



Appeal Decisions

Site visit made on 4 November 2019

by Thomas Shields DipURP MA MRTPI

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

Decision date: 31 December 2019

Appeal A: APP/K2610/C/18/3212999

11 East Avenue, Brundall, Norwich, NR13 5PB

- 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 Act").
- The appeal is made by Mr Matthew Banyard against an enforcement notice issued by Broadland District Council.
- The enforcement notice was issued on 28 September 2018.
- The breach of planning control as alleged in the notice is without planning permission the change of use and separation of part of the ground floor of the dwelling into a self-contained unit of accommodation.
- The requirements of the notice are:
Permanently cease the use of the subdivision as a separate unit of accommodation (known as "The Ramblers") permanently by removing the locks that separate the two units (The Ramblers and 11 East Avenue) and returning the property back to a single dwellinghouse.
- The period for compliance with the notice is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c) and (g) of the Act.

Summary of Decision: The appeal succeeds. Temporary planning permission is granted in the terms set out in the Formal Decision and the enforcement notice is quashed.

Appeal B: APP/K2610/W/18/3212839

11 East Avenue, Brundall, Norwich, NR13 5PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr Matthew Banyard against the decision of Broadland District Council.
- The application Ref 20181087, dated 30 June 2018, was refused by notice dated 28 September 2018.
- The development proposed is temporary change of use of part of ground floor of dwelling to holiday let.

Summary of Decision: The appeal succeeds and temporary planning permission is granted in the terms set out in the Formal Decision.

Preliminary matters

1. The description of development on the application form submitted to the Council in Appeal B differs to that used by the Council. I have adopted the Council's description as it is more concise.
2. It is common ground between the parties that part of the existing building has been in separate use as holiday-let accommodation. The appeal on ground (a)

against the enforcement notice, and appeal B, seek planning permission for that use, and the appellant confirms that the permission sought is for a temporary period of 12 months. I have determined the appeals which seek planning permission together on that basis.

Appeal A – ground (c)

3. An appeal on ground (c) is a claim that the matters alleged at Section 3 of the enforcement notice do not constitute a breach of planning control.
4. A breach of planning control comprises the carrying out of development without the requisite planning permission, and “development” is defined by Section 55 of the Act to include the making of a “material change of use” of land or buildings.
5. Section 55(3)(a) and (b) of the Act specifically define two circumstances where a material change of use is involved. (S.55(3)(b) is not relevant to this appeal). S.55(3)(a) states that *“the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used”*. It is important to note that integral to that definition is the concept of “use”.
6. Other than for the exceptions set out at section 55(3) a “material change of use” is not defined in any statute or statutory instrument, it is a question of fact and degree in each individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of the activity from what has taken place previously. Any off site impacts of any new activity may also be relevant material considerations in making such a judgment, for example the effects on the residential amenity of neighbours, but they are not determinative by themselves and should not be considered in isolation.
7. Accordingly, therefore, the appellant must demonstrate that the use of part of the property as separate self-contained unit of accommodation (holiday let) does not amount to a material change of use thereby constituting a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellant, and the test of the evidence is on the balance of probability.
8. In *Moore v SSCLG [2012] EWCA Civ 1202*, referred to by the parties, the Court held that whether the use of a dwellinghouse for commercial holiday letting amounts to a MCU will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Hence, it is not the case that using a dwellinghouse for commercial holiday lettings will *always* amount to a material change of use, or that it can *never* amount to a material change of use.
9. Planning permission for a rear extension and loft conversion to the bungalow (Council ref.20131789) was granted on 30 January 2014. The approved (later amended) layout showed an additional kitchen to the rear of the bungalow with bathroom and bedrooms within the loft conversion. While the appellant refers to this as allowing the creation of an ‘annexe’, that is not determinative of my decision on this ground (c) appeal since it is the manner of occupation and change in the character of the *use* of the property that is significant.

10. It is clear from the PCN¹ response to the Council, and from the appellant's appeal statement, that following the implementation of the planning permission it allowed the appellant and his family to occupy the property jointly with his mother and to provide day to day care for her. The appellant states that a lockable door had been internally provided in 2016. Nonetheless, there is no convincing evidence before me that the whole of the property had not been occupied by the extended family living together as a single household. As such, there was no material change of use of the property at that time.
11. In February 2017, the front ground floor of the property started to be advertised and used as accommodation for holiday letting purposes, comprising kitchen, lounge, bathroom and two bedrooms. The holiday let is thereby self-contained and separated from the rest of the property internally (in which the appellant and his family remain) by keeping the internal separating door locked. Other separating characteristics are that occupiers of the holiday let have their own separate access via the front door, and their own external amenity space at the rear, being separated from the rest of the garden by a close-boarded fence. Parking at the front is shared for the whole property.
12. The appellant's own evidence indicates to me that the use of the holiday let has been continuous and extensive² and he acknowledges that the holiday let is occupied as a single household³. That alone strongly suggests that the use of the property as a whole is sub-divided into two separate dwellinghouses. I also consider that the occupation of the holiday let likely results in far more comings and goings to the property, including with vehicles, than would otherwise be the case, particularly during peak holiday months, resulting in a degree of visible change in the character of the use of the property.
13. Taking account of all the above factors I find that the change of use to holiday letting of part of the property since February 2017 has resulted in a material change of use of the property as a whole. It now operates as two distinct and separate residential units. In this regard I conclude that there has been a material change of use from a single dwellinghouse to two separate dwellinghouses within section 55(3)(a) of the Act.
14. The appeal on ground (c) therefore fails.

Appeal A – ground (a) and Appeal B

Main Issue

15. Having regard to the Council's reasons for issuing the enforcement notice and for refusing planning permission, I consider the main issue is the effect upon the character and appearance of the area and upon the living conditions of occupiers with particular regard to privacy.
16. The appeal site is located along a private road, having detached and semi-detached residential properties on either side within mainly generously sized plots. It is within the settlement limit of Brundall and hence the development does not conflict with Policy GC2 of the Broadland Development Management Development Plan Document (2015) (DPD).

¹ Planning Contravention Notice response dated 20 June 2018

² 133 website reviews from occupiers of the holiday let.

³ Section 2.1 – Enforcement Appeal Statement

17. Reflective of the National Planning Policy Framework (2019) Policy 2 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (2011) (JCS) and DPD Policy GC4, taken together, support developments which have high standards of design, create a strong sense of place, respect local distinctiveness, and which avoid significant detrimental impact.
18. The Council is concerned that the tandem form of development results in a poor layout of land and development to the detriment of the surrounding character of the area. However, no detailed assessment of the character of the surrounding residential area, and how the development harms that character, has been provided. The only external physical change to the property is the low level fence to the rear which is not visible from outside of the site. Given the total number of bedrooms and likely maximum number of occupiers of the whole property at any one time, I consider the shared parking area to be of an adequate size to accommodate associated vehicles, and I note there is no objection from the Highway Authority. Taking account of these factors, and given the sub-division of the property is not externally apparent, I consider that the development does not result in any significant detrimental impact to the character and appearance of the area. To that extent I therefore find no conflict with the Council's Development Plan policies.
19. I also note, and as I saw during my visit to the property, that the appellant and his family would cross the rear patio area to access their accommodation (directly passing windows to the holiday let), and which itself can be overlooked from the appellant's windows. As such, there is some inter-visibility of the two parts of the property and a resulting diminished level of privacy for all occupiers. However, in terms of JCS Policy 2 and DPD Policy GC4 I do not consider that to be a significant detrimental impact.
20. While I acknowledge that the use has the potential to result in disturbance to neighbours, particularly during warmer months when people tend to have more windows and doors open, I have not been made aware of any complaints or objections from neighbours since part of the property has been used as a holiday let. However, since the application before me is for a time limited period of one year, allowing the appeal would give the Council a full year to assess any such harm that might arise.
21. I conclude that allowing the appeal for a one year period would not result in any significant harm to the character and appearance of the area, or to the living conditions of occupiers and neighbours. The appeal on ground (a) therefore succeeds.

Conditions

22. Since the permission sought was for a time limited period of one year I will impose such a condition. It will allow the Council to assess the effects of the development in the light of any material considerations and against prevailing planning policies in the event that a further planning permission is sought.

Conclusion

23. For the above reasons the ground (a) appeal in Appeal A, and Appeal B, succeed.
24. Since the notice will be quashed there is no need for consideration to be given to the appeal on ground (g) in Appeal A.

Formal Decisions

Appeal A: APP/K2610/C/18/3212999

25. The appeal is allowed and the enforcement notice is quashed. Temporary planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely change of use and separation of part of the ground floor of the dwelling into a self-contained unit of accommodation, subject to the following condition:

- 1) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision.

Appeal B: APP/K2610/W/18/3212839

26. The appeal is allowed and temporary planning permission is granted for the use of the land for change of use of part of the ground floor of the dwelling to a holiday let in accordance with the terms of the application Ref. 20181087, dated 30 June 2018, and the plans submitted with it, and subject to the following condition:

- 1) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision.

Thomas Shields

INSPECTOR