



Appeal Decision

Inquiry Held on 25 July 2017

Site visit made on 25 July 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 08 August 2017

Appeal Ref: APP/T0355/C/16/3162055

2a Straight Road, Old Windsor SL4 2RL

- 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 Ms D Buttigieg against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 30 September 2016.
 - The breach of planning control as alleged in the notice is the use of a building as a separate residential unit.
 - The requirements of the notice are cease the use of the building as a separate residential unit.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of a building as a separate residential unit at 2a Straight Road, Old Windsor.

Procedural matter

2. A ground (f) appeal originally made was withdrawn at the Inquiry.

Reasons

The ground (d) appeal

3. 2a Straight Road is a detached dwelling. In 2011 planning permission 11/00661 was granted for various works to the property including 'attached garage and car port with accommodation over accessed via external stairs'. The 'accommodation' over the garage and car port has been occupied as a separate residential unit but to be immune from enforcement action through the passage of time the Appellant must demonstrate, on the balance of probability, that this use has subsisted for the whole of the four year period prior to the date of issue of the enforcement notice. The critical date is therefore 30 September 2012.

4. The accommodation was first let by an agreement dated 31 January 2013 and was then subsequently let to the current occupier by an agreement dated 25 May 2013. Prior to the first let of the accommodation it was occupied by the Appellant from, on her evidence, December 2011. But up until 20 October 2012

the accommodation did not have independent gas and electricity supplies and up to that date electricity was provided, for a microwave and a kettle, by an extension lead from the main house, and the Appellant visited a neighbour to use her shower facilities. Council tax was not paid on the accommodation until the current occupant took up residence in 2013.

5. Occupation of the accommodation by the Appellant was simply residential use of part of the dwelling whilst renovation and extension works were being carried out to the main part of the property. The occupation of the accommodation over the garage and the car port, in this regard, was not occupation of a separate dwelling unit but occupation of part of a dwelling unit whilst the main part of the unit was undergoing works.

6. Separate, independent use of the unit of accommodation did not commence until it was let in January 2013, after the critical date of 30 September 2012. The accommodation over the garage and the car port has not been, as a matter of fact, occupied as a separate residential unit for the whole of the four year period prior to the date of issue of the enforcement notice. The ground (d) appeal thus fails.

The ground (a) appeal

7. The main issues are; first, the effect of the independent use of the accommodation over the car port and garage on the character of the area and the amenities of residents of the main dwelling; second, whether the accommodation has an acceptable level of amenity; and third, whether the development increases the number of people at risk from flooding.

The first issue – the character of the area and the amenities of residents of the dwelling

8. The residential plot is configured so that access to the separate residential unit can be obtained without passing through the amenity area in front of and associated with the main dwelling. In this regard access to the unit via the driveway off Straight Road, contrary to the view of the Council, is obvious, and residents of the main dwelling do not experience any loss of privacy through occupation of the unit. The road is a busy main road and traffic noise, probably at all times of the day and evening, is likely to be constant. Any noise generated by activity within the unit is not therefore likely to cause any disturbance for residents of the main dwelling. Similarly, parking activity associated with occupation of the unit (a parking space next to the frontage of the property is available to occupants of the unit), and any comings and goings by occupants and visitors, is not likely to cause any disturbance or loss of amenity for residents of the main dwelling.

9. Independent use of the accommodation over the car port and garage does not harm the character of the area and does not undermine the amenities of residents of the main dwelling. The use of the accommodation does not therefore conflict with saved policies H11 and DG1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (WMLP).

The second issue – the level of amenity of the accommodation

10. The accommodation comprises a bedroom, a bathroom and a living area with a kitchen partitioned off from a sitting area. It is about 25.6 metres overall and is therefore small. However, given in part its sloping ceilings that do not reduce its usable space, it is cosy and it has been cleverly laid out, the kitchen area in particular. The accommodation has all that is required for independent living by one or even two occupants. The bedroom can accommodate a double bed and

ample storage space, and whilst the living area is limited in size it does not 'feel' cramped. The bedroom has a small rooflight but this provides ample natural light for such a room, and a condition suggested by the Council that would require the installation of a larger rooflight is not necessary. The lack of any designated outdoor amenity space, other than a balcony, is not considered important as many flats do not have such designated space.

11. Taking all aforementioned factors into account, and all other matters raised, the accommodation over the car port and garage has an acceptable level of amenity for its occupants and the use of the accommodation does not therefore conflict with saved WMLP policy SP3.

The third issue - the number of people at risk from flooding

12. The accommodation over the car port and garage is at first floor level and is not therefore, in itself, at risk of flooding. For the same reason, occupants of the accommodation whilst in occupation would not be at risk of flooding. However, occupants would be at risk of flooding, and may be cut off from, or prevented from leaving, the accommodation, at times of flood. But the accommodation is, in terms of size and composition, as it was approved under planning permission 11/00661 and could be occupied, either temporarily or on a semi-permanent basis, by a member of the Appellant's family. There is no material difference between such occupation and that by one or two independent persons.

13. Independent occupation of the accommodation over the car port and garage does not materially affect the number of people at risk from flooding, and the use of the accommodation does not therefore conflict with saved WMLP policy F1.

Other matter

14. A vehicle parked on the property by an occupant of the accommodation over the car port and garage can be manoeuvred on a shared access, without requiring any other vehicle to be moved, to leave in forward gear. The use of the accommodation does not therefore compromise highway safety on Straight Road.

Conclusion

15. Independent use of the accommodation over the car port and garage does not harm the character of the area or the amenities of the residents of the main dwelling, does not materially affect the number of people at risk from flooding, and the accommodation has an acceptable level of amenity. The ground (a) appeal thus succeeds and planning permission has been granted for the use of a building as a separate residential unit at 2a Straight Road, Old Windsor.

John Braithwaite

Inspector

