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## Appeal Decision

Site visit made on 30 July 2019

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 August 2019**

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**Appeal Ref: APP/K0425/C/18/3215227**

**Land at 108 Seymour Park Road, Marlow, Buckinghamshire SL7 3EW**

- 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 Mr Paul Phillips against an enforcement notice issued by Wycombe District Council.
  - The enforcement notice was issued on 26 September 2018.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the garage to form a self-contained independent dwelling.
  - The requirements of the notice are: 1. Cease the use of the garage (shown outlined in green on the attached plan) as a self-contained independent dwelling; and 2. Remove from the garage all kitchen facilities, including the kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood; and 3. Remove all materials and debris resulting from carrying out steps 1 and 2 of this Notice from the land (shown outlined in red on the plan attached to this Notice).
  - The period for compliance with the requirements is: Nine months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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### Summary of Decision

1. The enforcement notice is corrected and the appeal dismissed.

### The Enforcement Notice

2. The alleged breach of planning control does not identify the location of the garage. However, requirement 5. 1. identifies the garage as being shown outlined in green on the attached plan. It is therefore clear from the enforcement notice which building is enforced against. I do not consider that any injustice arises from correcting the allegation to mirror that of the aforementioned requirement, which I shall set-out in my formal decision.

### The ground (b) appeal

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the material change of use of the garage to a self-contained independent dwelling, has not occurred as a matter of fact at the time the enforcement notice was issued.

4. Planning permission<sup>1</sup> was granted for various works to the dwelling, including the attached garage, in 2016. It is common ground that the exterior of the garage accords with the approved plans. There are also no planning conditions restricting the use of the garage for residential accommodation, such as for an annexe, which could include a small kitchen.
5. The approved floor plans for the first-floor of the garage show an internal staircase with the area served by a rooflight and two small windows in one of the gable ends. The area is annotated on the approved plans as a 'Store'.
6. There is no internal access between the garage and main house, despite being linked. I could see during my site visit that it is therefore accessed by a pedestrian door at the rear, as well as a garage door at the front for vehicles. The garage has been laid-out so that the pedestrian door opens into a lobby area that contains a washing machine and storage cupboards. There is also a bathroom containing a shower, toilet and hand-basin. Upstairs, there is a kitchen area containing a fridge, cooker and sink (as well as a kettle and toaster, amongst other things), whilst the remainder of the first-floor contained a double bed, sofa and table with chairs. It therefore has all the necessary facilities to support independent residential occupation and is equipped to a reasonably high standard.
7. The evidence is that the converted garage was listed as being available to rent on a property website in May 2018. During the Council's visit to the site in the same month, they advise the owners stated it had been occupied since 24 April 2018 and that the tenancy ran until 19 April 2019.
8. It is stated in the appellant's evidence, dated 31 October 2018, that the garage was occupied by a grounds keeper employed to manage the property whilst the owners are out of the country. In the evidence dated 5 July 2019, it is asserted that the website listing related to short-term stays of less than 90 days in any calendar year, but that there was a misunderstanding and the advert has since been removed. The grounds keeper's contract has also not been renewed and it is stated the garage is now used on an ad-hoc short-stay basis by visiting guests and children.
9. The garage was occupied at the time of the Council's site visit in May 2018. I have no evidence from the appellant, such as the grounds keeper's employment contract, to persuade me on the balance of probabilities that his or her function and occupation of the garage remained ancillary, or rather, part of the same planning unit. Whilst the cases of *Whitehead*<sup>2</sup> and *Uttlesford*<sup>3</sup> have been brought to my attention by the appellant, and how these have informed other decision makers, there is insufficient evidence to enable me to similarly conclude that at the time the Notice was issued there were sufficiently robust ties of employment or that the occupation of the garage simply amounted to that of an annexe.
10. Furthermore, the website listing casts considerable doubt in my mind as to the nature of the occupancy and thus the actual use of the garage. Given the facilities provided in the garage readily support independent occupation, stays

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<sup>1</sup> Council Ref 16/05702/FUL

<sup>2</sup> *Whitehead v SoS & Mole Valley DC* [1992] JPL 561

<sup>3</sup> *Uttlesford DC v SSE & White* [1992] JPL 171

of up to 90 days in any calendar year could still amount to an independent use, particularly if the owners are out of the country.

11. Whilst I appreciate the garage is not served by separate utilities, does not have its own address or listed for separate Council tax, I do not find these absences compelling or determinative in themselves given they have little bearing on how the garage has actually been occupied. That the driveway and gardens are not demarcated or separated, similarly does not assist the case of the appellant.

### *Conclusion*

12. The garage is equipped for independent occupation, to a reasonably high standard, which includes cooking facilities. Whilst this could also support its use as an annexe, this appeal is fact specific and so concerned with the actual use that was subsisting at the time the enforcement notice was issued.
13. The garage has its own external pedestrian access and there is evidence of its occupation and listing on a property website. The appellant's evidence that there was a misunderstanding about the website listing and that the occupant in 2018 was a grounds keeper/caretaker is not persuasive, particularly given the lack of specific evidence to support this latter contention. Even if the occupant were the grounds keeper, on the balance of probabilities the appellant has not substantiated that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. Consequently, the appeal on ground (b) must fail.

### **Formal Decision**

14. I direct that the enforcement notice be corrected by:

- deletion of the words '*Without planning permission, the material change of use of the garage to form a self-contained independent dwelling.*' and their replacement with the words '*Without planning permission, the material change of use of the garage (shown outlined in green on the attached plan) to form a self-contained independent dwelling.*'

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

*Paul T Hocking*

INSPECTOR