



Appeal Decision

Site visit made on 8 September 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/A3655/C/20/3247235

Land known as 153 Hawthorn Road, Woking, Surrey GU22 0BQ

- 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 Sharaz Hussain of Kookaburra Construction Limited against an enforcement notice issued by Woking Borough Council.
- The enforcement notice, numbered AJF/348, was issued on 10 January 2020.
- The breach of planning control as alleged in the notice is:
 - a) The material change of use of the Land from a single residential dwelling to four separate flats, and
 - b) The erection of a two storey rear and two storey side extension of the property measure approximately 11 metres in width, 4.6 metres in depth and 6.8 metres in height as shown in the approximate position hatched blue on the Plan.
- The requirements of the notice are:
 - (i) Cease use of the land as flats and return it to a single residential dwelling, and
 - (ii) Carry out such works as necessary to restore the premises to a single residential dwelling including but not limited to:
 - (a) Removal of all internal partition walls to stop the use as four self-contained flats;
 - (b) To reinstate an internal staircase so that access is always accessible for the whole house from the ground floor to the first floor;
 - (c) Removal of the fittings and alterations that have been installed to achieve the division and conversion of the dwellings to four separate and self-contained flats.
 - (iii) Restore the two storey rear and two storey side extensions of the property to accord with the approved plans no P.604 (proposed side and front elevations) dated 18.09.18, P.605 (proposed rear and side elevations) dated 18/09/18, plan no P.602 (proposed first floor plans) dated 18/09/18, plan no P.601 (proposed ground floor plan) dated 18.09.18 and plan no P.603 (proposed roof plan) dated 18.09.18 from planning consent reference number PLAN/2018/1019, and
 - (iv) Remove from the Land all materials, rubble and debris arising from compliance with requirements (i), (ii)(a)(b)(c) and (iii) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of the words 'and return it to a single residential dwelling' in requirement (i);

- the deletion of the words 'restore the premises to a single residential dwelling' in requirement (ii) and replacement with 'to cease the use as flats';
 - The deletion of the wording in requirement (iii) and replacement with 'amend the two storey rear and two storey side extensions to accord with planning permission reference PLAN/2018/1019 and the plans approved therein';
 - Deleting 'six' from the period for compliance and replacing it with 'nine'.
2. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Planning permission¹ was granted for a two storey side and rear extension and a two storey rear extension. The approved drawings indicate that it would result in a five bedroom dwelling. However, extensions have been built and internal alterations undertaken which do not reflect the approved drawings.
4. A further planning application² for 153 and 155 Hawthorn Road, which adjoin each other, was refused on 19 November 2019 for two storey side and rear extensions and conversion of both properties into a total of eight flats, four of which would have been at No 153.
5. A further application³ seeking permission for the two storey front and side extension as built is currently being considered by the Council, which indicates the property would be used as a four bedroom single dwellinghouse.

Matters concerning the notice

6. I have a duty to try to get the notice in order. There is a right under Section 57(2) of the Act to revert to the last lawful use following the issue of an enforcement notice. The positive requirement in the notice to revert to use as single dwelling is therefore excessive, and I shall correct the notice by deleting that part of requirement (i) and correcting the associated wording in requirement (ii).
7. I shall reword requirement (iii) to be more precise, by requiring that the extensions be amended to accord with the planning permission and the plans approved therein. I am satisfied that these corrections will not cause injustice to the parties, and I shall therefore use my powers under Section 176(1).

The ground (b) appeal

8. The ground of appeal is that the matters stated in the notice which may give rise to the breach of planning control, have not occurred. The burden of proof is on the appellant, and the standard of proof is the balance of probabilities. The planning merits are not relevant considerations. Therefore, I cannot take into consideration the concerns raised by neighbours.
9. The appellant states that this ground of appeal applies only to the allegation of a material change of use from a single residential dwelling to four residential

¹ Ref PLAN/2018/1019

² Ref PLAN/2019/0878

³ Ref PLAN/2020/0140

flats and not to the operational development. I have determined the appeal on that basis. The appellant argues that although internal and external alterations have taken place, the alleged separate flats do not have the day to day facilities to constitute individual dwellings (such as kitchens and toilets), have not been rented out or marketed as such. The change of use has therefore not taken place. The appellant also refers to the current application that is pending determination to regularise the extensions and the internal works as a single dwellinghouse.

10. Section 55(3) of the 1990 Act states that for the avoidance of doubt (a) 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. In this case, it needs to be established whether the use as four separate dwellinghouses has commenced, even though the units have not yet been occupied, as a matter of fact and degree.
11. The Impey case⁴, as confirmed in the Supreme Court in Welwyn-Hatfield⁵, held that a material change of use may take place when physical works are carried out for the proposed use in advance of the activity which constitutes the proposed use occurring. Therefore, a change of use could take place as a result of the physical works, but it is necessary "to look at the matter in the round and to ask what use the building has or of what use it is"⁵. The physical state of the building and the actual or intended use are important but are not decisive. It is a matter of fact and degree as to when the change of use occurs.
12. The notice was served following the physical works to the building. These resulted in the ground floor being divided into two separate units with new walls separating the front unit from the rear unit. The ground floor units have their own separate front doors. There is no internal access between the two spaces. The first floor is accessible via an external door in the side elevation of the building, which leads to a staircase giving access to the entirety of the first floor. At the time of my site visit there was also an opening from the bottom of the stairs to the rear part of the ground floor. Although no part of the building has been fitted out as flats, and there are no kitchens or WCs, this is because the works have not yet been completed. Most upper floor rooms have been plastered, with 'first fix' electrical and plumbing works in evidence.
13. The property could readily be divided into four separate units if doors were fitted either side of the upper floor landing, and the access to the rear part of the ground floor from the bottom of the staircase were blocked up. The layout resembles four flats, with indications of kitchen and bathroom areas in each unit due to the installation of electrical fittings and plumbing, including shower trays and waste pipes. There are separate external service cabinets for each flat. Although the flats are not ready to be occupied and lack the day to day facilities for living, they could be made so within a relatively short period of time due to the advanced stage of the works that have been carried out.
14. Conversely, as a result of the works, the building is not readily capable of being occupied as a single dwellinghouse. It is not possible to pass from the rooms at the front of the ground floor to the rear of the ground floor, nor is it possible to pass from the front of the ground floor to the first floor, without going outside. The building does not currently have the day to day facilities to be used as a

⁴ Impey v SSE and Lake District SPB [1984] 47 P & CR 157.

⁵ Welwyn Hatfield BC v SSCLG and Beesley [2011] UKSC 15

single dwelling and is not laid out as such. It would require considerable work in order to be useable as a single dwelling, including the removal of internal walls. The pending applications shows how the building could be altered to provide a single dwelling, but the physical works that have been carried out indicate four separate flats.

15. Looking at the matter in the round, in terms of what use the building has, or of what use it is, as a matter of fact and degree and on the balance of probabilities, I conclude that a material change of use to four flats has occurred as a result of the physical works that have been carried out. The alleged breach of planning control has therefore occurred and the appeal on ground (b) fails.

The ground (f) appeal

16. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity that has been caused by the breach.
17. The appellant argues that as no material change of use has taken place, step (i) should be deleted. However, as I have found in relation to the appeal on ground (b) that the alleged breach of planning control has occurred, removing step (i) would not remedy the breach.
18. The appellant further argues that step (ii) is not necessary as there is a requirement to revert to permission ref PLAN/2018/1019 under step (iii). However, step (ii) as corrected relates to the works that facilitate the use, while step (iii) relates to the operational development in terms of the extension. Therefore, step (ii) is required to ensure the removal of the facilitating works and is not excessive.
19. The appellant states that if application ref PLAN/2020/0140 is approved by the Council to gain planning permission for the extensions as built, it will represent an obvious alternative to the requirements of the notice. However, it has not been approved and therefore it does not represent an obvious alternative to the requirements of the notice. The appeal on ground (f) therefore fails.

The ground (g) appeal

20. The ground of appeal is that the period for compliance falls short of what should reasonably be allowed. The appellant requests additional time in order to submit an alternative planning application for the extensions so that the operational development can remain, and if necessary, to pursue an appeal in relation to PLAN/2020/0140. A period of six months is argued to be insufficient to achieve this and to complete the works necessary to comply with the requirements of the notice. A period of 12 months is requested, although the appellant also requests a period of three years to allow for the implementation of an alternative application if approved.
21. The Council has suggested that it would be reasonable to extend the period for compliance to nine months in view of the effect of Covid-19 restrictions, but considers an extension to twelve months or three years would be excessive.
22. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interest of the appellant. A period of nine months is reasonable, in order to allow sufficient time to submit an

application for an alternative scheme and to carry out the works. To this limited extent the appeal on ground (g) succeeds.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

N Thomas

INSPECTOR