Appeal Decision

Site visit made on 11 August 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/Q3630/C/19/3225852
Land at 2 Garfield Road, Addlestone KT15 2NS

- 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 Edward Wong Yon San against an enforcement notice issued by Runnymede Borough Council.
- The enforcement notice was issued on 27 February 2019.
- The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised material change of use from one dwelling-house to use as two separate dwelling-houses.'
- The requirements of the notice are:
  '5.1 Cease the use of the two storey extension (the Annex) as a separate residential dwelling-house.
  5.2 Remove all permanent obstructions from the doorway marked C on Plan P01 to allow access from the original part of the dwelling-house to and from the two storey side extension (the Annex).'
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.

Decision

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

Appeal under ground (d)

2. In appealing on ground (d), the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the development was lawful through the passage of time at the date when the enforcement notice was issued. Section 171B(2) states that where a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The Notice was issued on 27 February 2019.

3. The evidence provided in relation to the erection of the extension, how it was used and those who have lived within the extension has been provided by both the appellant in the form of a statutory declaration (SD), attachments and a statement, and by the Council from its records and the responses to the Planning Contravention Notice (PCN) dated 14 September 2018.

4. Planning permission was granted for a two storey side extension at No 2 (reference RN 04/0947) in October 2004. The approved plans show a dining

room and a family room at ground floor with access through doors from the original dwelling and at first floor there were two bedrooms, again with access at first floor level from the landing of the original dwelling. There was no staircase shown on the approved plans within the extension. The appellant states that the extension did not 'entirely follow' the approved drawings. A plan attached to the SD shows the elevations and floor plans for the extension as built. The plans are not that clear but do show an external door on the ground floor flank elevation leading into a single room with a staircase to first floor level where there appears to be a division with a door. No room names are included on the plan and it does not show the wall of the original dwelling.

5. At the time of my site visit access to the extension was via a door in the flank wall of the extension, which lead into a single room with a kitchen at the front, dining area and staircase to first floor. There was a door within the kitchen space into the original dwelling, but it was fixed shut/bolted. Upstairs was a double bed and wardrobe with a shower room located at one end. This layout follows the plans attached to the SD. In the original dwelling the door and its frame at ground floor level is clearly visible. There is no evidence of any other doors at ground floor level to the extension from the original dwelling.

6. In 2005 the appellant, in relation to queries raised by the Council including the insertion of the flank door in the extension, stated that he did not realise the external flank door required consent and that the extension was occupied by his daughter and two children <u>not</u> as a self contained dwelling. Due to the passage of time the actual extension and deviations from the approved plans are immune from enforcement action. The material change of use alleged in the Notice is accepted as occurring sometime after the appellant's daughter vacated the extension.

Material Change of Use of the Extension

7. The extension is stated to have been occupied by the appellant's daughter until June 2006 and from this date until January 2019 the extension is stated to have been occupied by tenants, and during this time there have been thirteen separate tenants.

8. I have been provided with various tenancy, rental and lodger agreements. The following are attached as appendices to the SD:

- Two Tenancy Agreements for a part furnished house or flat on an Assured Shorthold Tenancy (AST) basis, the first for 6 months the second for 12 months dated 2 June 2006 and December 2006. These agreements identifies the property being rented as 2 Garfield Road Addlestone Surrey for the same tenant. (Appendix 4)

- A Tenancy Agreement (6 months) dated 2 December 2007 identifies the property being rented as the Flat 2A Garfield Road. (Appendix 5)

- A Tenancy Agreement (12 months) dated 1 February 2009 identifies the property being rented as The Annex 2 Garfield Road. (Appendix 6)

- A Tenancy Agreement (12 months) dated 15 December 2009 identifies the property as The Annex Garfield Road. This agreement overlaps with the period of the Appendix 6 agreement. (Appendix 7)

- Tenancy Agreement (12 months) dated 1 January 2011 and 1 January 2013 identifies the property as The Annex 2 Garfield Road. There is a gap between the rental period for the agreement in Appendix 7 and this agreement. (Appendix 8)
- Rental Agreement (12 months) dated 1 January 2012 identifies the property as 2 Garfield Road and The Annex has been handwritten above the typed address. (Appendix 8)
- Lodger Agreement (12 months) beginning on 1 March 2014 identifies the property as Annex Flat to No 2 Garfield Road. The agreement relates to a room in a furnished house. Although the property is referred to as an 'Annex Flat' it also lists shared areas with the householder. A letter of deductions from a deposit of the tenants, by the appellant, is also provided. There is a gap between the rental period for the agreement in Appendix 8 and this agreement. (Appendix 9)
- Lodger Agreement with handwritten Self Contained Flat (Furnished) in the heading (12 months) beginning on 7 March 2015 identifies the property as Annex Flat to No 2 Garfield Road. The Council refer to a lodger agreement has been altered by hand from a room in a furnished house to self contained flat (furnished) which lists shared areas with the householder. There is a handwritten word crossed out and N/A on the agreement by the shared areas clause. There are a few days gap between the rental period for the agreement in Appendix 9 and this agreement. (Appendix 10)
- Rental Agreement (12 months) dated 15 May 2015 identifies the property as The Annex at 2 Garfield Road. This agreement overlaps the period of the agreement in Appendix 10. (Appendix 11)
- Rental Agreement (12 months) is signed 28 August 2016. The document is referred to by the appellant as being from 29 September 2015 on the cover of the Appendix 12 but in the SD it refers to it being a 2016 agreement. It identifies the property as 2 Garfield Road and The Annex has been handwritten above the typed address. A letter dated March 2019 from a person signing the same name as the stated tenant in the document states she lived in the property from 29 September 2016 to a date in 2017. The month stated is not clear on the copy letter provided. The letter is not a statutory declaration and so I can give it only limited weight. The SD refers to a leaving date of 10 October 2017. There is a gap between the rental period for the agreement in Appendix 11 and this agreement. (Appendix 12)
- Rental Agreement (12 month) is signed 20 October 2017. It identifies the property as 2 Garfield Road and The Annex has been handwritten above the typed address. (Appendix 13)

9. The Council served a PCN and in the reply the appellant stated that there was no separate electric or water meter for the extension and that water and electric charges are included in the rent. In the SD he states that a separate electric meter was installed for the extension on 10 December 2010. I note that there is an electrical installation certificate for a fuse box in the extension provided dated 10 December 2004. In the SD it is also stated that tenants pay on a monthly basis with a proportion towards utility bills. The evidence around

the provision and metering of utilities is contradictory. While the shared metering of utilities may not be determinative it also does not support the use of the extension as a self contained dwellinghouse.

10. A letter dated 3 July 2016 from the Valuation Office Agency records the effective date of alteration as being 7 March 2015, which is less than four years before the service of the Notice. The appellant states that Council Tax Vacancy Discount was applied between 31 May 2016 and 24 July 2016. The appellant believes the tenant of the extension was renting on an intermittent basis and assumes he was working away at that time.

11. In a statement of insurance dated 24 August 2015 it is recorded that the property is occupied by the owner (the appellant) and his family and it is not let. A statement of insurance dated 24 August 2016 refers to the property having five bedrooms and one bathroom, which must include the extension to equate to that layout. It also confirms that the owner that the property is occupied solely by himself and his family. In a document from another insurance company dated 1 August 2018 the owner states that the property is not let or sublet, and it is not shared by non-family members.

12. The notes from the Council Tax office record that first lodger moved in 1 March 2016 although it also notes 'he was a bit vague'. The Council have stated that a Revenues Inspector conducted a site visit on 9 March 2016 and it was recorded that the connecting door from the hallway was locked. In an email dated 10 March 2016 the Revenue Inspector stated that since the initial enquiry the owner (the appellant) had removed plaster board which covered up the dividing door at the bottom of staircase. It appears sometimes the doorway was plaster boarded over and at other times it was capable of being opened. There is no substantiated evidence to demonstrate when it was plaster boarded or capable of being opened but there is a note that a 'landlady' was reported as trying to illegally access the extension and tried to open the door and remove the partition on 7 March 2016. This seems to indicate the partition at that time could be removed.

13. The electoral register includes one person for the 'Annex' in 2017 and 2018 in addition to the appellant and his daughter. In 2016 the same individual is listed at No 2 and there is no mention of the 'Annex'.

14. While tenancy, rental and lodger agreements indicate the agreement has been entered in to, they do not demonstrate who has actually lived at the property or how it was occupied or whether the occupancy was continuous. There are gaps between agreement periods and overlaps of agreement periods. There is no clarity over occupation periods and by whom. Without corroboratory evidence the agreements do not demonstrate that the extension the subject of the Notice has been occupied as a self contained dwellinghouse for a continuous period of four years at any time prior to the service of the Notice.

15. In addition, the tenancy, rental and lodger agreements use a variety of descriptions for the property which is the subject of the agreement and what is being rented. Again, without corroboratory evidence it is not clear that the agreements relate to the extension the subject of the Notice.

16. The insurance statement documentary evidence is contrary to the SD evidence in that it records that there were no lodgers and the occupiers were the appellant and his family of the whole property. The reference to the number of

bedrooms could only relate to the original dwelling and extension taken as one property.

17. The tenancy, rental and lodger agreements do not cover all the periods the appellant states the extension was occupied as a separate unit. Appendix 5 agreement is for six months from December 2007 and would only indicate a rental agreement to June 2008. The SD states that the agreement for the June 2007 and December 2007 tenant could not be located. This appears to be the wrong dates. However, what is clear is that there is a period between the end of one agreement in June 2008 and the beginning of the next agreement in February 2009 that has no documentary evidence. This is a significant period of time.

18. The Council Tax and the electoral role records do not support the use of the extension as a self contained dwelling for a continuous period of four years before the service of the Notice. Albeit these records, on their own, do not demonstrate the extension had not been used as a self contained dwelling, just when the subdivision of the extension as a separate dwelling had been notified to the relevant authority. However, in relation to the Council Tax records the appellant did not disclose an earlier commencement of the separate use. I note that the appellant states that in periods of vacancy between tenants from 2 July 2016 onwards he paid Council tax for those periods.

19. While clearly the extension was completed in 2005 the ground floor internal door remains in-situ since then and connects the original dwelling to the extension. The internal door appears to have been plaster boarded over at various times and has been removed and is not present now. Exactly how the property has been used over time is less than clear from the submitted evidence. The documentary evidence at times contradicts what is said within the SD. Although there is one letter signed in the name of a tenant it is not a statutory declaration and does not demonstrate a four year continuous occupancy of the extension as a self-contained dwellinghouse. There is no substantiated evidence from those occupying the extension of when they lived in the property and the letter is not a statutory declaration. The SD does not provide precise and unambiguous evidence when read with other documentary evidence.

20. On the evidence before me the sequence of events, how the extension was occupied and whether or not the tenants could open the linking door or relied on the original dwelling in some way has not been clearly demonstrated.

21. The evidence before me fails to demonstrate in a precise and unambiguous way that the extension was occupied continuously as a self contained dwelling for a period of four years at any time from the completion of the extension to the service of the Notice. I therefore find that the evidence does not demonstrate, on the balance of probabilities, that the occupation of the extension as a self contained dwelling is immune from enforcement action. The appeal on ground d therefore fails.

Hilda Higenbottam

Inspector