
Appeal Decision

Inquiry Held on 17 & 18 May 2017

Site visit made on 17 May 2017.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 01 August 2017

Appeal Ref: APP/V3120/C/16/3147099

Land at 1 Downside, Westbrook Street, Blewbury OX11 9QA

- 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 by Andrew West against an enforcement notice issued by the Vale of White Horse District Council.
 - The enforcement notice, ref. P16/S0984/LDE, was issued on 11 February 2016.
 - The breach of planning control alleged in the notice is the material change of use of an outbuilding to use as a separate dwelling, in the approximate position shown hatched blue on the plan attached to the notice.
 - The requirements of the notice are to:
 - (i) Cease using the outbuilding referred to in the allegation as a separate dwelling.
 - (ii) Remove the kitchen facilities from the said outbuilding, including (for the avoidance of doubt), oven, hob, refrigerator, freezer, washing machine and tumble drying facilities and all standard kitchen fixtures and fittings such as kitchen cupboards, and worktops, whether built-in or free-standing.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

The Inquiry

2. Evidence at the inquiry was taken under oath or solemn affirmation.

Preliminary matters

3. The appellant's Counsel confirmed in opening that the appeal on ground (c) was not being pursued.

Background matters

4. No. 1 Downside is a semi-detached, two-storey house set back from the road on the western side of Westbrook Street. It is adjoined by no. 2 Downside to the west. Vehicular access to the site is from Westbrook Street along a drive some 40 metres long, which serves both properties. The detached outbuilding subject of the enforcement notice is located on the southern side of the drive,

opposite the house. The drive itself is in the same ownership as no. 2, with a right of way benefiting the appeal site. For the purposes of this decision I have referred to the house as 'the main house'

5. In 2009 planning permission was granted for a 3-bedroom house, carport and associated works¹ on the site fronting the street, immediately to the south of the access drive. This site was then owned by the appellant. The house – known as 'Carrow Cottage' – was subsequently built and occupied, and is no longer within the appellant's ownership.
6. The outbuilding subject of the enforcement notice was built as a study/home office in replacement of an existing garage/store under planning permission ref. P11/V1414, and a subsequent non-material amendment confirmed by the Council by letter. It is single storey building with shiplap external walls, and a slate hipped roof. As originally approved it had three principal rooms – a study, a home office, and library – with a shower/WC, and entrance area located between the two latter rooms. As it exists now, a kitchen has been installed in the room designated as the home office, the study is now a living/dining area, and the library has become a bedroom. For the purposes of this decision I have referred to the outbuilding as 'the annex'.
7. An application for a certificate of proposed lawful use (LDC) of the outbuilding as self-contained annex for occupation by elderly dependent relatives was refused by the Council in April 2017².

The appeal on ground (b)

8. In a ground (b) appeal the burden of proof is on the appellant to demonstrate that on the balance of probabilities the alleged breach of planning control has not occurred as a matter of fact. Furthermore, in a case of this type – on 'legal' grounds – with matters of fact in dispute, there is well established legal authority to say that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probabilities.
9. The Council argue that the outbuilding has all the facilities necessary for day-to-day domestic existence, and that it must therefore be seen as a dwellinghouse in the terms set out in the High Court case of *Gravesham*³. When the appellant applied for a change of use of the outbuilding from a study/home office⁴ to a self-contained annex he was advised by the Council that the outbuilding would be seen in this light, and that the application would be likely to be refused. The Council argue that the annex is a self-contained dwellinghouse in *Gravesham* terms, and a new separate planning unit has been created that is both physically and functionally separated from the main house.
10. As the appellant argues, the internal changes needed to provide a kitchen, living/dining area and bedroom affect only the interior of the building, and do not materially affect the external appearance. Under the provisions of

¹ Decision notice ref. P09/V2099/FUL.

² Decision notice ref. P16/V2840/LDP, dated 4 April 2017.

³ *Gravesham Borough Council v Secretary of State for the Environment* [1982] 47 P&CR 142.

⁴ Application ref. P14/V1806/FUL.

s.55(2)(a) of the Act they do not therefore constitute development, and no planning permission for these changes was required.

11. In the High Court case of *Uttlesford*⁵, which related to an application for a change of use of a building detached from the main house to private living accommodation to be used in conjunction with existing dwelling, it was held that the basic question to be answered was whether there was a material change of use that created a separate planning unit. In the case of *Burdle*⁶ the judge gave the opinion that when determining what was the appropriate planning unit, the whole of the area which is used for a particular purpose should be looked at, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose.
12. The single Land Registry title document shows that the parts of the site to either side of the drive are owned by Mr West and Ms Mols. The Council argue that the entrance drive being in separate ownership, and the raised patio and retaining wall to the front of the annex constitute a physical separation between the buildings. However, until about 8 years ago the entrance drive had been in common ownership with the 2 semi-detached houses. The separation occurred as a result of a judicial ruling on ownership of no. 2. The appellant has a right-of-way along, and across the drive at all times. To my mind the separate ownership of the drive does not provide any effective physical or functional separation between the two buildings.
13. As regards the patio and retaining wall, these extend across roughly three-quarters of the width of the annex. The building is set at a significantly higher level than the drive and the house – I estimated a difference of some 0.8 of a metre. I consider a retaining wall is reasonably necessary in order to provide a level amenity area to the front of the annex. Furthermore, there is only a minimal outdoor space available to the front of the main house that provides little in the way of privacy, given its proximity to the access drive. In order to provide some degree of privacy, and to guard the change of level, it is not unreasonable for the wall to be built up above the patio level. The Council consider that this would in any case be permitted development. Although a visual distinction between the house and the annex has been created, there is a clear unobstructed route between the two buildings that can be used by the occupants of both buildings at any time, and I do not consider the retaining wall and patio have created a physical barrier between the two parts of the site.
14. As regards utility supplies and other services, the house and annex are on one Council Tax account, there are single accounts for the TV licence, water supply and telephone. There is a single letter box, and one set of refuse bins. Electricity and gas supplies are separate, as is the foul drainage. The appellant explained that this was to avoid a ransom demand by the owner of no. 2 for services crossing the entrance drive. In my opinion, the existence of various supplies and services common to both buildings gives some weight to the argument that the two buildings are used in an inter-dependent way. Overall, I do not consider the existence of the drive and the retaining wall, or the existence of some separate utilities are sufficient to constitute a separation between the two parts of the appellant's site. In the light of this, I consider the

⁵ *Uttlesford District Council v Secretary of State for the Environment and White* [1992] JPL 171.

⁶ *Burdle and Another v SoSE and Another* [1972] 3 All E.R. 240.

- planning unit comprises the entire area of land owned by Mr West and Ms Mols, and is used for residential purposes.
15. However, that is not the end of the matter, and consideration must be given to whether there has been a material change of use of the annex, such that it no longer remains subordinate to the main house.
 16. As a result of serious and continuing health problems and impaired mobility Mr West had found it increasingly difficult to live in the main house, largely on account of the steep and narrow stairs, the compact first floor bathroom, the lack of a bath or shower on the ground floor, and poor heating. I could see that there would probably be no space available in the main house to install a stair-lift. As a consequence he and his partner now sleep and eat in the annex, which is all on one floor, has a reliably functioning heating system, and a readily accessible shower/WC.
 17. Philippa Mols' son Jonathan and daughter-in-law Subashnie live in the main house. However, the house is also used by the Andrew West and Philippa Mols as an office, for handcrafts, for entertaining friends and other members of the family, and cooking meals for them. They use the washing machines, cookers and fridges in both buildings. Their guests are put up in the second bedroom of the main house. I saw that the appellant's office equipment and papers are kept there, their furniture, books and most belongings remain there. Andrew West and Philippa Mols move freely between the annex and house at all times during the day, and there was extensive evidence provided by the appellant, his partner, members of the family, and close friends to the effect that the house and outbuilding were used essentially as a single unit.
 18. I appreciate that Jonathan Mols and his wife may not be full-time carers, and that they are living in the main house pending being able to buy a house of their own. However, they have exclusive use of only one bedroom in the house. The ground floor is accessible for the appellant and members of his large family at more or less all times, and the evidence showed that much use is made of this, particularly when there are family gatherings.
 19. It is not an uncommon arrangement for younger family members to live with parents in these circumstances. The son and daughter-in-law by no means have exclusive use of the house, and I do not accept that this is similar to a situation where members of the same family might live in dwellings side-by-side, but live quite independent lives. The fact that there are two separate buildings in use does not to my mind significantly differentiate this case, in planning terms, from the situation where 'children' and spouses live together with parents in a single, larger house.
 20. I saw that the facilities in the annex are highly compact – there is a dining table with two chairs, the kitchen is of minimal size, and the living room and bedroom are relatively small. While it would be conceivable to use the annex for independent residential accommodation, it would be quite unsuitable for a family dwelling, and could not reasonably contain the social and work activities of the appellant, or their extensive possessions, in any reasonably practical way.
 21. Furthermore, if for instance the main house were to be occupied by, and possibly let to non-family members, it is unlikely that the current arrangement could exist, whereby Mr West and Ms Mols could eat and sleep in the

outbuilding, but have free access to the house for work and social purposes. I concur with the view put forward for the appellant that the annex cannot exist as a residential unit in these particular circumstances without reliance upon the facilities of the main house. As a matter of fact and degree I consider the current arrangements indicate that the outbuilding is used in a way that is incidental to the main dwellinghouse.

22. The Council argue that Mr West's use of the house for his business is not a residential use, the business is registered elsewhere, and this element should be discounted. Again, it is not uncommon - and is becoming increasingly frequent - for business activities on a small scale to be carried on in the home environment. In my view the use of the main house for this purpose is part and parcel of the range of activities that the appellant carries out there.
23. Evidence was given by objectors as to the infrequency of visits by the appellant and Philippa Mols to the main house, and of visits by the son and daughter-in-law to the annex. However, there was little information given about when these observations were made, or how often. Although there are views from neighbouring gardens I saw that these are quite limited. I can give only little weight to this material, and do not consider it provides a firm basis on which to contradict the evidence put forward by the appellant's witnesses.
24. Overall, I consider that as a matter of fact and degree the annex remains subordinate to the main house, and there has not been a material change of use to a separate dwelling. The two parts of the appeal site are not significantly separated either physically or functionally, and they remain as a single planning unit in residential use.
25. I conclude that that on the balance of probabilities the material change of use of the outbuilding to use as a separate dwelling has not occurred as a matter of fact, and that the appeal should succeed on ground (b). Accordingly, I intend to quash the enforcement notice. In these circumstances the appeal under the other grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Conclusions

26. For the reasons given above and having regard to all other matters raised, I consider the appeal should succeed and I intend to quash the enforcement notice.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	of Counsel, instructed by, Ken Dijksman, Dijksman Planning LLP.
He called:	
Philippa Mols	The appellant's partner.
Andrew West	Appellant.
Kylie Baker	Mr West's daughter.
Jonathan Mols	Philippa Mols' son.
Paul Springford	Local resident and friend of the appellant.
Roger Smith	Friend of the appellant and former local resident.
Jennifer Gold	Local resident and friend of the appellant.
Sarah Mols	Philippa Mols' daughter-in-law.
Peter Mols	Philippa Mols' son.
Subashnie Moodley	Philippa Mols' daughter-in-law.
Peter Savage	Friend of the appellant.
Richard Gilbert	Local resident and friend of the appellant.
Simon Mols	Philippa Mols' son.
Michael Bissell	Friend of the appellant.
Ken Dijksman	Chartered Town Planner, Principal of Dijksman Planning (UK) LLP.

FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham-Paul	of Counsel, instructed by Robert Cramp Vale of White Horse District Council.
She called:	
Robert Cramp	Principal Planning Enforcement Officer Vale of White Horse District Council.

INTERESTED PERSONS:

Justin Cadbury	Local resident.
Christine Duckett	Local resident.

DOCUMENTS

- 1 Attendance list (2 documents).
- 2 The Council's letter of notification of the appeal, dated 11 April 2017.
- 3 Letters of representation.
- 4 Statement of Common Ground.
- 5 Appendices to Mr Dijksman's proof of evidence.
- 6 Appendices to Mr Cramp's proof of evidence.
- 7 Eileen George's statement.
- 8 Christine Duckett's statement.
- 9 Justin Cadbury's statement.

- 10 The Council's Draft Authorisation for enforcement action, dated 11 December 2014.
- 11 Transcripts of the High Court cases *Bowring*, *Somak Travel*, and *Uttlesford District Council v SoSE and White*.
- 12 Transcript of the High Court case of *Burdle*.
- 13 E-mails between Ms Mols and Mr Dijksman of 20 June 2016.