



Appeal Decision

Site visit made on 19 November 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 09 December 2020

Appeal Ref: APP/K2230/C/20/3245867

Land at 100C Wrotham Road, Gravesend, Kent DA11 0QH

- 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 Jasbinder Singh Gill against an enforcement notice issued by Gravesham Borough Council.
 - The enforcement notice was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the material change of use of the two outbuildings in the rear garden of the Property (shown as units 1 and 2 on the attached plan) to use as separate residential dwellings, and the formation of associated residential curtilages.
 - The requirements of the notice are to:
 - 1) Cease the use of the two outbuildings as separate residential dwellings;
 - 2) Disconnect all independent services and utilities to the two outbuildings and remove the respective consumer units in their entirety;
 - 3) Remove all subdividing fencing from the residential curtilages of the two outbuildings; and
 - a) Remove all resultant debris and associated materials from the Property.
 - The period for compliance with the requirements is within six calendar months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed, and the enforcement notice is upheld with a variation.

Application for costs

2. An application for costs was made by Gravesham Borough Council against Mr Jasbinder Singh Gill. This application is the subject of a separate decision.

Preliminary Matters

3. By way of e-mails dated 23 and 24 July 2020 the appellant provided certain late evidence, subsequent to that already received at the 'final comments' stage. As the Council has responded to these representations, I have taken them into account in reaching my decision.
4. In July 2020 the Council refused planning permission for the continued use of the outbuildings as two separate residential dwellings along with minor alterations to the existing buildings and garage. I note that this decision has very recently been appealed. However, due to the different issues involved, the Council's decision in this regard has no bearing on the current appeal and

thereby has had no effect on my conclusions as to whether or not the decision to issue the enforcement notice was well founded.

Background

5. From a site visit to the appeal property made by a Council official in October 2017 it was found that both the said outbuildings, at the rear end of its back garden, were being occupied for residential purposes by persons apparently unrelated to the occupiers of the main dwelling. Fencing had also been erected to demarcate what appeared as a separate and independent occupation.
6. Subsequent to this visit, in November 2017, a planning application (ref 20171180) was submitted to the Council proposing the continued use of the two outbuildings as two separate residential dwellings. Permission was then refused on 30 October 2019. Given these circumstances, and in view of the considered planning position, the Council saw it expedient to issue the enforcement notice, now at appeal.

The Appeal on Ground (d)

7. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced four years before the date of the issue of the enforcement notice, ie prior to 11 December 2015 (hereinafter referred to as "*the material date*") and has continued since. The onus of proof in this respect is on the appellant.
8. There is no definition of "dwellinghouse" in the Act, but in *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 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. Having, at my site visit, viewed the internal accommodation within both outbuildings, I am satisfied that each is capable of providing facilities consistent with self-contained habitable, residential units. In this connection the appellant indicates that both outbuildings, constructed in approximately 2003, have been used as self-contained units since 2010, and were initially occupied by the appellant's family and his sons.
9. A paper sheet titled 'Rent cards' would suggest tenancies for both outbuildings. Between 3 November 2015 and 29 January 2020 (the date the appeal was lodged) it indicates that 'Bungalow 1', a chalet building with an upper floor, was occupied by four successive tenants with only short breaks between tenancies. It also indicates that from 1 December 2015 and 29 January 2020 'Bungalow 2' was also occupied by four successive tenants, again with short breaks between tenancies. This tabulated information for such a time period would cover the requisite length of time from the material date.
10. Copies of apparent tenancy agreements have also been provided, but no statutory declarations from previous tenants have been received, despite a suggestion in the appellant's Statement that 'an affidavit' from Carlos Moreira, relating to his claimed occupation of Bungalow 2 between December 2015 and May 2017, would be produced. The Statement also states in paragraph 3.11 "*We have in the process of obtaining affidavits from Luke Comer and Elvis in respect to their occupancy.*" Luke Comer is said to have occupied Bungalow 1 between November 2015 and December 2017 but, again, no such declaration(s) has materialised.

11. The Council has provided evidence from its Revenues Visiting Officer, showing that the electoral roll has only the appellant and Mrs Gemma Gill registered at No 100C, and the position regarding the supply of utilities from statutory undertakers does not help the appellant's case, either.
12. The Council, in its Statement, has provided an e-mail exchange between the case officer and Dalian Gill of No 39 Wrotham Road, dated 20 October 2017 whereby the former highlighted the site's planning position, saying that it was the Council's understanding that the use of the two former ancillary annexes into two separate residential units occupied by unrelated people commenced four months ago. The fact that the Mr Gill did not specifically contradict this assertion does not necessarily suggest he accepted it. However, neither do I consider that much can be gleaned from an e-mail exchange, dated 17 October 2017, between the parties, provided by the appellant.
13. The appellant has drawn my attention to comments made at a meeting of the Council's Planning Committee on 22 July 2020 which he considers supports his case. I note that the appellant's agent has provided an extract from the proceedings, albeit typed by himself. However, having checked the minutes of this meeting whereby the committee was considering the planning application ref 20200478 relating to the site, I have found the following extracts as relevant:

"A member of the Committee advised that he had received an email from the applicant's agent and had read it out of courtesy but had not predetermined the application... The Committee was advised that numerous complaints had been received with regard to the site since 2012 and had included parking problems, noise nuisance, rubbish etc."
14. This amounts to the same point that the appellant is referring to, but it is not helpful as to who might have been occupying the outbuildings and causing such disturbance, when exactly the appellant's sons ceased occupation, nor does it give confirmation to the claim that the requisite period of immunity had accrued by the date that the enforcement notice was issued. In the above regard I am mindful that neither the appellant nor members of his family have provided sworn statutory declarations to this end.
15. I acknowledge that, in the judgement of *Gabbitts v SSE & Newham LBC* [1995] JPL 630, it was held that the appellant's evidence should not be rejected simply because it is not corroborated, and if there is no evidence to contradict the particular version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.
16. The wording "*precise and unambiguous*" is important here and a subsequent judgement in the case of *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin), in confirming the principle that the burden of proof in establishing that a period of immunity had accrued fell on the appellant, held that it was not for the inspector to seek out evidence. Lack of detail in the statutory declarations and the tenancy agreements were not conclusive of occupation for a continuous four-year period, and the fact that there was a question of the inspector having to draw an inference from the evidence pointed to the fact that the evidence submitted by the developer was insufficient.

17. The two parties dispute when the fencing was put in place, subdividing the original curtilage of No 100C and allowing for each bungalow to have its own small associated external piece of land. The Council considers that aerial photographic evidence suggests that the fencing was erected in approximately July 2017, whereas the appellant says that the fencing was present in April 2015. Whilst this is not confirmation of the outbuildings being independently occupied – I noted at my site visit that the boundary enclosure fencing between the external areas set aside for each outbuilding was incomplete – the appellant suggests that his appeal Statement had given an incorrect date for an aerial image provided, thereby creating confusion. This illustrates the importance of precision and unambiguity.
18. It would seem clear that at some point, a change in circumstances as to the occupation of the outbuildings by persons unrelated to the general occupation of No 100C rather than, as had been the case, family members, amounted to a material change of use in planning terms. At this point, the outbuildings, even if they had been used as self-contained residential units, would cease to have any direct relationship with No 100C, and any family interaction of note between the occupiers and those persons residing in the main dwelling would effectively cease. The creation of a new planning unit(s) then becomes a material consideration.
19. Such development would require the benefit of planning permission and, in the absence of such, a breach of planning control has occurred. However, whilst I acknowledge the evidence provided it is not so substantial or compelling as to amount to the appellant having discharged his burden of proof. Accordingly, although the appellant's claims may be correct, without more precise and unambiguous evidence I am not sufficiently convinced as to its accuracy, not least due to its limited extent.
20. I therefore conclude, in the circumstances, that the appellant has not demonstrated, on the balance of probability, that the material change of use took place before the material date, or that it was continuous.
21. Accordingly, the ground (d) appeal does not succeed.

The appeal on Ground (g)

22. The appellant considers that a six month period, as specified in the notice, is insufficient time to carry out the required steps and believes that a more reasonable period for compliance would be at least nine months.
23. As mentioned, the appellant has only recently appealed the Council's decision to refuse planning permission for the continued residential use of the outbuildings, along with proposed alterations. Although I noted at my site visit that 'Bungalow 1' had apparently been vacated I consider it appropriate to extend the compliance period to nine months which might allow sufficient time for a full and definitive planning position regarding this site to be reached.
24. The appeal on ground (g) succeeds to that extent.

Conclusion

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

Formal Decision

26. It is directed that the enforcement notice be varied by substituting the stipulated compliance period of six months for that of nine months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Timothy C King

INSPECTOR