it likely that the property pre-dates 1 July 1948, that being the Appointed Day when comprehensive planning control under the Town and Country Planning Act 1947 came into force.

7. The implications of this are that, if the property had been in use as two dwellings before and including the Appointed Day, there would have been a lawful right to continue such use. Subsequent periods of inactivity or dormancy would, in themselves, have been unlikely to result in loss of use rights.[5]

8. That said, I do not consider the evidence supporting the assertion that the property was built as two semi-detached bungalows to be persuasive. Whilst the property had an entrance from Woollards Road as well as Wharf Road[6], it would not be unusual for a dwelling of this size to have two doorways to different frontages. Attention has been drawn to there being two separate kitchens, bathrooms and living quarters, and to there being separate gas supplies and electric fuse boards. However, these facilities could have been

[2] An appeal on ground (c) is that the matter alleged does not amount to a breach of planning control.
[3] Balance of probability concerns "likelihood". In other words, it means that the assertion being made is more likely than not to be true.
[4] This is the date given in the Design and Access Statement prepared by LPD Design Services Limited (in or around 2008) as being the date at which the property was built.
[5] Use rights can be lost (for example) as a result of abandonment, a subsuming material change of use, by implementing an inconsistent planning permission or by condition. Periods of dormancy, in themselves, are unlikely to result in loss of use rights.
[6] The two entrances are evidenced in photographs taken in or around 2008 and the sales particulars of 2013. Each entrance appears to have been accessed via a separate flight of steps. I saw at my site visit that the lintel to the (former) Woollards Road entrance was still in situ and appeared to be an original feature of the building.

installed at a later date. Whilst it is suggested that there were two separate cellars this cannot, now, be verified because one of the cellar entrances has been closed up. In any event, two separate cellars would not, in itself, be conclusive of use as two separate dwellings.

9. For the following reasons, I am more inclined to the view that the property was built as a single dwelling. Firstly, the elevation to Wharf Road, with its entrance approached by a flight of steps, positioned centrally between two bays, has the character of a principal elevation. That to Woollards Road is more understated and of secondary character and appearance. Secondly, the internal floor plan suggests that at one time there was a straight corridor (now divided by a partition wall) from the main living quarters running the length of the eastern wing. Thirdly, it is difficult to see how the external space would have been divided to provide a separate garden area for each dwelling, the land to the rear being overlooked by both dwellings.[7] Fourthly, there is an imbalance in the size of the units, that at the Laurels being considerably smaller with more constrained room sizes.

10. When taking these matters into account I find that the case for the property being built as two dwellings is not adequately substantiated. The property was probably constructed as a single dwelling and was so used at the Appointed Day on balance of probability. There is no evidence to indicate otherwise.

11. Consequently, there has been development involving the change of use from one dwelling to two as a matter of fact. The implied appeal on ground (b) fails.

The appeal on ground (c)

12. On ground (c) there is no evidence as to why, if the change of use has occurred as a matter of fact, it would not amount to a breach of planning control. Indeed, s55(3)(b) of the Act states that, for the avoidance of doubt, the use as two or more separate dwellings of any building previously used as a single dwelling involves a material change in use of the building and of each part of it which is so used. I know of no permitted development rights that would allow such a change of use. Nor am I aware of any other reason(s) why such a change of use could occur without the need for express planning permission. The appeal on ground (c) fails.

The implied appeal on ground (d)

13. The appellant argues that the requirements of the enforcement notice are incorrect due to the length of time over which the property has been used as two separate dwellings. It is suggested that the material change of use to two dwellings first occurred around 50 years ago.

14. In the case of a breach involving the change of use of one dwelling to two, the relevant time period within which enforcement action can be taken is four years commencing with the date of the breach.[8] Four years was also the relevant period under the former established use provisions (effective from

[7] A different configuration of the external space is now possible because of a later land conveyance.
[8] S171B(2) of the Act states that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of a period of four years beginning with the date of the breach. Prior to the coming into force of S171B(2) together with other

1 January 1964). Any dwellinghouse use that had accrued immunity under these former provisions would have converted to a lawful use on 27 July 1992 under the transitional arrangements.

15. There is some evidence that is indicative of earlier use of the property as two dwellings. For example, there is a letter from the appellant's contractor who confirms he was approached by an elderly lady wishing to look round the property. She said she had occupied the part of the property now known as The Laurels and that the (then) owner (who was in the plumbing trade) occupied the front part. Also, the appellant has some personal knowledge of the property dating from 1960, having lived and worked in the area. For a time he rented a warehouse next to the site in connection with his business. He can recall the property being in use as two dwellings for many years, the owner (a builder and plumber) living in the front part. The Council's officer, at one stage, appears to have been of the view that no further action was warranted because the property had a history of use as two dwellings. I also note that, in 1968, planning permission was granted for an additional bathroom albeit on the basis of a floor plan indicating a single dwelling at that time.

16. The Council's evidence mainly dates from 2004 and adds little to what is known about the use of the property during this earlier period. The permission for the additional bathroom is ambiguous as the bathroom could have been used in connection with a second dwelling but, equally, it could have been an extra bathroom in a single dwelling.

17. Whilst there is nothing which directly contradicts the appellant's version of events over this earlier period, the evidence lacks detail as to the exact dates and time period(s) over which the use is said to have subsisted, whether such use was continuous over the particular time period(s), how the property was configured internally and the nature of its occupation. There is no documentary evidence (for example bills or tenancy agreements) or photographic evidence, for example showing the internal features of the property at the time the appellant acquired it. Nor is there any direct evidence from persons said to have lived in or visited the property, the evidence of the appellant's contractor being hearsay to which only limited weight can be attributed. The appellant's evidence, whilst providing some corroboration, is not specific as to dates and detail. Neither is it in the form of a sworn statement and, thus, it too carries only limited weight.

18. I cannot conclude, on what is before me, that an earlier use as two self-contained dwellings (even if such a change of use did occur) subsisted continuously for a period of four years on balance of probability, such that it would have accrued immunity from enforcement action and/or lawful use rights over that time period. The burden that is upon the appellant to prove the case otherwise has not been satisfactorily discharged.

19. By 2004 it appears the property was in use as a single dwelling occupied by Mr and Mrs Blackman, Mr Blackman having bought the property in 1989 according to the Land Registry copy. The property was visited on a number of occasions by Council officers who have confirmed its use as a single dwelling and that it

legislative changes, a different immunity regime was in operation which provided for the granting of established use certificates. The relevant time period under those former provisions was also four years.

was listed as such for Council Tax purposes. The property was in a poor state of repair. On visits made in April 2004 one officer recorded that there were no cooking facilities and another that there were damp spores on all walls and parts of the roof had collapsed.

20. From Council Tax records it appears Mr Blackman passed away in November 2010 and Mrs Blackman then moved out of the property to live with her daughter. The property remained vacant until it was sold to the appellant in 2013. The sales particulars described the property as a "5 bedroom detached house", with potential for its replacement by a brand new home because it had fallen into serious disrepair.

21. In 2005 and 2013 enquiries had been made to the Council about the possibility of re-developing the site with a pair of semi-detached dwellings. The documentation accompanying these enquiries also indicates that the existing use of the property was as a single dwelling.

22. Since the time of the appellant's acquisition substantial repair and renovation works have been undertaken. The present use of the property as two dwellings probably commenced in or around April 2014 when it was registered as such for Council Tax purposes.

23. However, I cannot conclude on the evidence that the present use as two dwellings is the continuation of any former use. Even if there had been an earlier use of the property as two dwellings the lawfulness of that use has not been proved on balance of probability. On what is before me I find that any earlier breach had come to an end. The occupation as two dwellings in (or around) April 2014 marked the beginning of a new breach and the four year clock re-started at that point.

24. Thus the Council's enforcement notice was issued in time. The implied appeal on ground (d) fails.

Conclusion

25. For all the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction.

Susan Wraith

Inspector