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## Appeal Decisions

Site visit made on 28 November 2019

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

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

**Decision date: 6 January 2020**

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**Appeal A: APP/F9498/C/18/3219078**

**Appeal B: APP/F9498/C/18/3219079**

**Monkham House, Exford**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Cassandra Midgley and Mr Christopher Midgley against an enforcement notice issued by Exmoor National Park Authority.
- The enforcement notice was issued on 14 November 2018.
- The breach of planning control as alleged in the notice is a material change of use by way of the sub-division of the existing dwelling known as Monkham House situated on the Land to create two separate dwellings.
- The requirements of the notice are:
  1. Cease the independent, residential use of the unit of accommodation edged in red on the attached plan, to ensure that a single dwelling is reinstated at the dwelling known as Monkham House.
  2. Reinstatement the internal door between the dwellings (the subject of this enforcement notice).
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. With respect to Appeal B, 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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### Decision

1. Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.
2. Appeal B is dismissed.

### The Appeals on Ground (d)

3. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. Under s171B (2) of the Act, no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control consisting of a material change of use of a building to use as a single dwellinghouse. The enforcement notice was dated 14 November 2018 and therefore the material date for the use of the property will be 14 November 2014.
4. Evidence by John Hudson is not in the form of a statutory declaration and therefore attracts limited weight. In addition, it is clear that he does not

- specify the dates of between 1992 and 2000 with any degree of certainty and, as such, his evidence gives little to the appellants' case.
5. There is also correspondence between the appellants' solicitors and the property's previous owner, in which reference is made to the construction of the annex rather than there being lawful use of the annex as an independent unit of residential accommodation. Therefore, this also gives little weight to the appellants' case.
  6. The evidence relating to the supply of utilities to the property, including a separate gas cannister supply, but in my mind that is not evidence that the property has been in separate occupation, since an annex may have a separate cannister gas supply of its own in any case. As such this is of limited value in support of the appellants' arguments.
  7. The appellants also contend that the annex is registered with the District Council as a separate dwelling for Council Tax purposes. However, under Council Tax regulations, there would have been a requirement for two separate payments, irrespective of whether or not the annex was ancillary accommodation or a separate residential unit. Consequently, the evidence in this respect gives little weight in favour of the appellants. The fact that Council Tax is being paid for both the annex and the main house is not clear evidence that the annex is a separate residential unit in planning terms.
  8. The evidence with respect to the actual occupancy of the unit sets out that since May 2014 there have been successive occupants. However, in my opinion the evidence in this regard is rather sketchy, comprising lists of payments into a bank account, although the details of the bank account have not been provided. Furthermore, there is insufficient clear evidence to demonstrate what these payments are for or that they are payments that are associated with this property rather than other property or business interests. Therefore, the evidence of occupancy is inadequate. In addition, there are no statutory declarations from either the appellants or the previous or current occupants of the appeal property.
  9. I am also concerned with respect to the type of occupation of the property by Ms Richardson as it appears that her occupation was more akin to that of living in an annex rather than a separate unit of residential accommodation. Indeed, the appellants' own evidence describe the time she occupied the "annex" and the tasks she undertook during that period.
  10. Furthermore, according to case law<sup>1</sup>, an annex will become a separate dwellinghouse when it is self-contained with all necessary living facilities. Other case law<sup>2</sup> paints a somewhat complex picture of the concept of an annex, indicating that an annex that enables a person to live independently from the rest of a family does not always amount to the creation of a separate planning unit and the intention of building an annex or other building in the first place is important. If the purpose of an annex is incidental to the enjoyment of the main house (for example to accommodate a house keeper or similar) then it may well be the case that it is not a separate residential unit. As stated above, the occupation of the unit by Ms Richardson appears to be as an annex between May 2014 and August 2015 because she provided

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<sup>1</sup> Gravesham BC v SoS & O'Brien [1982]

<sup>2</sup> Uttlesford DC v SoSE and White [1992] and Whitehead v SoS & Mole Valley DC [1991]

“substantial services” for the appellants’ property and provided security. Therefore, this type of occupancy along with the reduced rental indicates to me that her occupation was ancillary to the main house due to her role in managing the property. I understand that other than working at Monkham House she had little employment, which again supports the theory that her main role was to look after the property.

11. In the light of the case law I have identified, the fact that the annex has a separate kitchen, bathroom and other facilities does not alter my opinion that the occupancy of the annex between May 2014 and August 2015 was anything other than incidental to the single residential planning unit known as Monkham House.
12. As such, given the inadequate evidence with respect to the occupancy and also the conclusion that until August 2015 it was occupied as an annex rather than an independent unit of residential accommodation, under the scenarios discussed above, the appeals on ground (d) must fail.

### **Appeal A on Ground (a)**

13. The ground of appeal is that planning permission should be granted. The main issue are whether the sub-division of the existing dwelling is acceptable, in principle and the effect on the safe, convenient and efficient movement of highway users.
14. Policy HC-D14 and HC-S4 of the Exmoor National Park Local Plan 2011-2031 (the Local Plan) state that the sub-division of existing buildings will be permitted in specific circumstances, including where the new dwelling will be principal residence housing which will require the imposition of a suitable worded condition to restrict occupancy. The appellant is agreeable to a condition which ensures the property is used only as a principal residence and not as a second home or as a unit of holiday accommodation. On that basis the principle of the development is acceptable in accordance with the provisions of the Local Plan.
15. The access to Monkham House is rather narrow with some restricted visibility onto the highway. However, I have noted that there is no dispute between parties with respect to this matter. Furthermore, I do not consider that the additional vehicle movements that may be associated with a new independent dwelling are likely to be significant to a degree. Therefore, on this issue I conclude that the development would not result in harm to the safe, convenient and efficient movement of highway users.

### **Conclusion**

16. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. Appeal B is dismissed.

### **Conditions**

17. I have specified drawing numbers to ensure the property remains in a suitable layout for two independent residential uses. In order to comply with Policy HC-D14 of the Local Plan the residential unit should be restricted to use as a Principal Residence dwelling and shall only be occupied as a principal home and not as a second home or as holiday letting accommodation. Finally, in order to control external lighting in the interests of the Buffer Zone of the Exmoor Dark

Sky Reserve's Core Zone I have also imposed a condition restricting external lighting.

### **Formal Decisions**

18. Appeal A is allowed, the enforcement notice is quashed, and 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 the material change of use by the way of the sub-division of the existing dwelling situated on the land to create two separate dwellings on land at Monkham House, Exford, as shown edged red on the plan attached to the notice, subject to the following conditions:
- 1) The development hereby permitted shall be retained in accordance with the following plans: 001, 002, 003, 004, 005 and 006.
  - 2) The residential unit hereby approved shall only be used as a Principal Residence dwelling (Use Class C3). It shall not be occupied otherwise than by a person as his or her only or principal home. The occupant shall supply to the Local Planning Authority (within 14 days of the local planning authority's request to do so) such information as the Local Planning Authority may reasonably require in order to determine compliance with this condition. For the avoidance of doubt, the dwelling shall not be occupied as a second home or for use as a unit of holiday letting accommodation.
  - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting those Orders with or without modification), no external lighting shall be installed on the residential unit hereby approved unless details have first been submitted to and approved in writing by the Local Planning Authority. The external lighting shall thereafter be installed and operated fully in accordance with the approved details.
19. Appeal B is dismissed.

*A A Phillips*

INSPECTOR