
Appeal Decision

Site visit made on 8 October 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref : APP/M2270/C/18/3212478

Land at 24 Chieveley Drive, Tunbridge Wells, Kent, TN2 5HQ

- 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 T Branczyk against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 23 August 2018.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of a property from a single dwelling and annex to a house of multiple occupation (HMO) and the associated operational development involving the erection of side extensions and the conversion of the original garage into separate accommodation.
- The requirements of the notice are 1. Cease the use of the land as a house in multiple occupation (HMO); 2. Remove and infill the external doors to the unauthorised HMO rooms labelled 1 on Plan B attached to the notice except that within the lawful 'granny annex' approved by planning consent TW/90/1551; 3. Remove the shower and cooking facilities from within each of the separate unauthorised HMO rooms labelled 1 & 2 (green area) on Plan B attached to the notice; 4. Demolish the unauthorised side extensions labelled 2 (green area) on Plan B attached to the notice which facilitates the unauthorised HMO use, remove from the land all materials, debris and waste arising from compliance with the above steps 2-4.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

1. The appeal form lodged an appeal under grounds (a), (c), (f) and (g). During the course of the appeal the Planning Inspectorate requested facts in support of ground (c) but none was submitted. In the absence of payment of the requisite fee the ground (a) appeal has lapsed. I shall therefore determine this appeal under grounds (f) and (g).
2. The Appellant provides an analysis of each of the reasons for issue of the notice. But there is no ground (a) appeal before me and therefore the planning merits of the development are not within my remit to consider. Planning permission has been refused on appeal for a single storey side infill extension and use of the annex as a three bedroom HMO.

Ground (f) appeal

3. This ground of appeal is that the steps for compliance with the notice are excessive.
4. There are two purposes that the requirements of an enforcement notice can seek to achieve – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach.
5. In this case the notice requires the cessation of the unauthorised use and removal of works that facilitate that use. Its purpose is therefore to remedy the breach of planning control and no lesser step could achieve that purpose.
6. The Appellant says that his family circumstances should be taken into account and that the property should either be retained as an HMO or two flats to avoid having to subject the family to living in cramped and unhealthy living conditions. But there is no application before me to convert the property into two flats nor a deemed application to retain it as an HMO. It is not the purpose of a ground (f) appeal to run planning merit arguments nor to consider the grant of permission for alternative proposed uses.
7. The Appellant suggests that permitted development rights would enable him to rebuild the development but I am not persuaded that any fall back position exists which would justify the unauthorised development.
8. For the reasons given the ground (f) appeal does not succeed.

Ground (g) appeal

9. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for a three month compliance period.
10. The Appellant argues that 6 or 9 months would be reasonable. He says this time is needed to source a reputable builder to undertake the physical alterations and to make necessary arrangements for the au pair and driver. He says that he might need to forcefully remove his staff if they have nowhere to go.
11. There is no compelling justification before me as to why the physical works could not be undertaken in a three month period. They are not complex or specialist. I recognise that compliance will result in a loss of accommodation and individual rights must be taken into account. I have balanced competing private and public interests – the private property interest of the Appellant and the rights of the occupants to a home and the public interest in bringing the identified harm to an end without unnecessary delay. There is no evidence to suggest that occupants will be unable to secure alternative accommodation within 3 months and the reference to forcefully removing them is speculation. I consider that three months strikes an appropriate balance and does not violate individual rights.
12. For the reasons given the ground (g) appeal does not succeed.

Formal Decision

13.The appeal is dismissed and the enforcement notice is upheld.

S.Prair

Inspector