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# Appeal Decision

Site Visit made on 27 July 2021

**by Simon Hand MA**

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

**Decision date: 16 August 2021**

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**Appeal Ref: APP/T0355/C/20/3264591**

**Pondwood Farm, Pondwood Lane, White Waltham, MAIDENHEAD, SL6 3SS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michael Holdaway against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
  - The notice, reference 18/50022/ENF, was issued on 3 November 2020.
  - The breach of planning control as alleged in the notice is Without planning permission, the erection of an outbuilding for separate residential use (in the approximate position as hatched in green on the attached plan).
  - The requirements of the notice are (i) cease the separate residential use of the outbuilding. (ii) Demolish the outbuilding. (iii) Remove materials from the land following completion of step (ii).
  - The period for compliance with the requirements is: 12 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f), (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 have lapsed.
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## Decision

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

## The Appeal on Ground (b)

2. This ground is that the matters alleged have not occurred. In this case the appellant argues the outbuilding has not been used as a separate dwelling. There is no dispute that the building is the primary residence of the appellant's son and his wife and family. For various reasons that I do not need to go into, as there is no ground (a) appeal, the appellant's son and family came to live in the outbuilding. An application for a temporary planning permission for the outbuilding was refused and appealed in 2019. At the appeal<sup>1</sup>, which was also dismissed, the Inspector considered whether the outbuilding was an independent dwelling and reached the conclusion that it was. That decision was not challenged.
3. The Inspector acknowledged there was no intention to develop a separate dwelling and that the outbuilding would be used only for the son and his family, that they wandered freely between the outbuilding and the main farmhouse and there was no physical separation between the two buildings. However, he also noted, and as I saw on my site visit, the outbuilding is a substantial 4 bedroom house that is entirely self-contained and has no incidental or ancillary link to the main farmhouse. I agree that simply containing the requirements

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<sup>1</sup> APP/T0355/W/19/3229741

for day to day living as note in the *Gravesham*<sup>2</sup> case is not determinative, and the *Uttlesford*<sup>3</sup> case shows that a nominally self-contained dwelling need not amount to a material change of use. In that case the use was as accommodation for staff, and *Uttlesford* is often used to differentiate a 'granny annex' from a separate dwelling in a garden. But in both those examples there is an incidental or ancillary link to the main house. In this appeal the building is occupied by a large family entirely independently. They may go to the main house from time to time, but as the previous Inspector noted that is true for many neighbours.

4. I also agree that the fact the outbuilding could be easily separated is not of great weight but given that it is currently occupied by a separate family on an independent basis means that future enforcement would be very difficult. If the family changed, for example, to friends of the appellant how would that be materially different from what is happening now? The ease with which the outbuilding could be turned into an entirely separate dwelling is suggestive that it is not genuinely incidental or ancillary now.
5. The previous Inspector discussed the meaning of ancillary and incidental in some detail. The outbuilding is clearly not incidental as it is capable of independent occupation. In my view it is not ancillary either as it is occupied independently, albeit with a close connection to the main house and as noted above there is nothing that links it functionally or physically to the main house. The appeal on ground (b) fails.

### **The Appeal on Ground (c)**

6. This ground is that the development as alleged does not require planning permission. In this case it is argued it is a Class E<sup>4</sup> garden building. However, failure of ground (b) means the outbuilding is an independent dwelling and so cannot be a Class E garden building.
7. Nevertheless, had the ground (b) appeal succeeded either I could have corrected the allegation to read something like "construction of a large outbuilding for ancillary residential purposes" or a new notice could have been issued. The question of whether the outbuilding fitted within the parameters of Class E would then be relevant. For the avoidance of doubt I shall deal with this issue as the outbuilding does not fall within the limits set.
8. Principally E.1(e)(i) requires the height to be no more than 4m to the ridge. The height of the appeal building is over that. This too was dealt with by the previous Inspector who was not convinced the small mound of earth to the rear of the outbuilding was the original ground level. I too am not convinced as the outbuilding seems to have been built on level ground that is the same as the farmhouse and nearby swimming pool. I am also not convinced the building was ever in incidental use to begin with. The appellant argues it was originally built as a changing room and entertaining space for the swimming pool. But it is a huge building which suits the role of 4 bedroom dwelling very well. There is no evidence of its original use and the appellant acknowledges that at best it was only briefly used for an incidental purpose.

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<sup>2</sup> *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142

<sup>3</sup> *Uttlesford DC v SSE & White* [1992] JPL 171

<sup>4</sup> Class e of Schedule 2 of Part 1 of the General Permitted Development (England) Order 2015

9. In my view therefore the building is too tall to fall within Class E and I have doubts it was ever lawfully used as a Class E building, but that it was built as a dwelling from the beginning. Both of these would be fatal to the ground (c) appeal, but I also note that E.1(h) does not allow a verandah, balcony or raised platform. The outbuilding has a substantial raised platform around two sides that is taller than the maximum 30cm allowed. This platform appears to be an integral part of the outbuilding and is another reason it falls outwith Class E. The appeal on ground (c) fails.

**The Appeal on Ground (f)**

10. As the outbuilding is not lawful there is no fallback position. Therefore the only way to remedy the breach is to cease the use and remove the building. No lesser steps have been suggested and there are none that I can think of that would remedy the breach alleged. The appeal on ground (f) fails.

**The Appeal on Ground (g)**

11. The period for compliance is already a very generous 12 months, so even taking into account the fact that the occupiers of the outbuilding will lose their home I cannot see that a longer period is warranted. The uncertainty created by the pandemic is now abating and there should be no reason why they could not find rented accommodation within a year. The Appeal on ground (g) fails.

*Simon Hand*

INSPECTOR