



Appeal Decisions

Site visit made on 29 October 2019

by Thomas Shields DipURP MA MRTPI

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

Decision date: 06 January 2020

Appeal A: APP/R3650/C/18/3207244

Prestwick Cottage, Prestwick Lane, Chiddingfold, Godalming, GU8 4XP

- 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 Mrs Alex Jane James against an enforcement notice issued by Waverley Borough Council.
- The enforcement notice was issued on 15 June 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of buildings from a use that is incidental to the enjoyment of the primary dwellinghouse to that of dwellings with an independent residential use. The buildings are in the approximate position marked 'A' and 'B' on the attached plan.
- The requirements of the enforcement notice are:
 - i. Cease the use of the buildings as dwellings for independent residential use.
 - ii. Remove from the buildings all kitchen facilities including the cooker, kitchen sink and dishwasher.
 - iii. Remove from the buildings on the attached plan all baths and showers.
 - iv. Remove from the land all materials resulting in compliance with the above steps.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Act. 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/R3650/X/18/3200780

Prestwick Cottage, Prestwick Lane, Chiddingfold, Godalming, GU8 4XP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Alex Jane James against the decision of the Waverley Borough Council.
- The application Ref. WA/2017/0964, dated 30 May 2017, was refused by notice dated 5 April 2018.
- The application was made under section 191(1)(a) of the Act.
- The development for which a LDC is sought is described as "Store/garden room/art studio".

Summary of Decision: The appeal is allowed and a LDC is issued in the terms set out below in the Formal Decision.

Appeal site and background

1. It is unnecessary for me to rehearse the considerable planning history to the appeal site. The relevant main factors are that the dwellinghouse within the appeal site, Prestwick Cottage, was originally a garage building serving Prestwick Lodge. In January 2008 the Council granted a LDC for the building's use as an independent dwellinghouse. Subsequently, planning permission and a LDC in 2010 authorised the extension of the house, and two detached buildings A and B (subject of Appeal A) shown on the plan attached to the enforcement notice were erected thereafter.
2. The main house and buildings A and B are all served from the existing parking area and access onto Prestwick Lane. Buildings A and B take utility services directly from the main house.
3. A third building, not subject of the enforcement notice, is subject of the appeal against the Council's refusal of a LDC (Appeal B).

APPEAL A

Appeal on grounds (b) and (c)

4. Appeals on grounds (b) and (c) are legal grounds of appeal and are distinct from any planning merits of development. An appeal on ground (b) is a claim that the matters stated in the Notice which may give rise to the breach of planning control have not occurred *as a matter of fact*. An appeal on ground (c) is a claim that those matters, if they did occur, do not constitute a breach of planning control. The relevant date for determining appeals on these grounds is the date the Notice was issued, 15 June 2018. There is considerable overlap of the relevant evidence and factors in both of these grounds of appeal and so I will deal with them both together.
5. The Courts have held that the burden of proof in legal grounds of appeal rests with the appellant, and the test of the evidence is on the balance of probability.
6. The Notice does not allege that the construction of the buildings A and B ("the appeal buildings") was unlawful. It alleges only that the *use* of the appeal buildings has materially changed; from being incidental with the main dwellinghouse to dwellings with independent residential use. In other words, that at the date the Notice was issued the use of each of the appeal buildings was as a separate dwellinghouse.
7. There is no definition of 'dwellinghouse' in the Act, but in *Gravesham*¹, it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It is clear from my own inspection of the buildings, together with older submitted photographs, and evidence of inspection by the Council, that at the date the Notice was issued the appeal buildings each contained sleeping, cooking, washing and toilet facilities. Indeed, the appellant acknowledges² that the buildings "*have facilities expected in a self-contained dwelling*". However, while they have facilities so as to comprise dwellinghouses consistent with *Gravesham*, the key issue is whether they are occupied in such a way as to form separate planning units.

¹ *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

² Appellant's Statement of Facts and Grounds of Appeal

8. In *Moore*³ the Court held that whether the use of a dwellinghouse for commercial holiday letting amounts to a material change of use (requiring planning permission) 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. The appellant's case broadly is that she uses the whole of the property flexibly, in that she occupies the main dwelling, sometimes with and without lodgers in the appeal buildings and who also access the main house. If renting out the main house she may herself occupy building A or B. At other times she may rent out the entire property as one letting. Also, at other times her sons and their girlfriends if they come to stay might occupy one or both of the appeal buildings while sharing the facilities within the main house.
10. That the appellant at times both occupies and rents out at least parts of the property as residential accommodation, as she states, is not disputed. However, the extent, nature and duration of occupation of the appeal buildings is not clear. The appellant states that she is always in occupation at the property, but it is unclear to me how that can be so if the whole property is rented out as a single letting. Furthermore, the appellant's claims that the house is occupied by herself while lodgers occupy the appeal buildings, or alternatively the reverse of that position, is not supported by any detailed evidence in the form of occupancy dates, signed agreements, or other documentation. Neither have any specific dates been provided of when the appeal buildings have been occupied by family members. No letters or other documentation confirming such use has been provided from such family members or other occupiers. A submitted 'scenario sheet' dated 22 October 2016 lists combinations of occupiers of the property as a whole. However, it does not provide specific dates or periods of occupation of the appeal buildings, and by whom. Overall therefore, there is little documentary evidence which supports the appellant's case.
11. The Council's evidence includes printouts of searches they carried out on internet booking websites in 2016 and 2018⁴. This evidence shows the appeal buildings advertised as available for rent including with internal and external photographs. Amongst other amenities and features of the buildings, they are described as being 'self-contained', and reviews on the websites from past occupiers generally indicate to me the nature of their occupation was on that basis. The considerable number of reviewers referred to stays in 2016, 2017 and 2018 ranging from one to four nights duration. Reviews in 2018 were for every month from April through to December. In addition, Council records⁵ of officers' visits to the property confirm that the appeal buildings were being separately let at those particular times.
12. The appellant challenges the accuracy of some of the comments from local residents. Nonetheless, I have no reason to disregard reports that on occasions throughout the year various occupiers of the appeal buildings have mistakenly arrived at other nearby properties. Third party comments also refer to different

³ *Moore v SSCLG* [2012] EWCA Civ 1202

⁴ Appendix VC2 to Council's Statement of Case

⁵ Appendices VC3/VC4 to Council's Statement of Case

sets of people arriving and staying for short periods, and that occasionally occupiers park in Prestwick Lane.

13. I am mindful that the appellant disputes the Council's interpretation of some of the website reviews, and that comments from third parties in respect of people calling at their properties and parking in the lane is not necessarily evidence that is in conflict with her case. However, taking account of all the above factors I find that the appellant's case with regard to how the appeal buildings have been occupied is imprecise and lacking in support evidentially. The Council's evidence is not so and contradicts that of the appellant. It is also consistent with the correspondence received from third parties. On the balance of probability, I find that the predominant use of the appeal buildings has been as separate self-contained dwellinghouses, both being available and occupied for rent on a commercial basis for relatively short durations. The nature of such occupation, with frequent arrivals and departures of guests and their vehicles, results in a significant and noticeable change in the pattern of activity in and around the appeal buildings where the short-stay paying occupiers would not form part of the same single household occupying the main house. Thus, this commercial use of the appeal buildings amounts to a material change of use in each of them, creating two additional and separate planning units.
14. The appellant refers to *Uttlesford*⁶. In that case, permission had been granted for a garage for incidental use. The finished accommodation gave the occupant the facilities of a self-contained living unit, but was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. Thus, the building remained in single family occupation and functioned as a single household. However, that is not comparable with the facts of the appeal before me. While I accept that at times the appellant may occupy the house while buildings A and B are simultaneously occupied by sons/girlfriends, or alternatively that the whole property might be let as a single letting, I have found that not to be the predominant use of buildings A and B.
15. Having regard to all the evidence before me, I conclude on the balance of probability that the use of the appeal buildings as dwellings with an independent residential use has occurred as a matter of fact and hence the appeal on ground (b) fails. Also, that such use constitutes a material change of use and is therefore 'development' within section 55 of the Act. Since planning permission has not been granted for the development it constitutes a breach of planning control and therefore the appeal on ground (c) also fails.
16. In reaching my decision I have taken account of all of the appellant's submitted evidence, including a number of previous planning appeal Decisions at other locations. However, none of these submissions alter my conclusion as set out above.

Appeal on ground (f)

17. Section 173(3) of the Act requires an enforcement Notice to specify the steps which the authority require to be taken for the purposes of either remedying the breach of planning control (s.173(4)(a)), or, as the case may be, remedying any harm to amenity resulting from the breach (s.173(4)(b)).

⁶ *Uttlesford DC v SSE & White* [1992]

18. The Notice requires the unauthorised use to cease and to remove the facilities that sustain that use as referred to in Section 5(ii-iv) of the Notice. It is clear therefore that the purpose of the Notice is to remedy the breach of planning control within s.173(4)(a). Hence, the appeal on ground (f), in this case, is a claim that the Notice requirement at Section 5(iii) to remove "all baths and showers" from the appeal buildings goes beyond what is necessary to remedy the breach of planning control.
19. The Courts have held that where internal fixtures and fittings have been provided as part of, and integral to, an unauthorised material change of use of a building, and *have thereby facilitated that change of use*, then those fixtures and fittings can also properly be required by an enforcement notice to be removed in remedying the breach of planning control.
20. However, notwithstanding that the appellant states that building A was constructed in 2011 and subsequently converted, the Council state⁷ that they were aware of the provision of the shower rooms in the appeal buildings when they were erected in 2011, and that there was no evidence that the material change of use alleged in the Notice had taken place until 2015. There is no inconsistency in that position with the appellant's response to the Council's 2012 Planning Contravention Notice which states that at that time the appeal buildings were in use by her son and other family and friends. Given the period of time that elapsed from 2011/12 to 2015, when the Council say the breach occurred, the evidence does not support the view that the shower room facilities were installed as integral to and for the purpose of facilitating the material change of use. As such, I find that their removal would be an excessive requirement.
21. For the reasons given above I conclude that requirement 5(iii) is excessive and I will vary the Notice accordingly prior to upholding it. The appeal on ground (f) succeeds to that extent.

APPEAL B

Procedural Matters

22. The detached building subject of this appeal is located furthest away to the north of the main dwellinghouse, Prestwick Cottage.
23. The application to the Council indicated a LDC was sought only in relation to the *use*⁸ of the building. However, it is clear from the details in the remainder of the application, and from the accompanying written description, that confirmation of lawfulness was also sought for the building itself, described as being for "store/garden room/art studio". The application floor plan also indicates the provision of a toilet facility, although none has been installed. The Council considered the application on that basis, and all parties to the appeal have submitted evidence and comments accordingly. I shall also therefore determine the appeal application as made under section 191(1)(a) and (b) of the Act.
24. Matters such as planning policies and the effect of the building on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority. Where an

⁷ Council's Statement of Case, page 6: "Comments on Change of Use"

⁸ LDC application form, question 7

LDC is sought, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The relevant date for determining lawfulness is the date a valid application was made, which in this case is 30 May 2017.

Main Issue

25. The main issue is whether the Council's refusal to issue a LDC was well founded. This turns on the point of dispute between the parties as to whether or not the existing building and use benefits from the planning permission granted by Article 3 and Class E(a), Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, known generally as "permitted development".

Reasons

26. Class E(a) allows for *the provision within the curtilage of a dwellinghouse any building required for a purpose incidental to the enjoyment of the dwellinghouse as such*. Any such building must also meet the dimensional and other conditions and limitations set out at E.1.(a) to (j), E.2, and E.3.
27. I note that third parties query whether the building as a physical structure meets the dimensional conditions and limitations of Class E. However, the Council does not argue with the appellant's evidence that it does meet them, nor submit any contrary evidence that there is any contravention. As such, I have no reason to consider that there is any such contravention. Reference is also made by third parties to a septic tank and a new parking/access at the rear onto the highway. However, a septic tank and the new access were not subject of the application or, consequently, this appeal.
28. During my inspection of the building I saw that it contained gym equipment, garden equipment, an office desk and chair and related equipment, book cases with books, a filing cabinet, rolls of material, clothing and shoes, and numerous other sundry items. In her statement the appellant states that suits belonging to her son were also being stored. Albeit my inspection on a single day is merely a snapshot in time, the main use overall use appeared to be predominantly for storage of a domestic nature, consistent with the appellant's submitted photographs.
29. The Council makes no argument that the building is disproportionately oversized (and hence not reasonably required) in relation to the uses stated in the application; those being storage, garden room and art studio. Given the size of the building and floor space for those uses in the context of the main dwellinghouse I also take no issue.
30. The Council argues that the existing use is not incidental to the enjoyment of the main dwellinghouse. It advances this argument on the basis that when they visited the site in relation to the LDC application the appellant was residing in one of the other outbuildings (building A, subject of Appeal A) and that the main dwellinghouse was being rented out to other occupiers. Consequently, it is argued, the use of the building subject of this appeal was related to the occupier (appellant) use of outbuilding A, and not being used incidentally by occupiers renting the main house. I find this argument to be flawed for the following reasons.

31. As established in *Gravesham*⁹ a lawful dwellinghouse does not cease to be a dwellinghouse if the house is left vacant, even for long periods of time, or if it is rented out as a holiday cottage. It is clear, as set out in Appeal A, that the main house lawfully became a dwellinghouse in January 2008. The Council acknowledges¹⁰ its status as a dwellinghouse and that it has full permitted development rights. Its occupation by tenants (on the day of the Council's site visit) does not change its status from being a dwellinghouse, neither does the fact that the appellant has at times temporarily resided in one of the other outbuildings, or indeed anywhere else. Given the appellant's use of the outbuilding and its contents as previously described, I find that is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
32. For the reasons given above I conclude on the evidence now available, that the Council's refusal to grant a LDC in respect of store/garden room/art studio was not well-founded and that the appeal should succeed. I will exercise the powers available to me under section 195(2) of the Act.

Formal Decisions

Appeal A

33. The appeal is allowed in part on ground (f) and it is directed that the enforcement notice be varied by deleting the whole of the requirement at Section 5(iii), and then re-numbering 5(iv) to become 5(iii). Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

34. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and operations which are considered to be lawful.

Thomas Shields

INSPECTOR

⁹ *Gravesham BC v SSE and O'Brien*, [1983] JPL 306

¹⁰ Council's Statement of Case, page 5

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 May 2017 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development benefitted from planning permission granted by Article 3 and Class E(a) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

Inspector

Date 06 January 2020

Reference: APP/R3650/X/18/3200780

First Schedule

Store/garden room/art studio

Second Schedule

Land at Prestwick Cottage, Prestwick Lane, Chiddingfold, Godalming, GU8 4XP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 January 2020

by Thomas Shields DipURP MA MRTPI

Land at: Prestwick Cottage, Prestwick Lane, Chiddingfold, Godalming, GU8 4XP

Reference: APP/R3650/X/18/3200780

Do not scale

