
Appeal Decision

Site visit made on 5 September 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 08 September 2017

Appeal Ref: APP/Q3630/C/16/3165579

28 Huntingfield Way, Egham, Surrey TW20 8DT

- 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 Simone Claesson against an enforcement notice issued by Runnymede Borough Council.
 - The enforcement notice, references RU.17/0427 & 14E0078, was issued on 15 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the land from a single residential use to a sui generis use of commercial leisure accommodation.
 - The requirements of the notice are cease the use of the main dwelling and ancillary outbuilding from commercial leisure use.
 - The period for compliance with the requirements is two months from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The appeal premises comprise an extended semi-detached house in a residential street of similar properties arranged as semi-detached pairs and short terraces. Many of the properties have parking bays in the front gardens such that on-street parking between driveways is limited.
3. The property has been extended to the side and rear with the extension providing a single bedroom with en-suite bathroom; a double bedroom with en-suite bathroom; and a large kitchen/diner/living room. Both the kitchen/diner/living room and the double bedroom have substantial mezzanine platforms with double mattresses which the appellant describes as storage space.
4. The front downstairs room of the original dwelling is arranged as a double bedroom and upstairs there are two bedrooms, one containing a double and a single bed and the other a double bed, together with a bathroom.

5. To the rear of the property there is a large raised decking area and an outbuilding containing a further double bedroom plus sofa bed, a fully fitted kitchen and a bathroom.

The Ground (b) Appeal and the Ground (c) Appeal

6. Under ground (b) the appellant pleads that the breach of planning control as alleged has not occurred as a matter of fact, suggesting that the property is still in use as a dwelling with short term lets only whilst she is away from home and that the principle character remains as a private dwellinghouse.
7. Under ground (c) the appellant pleads that if there has been a change of use that change is not material and there has therefore not been a breach of planning control.
8. In the appellant's own statement at paragraph 6f it is explained that the property was booked for a total of 156 nights in 2014; 174 nights in 2015; and 136 in 2016. No details are provided as to how many nights the appellant occupied the property although it is stated at paragraph 6d that she stays in the property for some of the other part of the year and at other times the property is empty.
9. The property is clearly furnished so as to maximise the number of occupants with 5 double beds, 2 single beds, two mattresses on platforms (albeit that the appellant describes these as being storage areas), and at least two sofa beds. There is only one communal living space; that is the kitchen/diner/living room. The downstairs double bedroom, described by the appellant as the 'master bedroom, and the downstairs single bedroom, despite both having an en-suite bathroom, have no clothes storage other than a simple hanging space in the double bedroom.
10. At the time of the site visit there was little sign of any personal possessions which might be expected if the property was occupied by the appellant as a principle residence other than a locked wardrobe and a locked cupboard over the stairs, to which the appellant had no key at the site visit, in one upstairs bedroom. Whilst it could be that a limited amount of personal belongings are kept locked away at times when the property is let, and indeed it appeared that all the bedrooms were occupied at the time of the site visit, all the indications are that the property is arranged principally for short term letting to large groups and not as a main residence. No evidence has been provided to demonstrate regular occupation by the appellant who accepts that she splits her time between London and a property in Bulgaria.
11. The property is advertised on various online booking sites as ideal for families on vacation, groups of friends travelling together and tourists on sightseeing, as well as short term accommodation if working in the area.
12. Given the nature of the property and the level of occupation on short term lets, on the balance of probabilities the principal use of the property is as commercial leisure accommodation with occasional use by the appellant when not let.
13. Although the appellant cites case law in support of her case on ground (c) she quite correctly states that the question as to whether there has been a material change of use is a matter of fact and degree.

14. It is further stated that the tenants are not usually holidaymakers and that although the property accommodates 16 individuals, there are usually fewer than 6 in occupation. However this does not correspond with the property as advertised, being for 16+ (which would tie in with the availability of sleeping accommodation for at least 20 persons, including the 2 double mattresses on platforms) and ideal for families on vacation, groups of friends travelling together and tourists on sightseeing.
15. The change of use of the property from a modest family sized dwelling to use as short term accommodation for groups of up to 16+ (as advertised) substantially changes the nature of the use of the house with significant effect on the dwelling itself and the character of the street with the potential for unacceptable demand for on street parking spaces and noise and disturbance in an otherwise quiet residential street resulting from the disproportionate number of transient occupants.
16. There has therefore been a material change of use from a single residential use to use as commercial leisure accommodation and the ground (b) and (c) appeals fail.

The Ground (a) Appeal

17. Under ground (a) the appellant pleads that planning permission should be granted arguing that the use of the property for short term lets has no adverse effect and complies with local and national planning policy.
18. The Council's reasons for issuing the notice are that the use causes unreasonable noise and disturbance affecting the residential amenity of adjoining properties.
19. The appellant suggests that guests at the property are generally respectful and well behaved and there is no reason to believe that the use by short term guests necessarily causes any greater disruption than use by the appellant and her family. However, the use of the property by large groups has resulted in a number of complaints to the Council regarding noise, disturbance, parking, rubbish and inconsiderate behaviour. It is inevitable that some groups of persons, up to 12 or more, staying short term in a rented property, either on holiday or on business will behave with less concern for neighbours than would permanent or long term residents. There is only one parking space provided at the property with the inevitable pressure on on-street parking when the property is let to a group of more than four persons. The rear garden is arranged with a substantial area set out for barbecues and 'outdoor living' and, with minimal screening to neighbouring gardens, its use, especially by holiday groups in the summer, is likely to extend into the late evening with corresponding disturbance to the immediate neighbours.
20. The outbuilding, described as a garden flat, has windows overlooking the neighbouring gardens and an air conditioning unit on the west elevation adjacent to the boundary with the neighbouring garden. The operation of the air conditioning unit and overlooking inevitably causes detriment to the enjoyment of the neighbour's rear gardens. Although there would be potential for some mitigation of this by conditions there would remain more general detriment resulting from overlooking and general disturbance from the use of the decking and garden space by strangers.

21. The appellant has suggested a number of conditions by which any detriment to neighbouring amenity could be mitigated.
22. Firstly it is suggested that a single condition could be imposed requiring a 'noise (or tenant) management plan' It is difficult to envisage how the operation of such a plan could be enforced or how it would mitigate the harm currently arising.
23. As an alternative, the appellant argues that specific conditions could be imposed.
24. Sound attenuation measures could be installed but no evidence has been provided as to the efficacy of such measures which, in any event, would not mitigate or control noise via open windows or arising from the use of outdoor space. Any condition restricting the hours of use of the outdoor area or restricting the opening of doors and windows after a certain time would be unenforceable.
25. Conditions restricting the number of guests or the number of days that the property that the property is let would similarly be unenforceable and would not, in any event entirely remove detriment to neighbouring amenity or reduce it to an acceptable level.
26. The appellant also suggests that conditions could require increasing the minimum stay to three nights, the installation of cctv cameras and noise monitoring equipment, the employment of an individual to visit the premises at the start of each letting and the provision to guests of detailed regulations, regarding numbers, noise levels, parking and the storage and disposal of refuse, to guests. Such conditions would be unenforceable by the Council and no explanation is given as to how regulations could be enforced by the appellant.
27. Policy HO9 of the Runnymede Borough Local Plan Second Alteration 2001 is a general policy relating to housing development including conversions and extensions and it states that the Council will require sensitively designed proposals that do not damage the character and amenity of established residential areas and provide adequate privacy for existing properties. The use of the appeal property as leisure accommodation is detrimental to residential amenity and the residential character of Huntingfield Way in conflict with Policy HO9.
28. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The Ground (f) Appeal

29. Under Ground (f) the appellant pleads that the steps required exceed what is necessary to overcome objections in that variation of the enforcement notice to limit the number of individual guests and restrict the letting to a percentage of the year; and to require a management plan would be appropriate.
30. As reasoned above limiting the number of guests would not remove the harm to residential amenity and would not be controllable. Restricting the period of

occupation would merely restrict the number of days of unacceptable disturbance.

31. The appellant further suggests that the notice precludes the occasional letting of the residential property which would be lawful. The enforcement notice requires the cessation of commercial leisure use and cannot preclude any lawful use.
32. The requirements of the notice are not excessive and the ground (f) appeal fails.

Andrew Hammond

Inspector