



Appeal Decision

Site visit made on 18 July 2017

by Simon N Hand MA

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

Decision date: 26 July 2017

Appeal Ref: APP/L1765/X/17/3167286

The Old Forge, Winchester Road, Shedfield, Southampton, SO32 2HS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Leonard Southwell against the decision of Winchester City Council.
 - The application Ref 16/01574/LDC, dated 30 June 2016, was refused by notice dated 28 November 2016.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the residential use of a former garage.
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Decision

1. The appeal is dismissed.

Reasons

2. There is no dispute that in 2008 the garage, which stands to the rear of the pub car park, was converted into residential accommodation. The objective was to provide staff accommodation for the pub. In 2009 it seems the appellant, Leonard Southwell, and his wife moved into the building and have lived there ever since. As I saw on my site visit the accommodation is self-contained, with a bedroom, living room, small kitchen and separate bathroom, as well as a small utility in the entrance hall. The issue is whether the building has been occupied as a separate residential unit and as a separate planning unit for 4 years or whether it has actually been staff accommodation.
3. The appellant argues that a separate planning unit has been created and the building meets the tests in *Burdle*¹. When identifying the correct planning unit the courts made three propositions in *Burdle*, the first and third are relevant here. Firstly *"that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered"*, and thirdly *"it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit"*. The Council argue the first situation is

¹ *Burdle v Secretary of State for the Environment* [1972] 3 All E.R. 240, 244

the case while the appellant maintains it is the third. In other words has the building been occupied as staff accommodation, incidental to the main use of the pub or is it physically separate and distinct, being occupied for a different and unrelated purpose to the pub.

4. In October 2007 Leonard Southwell wrote to the Council asking for them to confirm the advice he had received from a planning consultant that converting the garage, which was within the curtilage of the pub, to staff accommodation would not require planning permission. The Council replied to confirm this was the case providing the accommodation was ancillary to the main use of the pub. They also advise any external works might require planning permission. The appellant disputes the provenance of this letter from the Council and speculates that it is effectively a forgery. The letter is undated but otherwise appears genuine to me. The Council say it was reproduced from a scan of the old case files which no longer exist. Whether or not it is genuine it is clear that Mr Southwell's letter is genuine and that he was fully aware of the planning situation which was that planning permission was not needed as long as the building housed staff working at the pub.
5. When the conversion works were carried out, there was some external work that did require planning permission which was never sought. The appellant argues this makes the building unlawful. This is not quite correct. The works may have been unlawful, but now would seem to have gained immunity through the passage of time. The use of the building is unaffected. The Council say they were aware of the works but as they would have granted planning permission anyway did not think it worth pursuing. Whatever the situation, the use of the building remained, lawfully, incidental to the use of the pub.
6. In 2009 Mr Southwell and his wife moved into the building, but carried on working in the pub. At some point between then and the winter of 2011, Mr Southwell's son, Paul, took over at the pub, with Mr Southwell carrying on helping out. In the winter of 2011, the appellant says he retired from the pub and carried on living in the former garage building, only helping out in occasional emergencies. From this date, he argues, the use ceased to be incidental and a separate planning unit was formed. Regardless of the exact date in 2011 this is comfortably more than 4 years prior to the date of the application in June 2016. I have unsigned declarations from both Mr Southwells to this effect.
7. The burden of proof lies with the appellant in such cases and he needs to show on the balance of probabilities the use took place as described. Although there is no independent evidence, if the Council have no counter arguments then there is no reason to disbelieve the appellant's version of events.
8. In this case however the Council point to several matters that suggest there has not been the creation of a new planning unit. Firstly, there is no separate address and no separate utilities. I saw a postbox for the building at the road end of the car park, but there is no evidence when this was put there. Leonard Southwell is still the licensee of the pub, along with his wife and son. If they now live at a separate address they are obliged to inform the licensing authority which they have not done. The electoral register shows the address of Leonard Southwell and his wife as the Old Forge Inn. As I also saw on the site visit there is no separate curtilage for the dwelling, it sits directly behind

the parking spaces at the back of the car park and can only be accessed through the car park. There is a small space to the side with a workshop, and a narrow access path around the back, but otherwise no private space around the building.

9. All of this suggests to me that a separate planning unit has not been created and there is no physically separate or distinct area as suggested in Burdle. Of further support to this argument are the representations on a planning appeal² made in 2013, to convert part of the pub into self-contained flats. Paul Southwell, when responding to objections from neighbours said the objector was incorrect, the building in question was a "*self-contained residential unit within the car park lived in by my parents as staff accommodation*". This seems pretty conclusive to me. The appellant's agent suggests that Paul Southwell is no planning expert and only had a layman's idea of what staff accommodation was. I agree this is no doubt true, but to a layman surely staff accommodation means accommodation for staff, I do not see how he could accurately describe his parents' independent dwellinghouse as staff accommodation unless they were still, in his mind, occupying it as staff. As the Council point out he later refers to "our livelihood", which further suggests there was still involvement by at least his father, in the pub business.
10. Finally, the Council refer to notes made by an enforcement officer who visited the site in July 2014 that the garage conversion was permitted development. His notes actually say "garage converted into living accommodation occupied by pub owner – planning permission not required". This may have been prompted by a previous visit in April of that year when the officer noticed the dwelling and later received a phone call from the appellant's agent confirming it was permitted development. The officer notes a further site visit is required, hence the July visit. The appellant's agent, who is the same now as in 2014, accepts he said this but explains it was only his opinion and he made no comment as to whether it was staff accommodation or not. Nevertheless, as the original conversion was only ever permitted development because it was staff accommodation, to describe it as such strongly suggests it was still staff accommodation. No other reasonable explanation as to what this comment might otherwise have meant has been provided.
11. To sum up, in 2013 and 2014 the appellant's son and his agent were both describing the use of the building as either staff accommodation or permitted development, ie not as a separate dwelling. Taking all this together it seems quite clear to me that a separate planning unit has not been created, either physically on the ground due to the still intimate relationship between the building and the pub nor in its use, as at least until the summer of 2014 it was being used as staff accommodation.
12. The appellant's agent argues that as there is no condition tying the use of the building to the pub it cannot be restricted to staff accommodation. This, however, is not the case. For a condition to be relevant there would have to have been a planning permission granted for a separate dwelling which was then tied to the pub through a condition. This did not happen as in this case a perfectly lawful change was made to the building to use it as staff accommodation. Once it ceased to be used as staff accommodation and a

² APP/L1765/A/13/2200094

separate planning unit created then a case could be made for it to be a separate dwelling, but that case has not been made out in this appeal.

13. The agent also refers to advice from DCLG³ under Class E of the General Permitted Development (England) Order 2015, that normal residential use is not incidental to a dwellinghouse. That may be so, but in this case the building was not used as normal residential use, but as staff accommodation and no claim was made that it either was or was not incidental to a dwellinghouse in terms of Class E. This is irrelevant to the appeal.

Simon Hand

Inspector

³ Permitted development rights for Householders - Technical Guidance 2016