



Appeal Decision

Site visit made on 20 July 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH AUGUST 2021

Appeal Ref: APP/X1925/C/21/3270832

Land at 15 Weston Way, Baldock SG7 6EY

- 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 Ms Samantha Cansfield against an enforcement notice issued by North Hertfordshire District Council.
- The enforcement notice was issued on 11 February 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the creation of a separate residential dwelling.
- The requirements of the notice are (i) Cease the use of the property known as The Studio, 15 Weston Way, Baldock SG7 6EY for residential purposes; (ii) Permanently remove from the property the means of enclosure or fence(s) that subdivide the outdoor amenity space and return the land [to] single amenity use; and (iii) Permanently reinstate an internal means of access in the property so that the whole property is used [as] a single dwellinghouse.
- The period for compliance with the requirements is within 12 months of the day the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. Reference has been made to sections of fence on the Weston Way frontage. However, the notice only requires means of enclosure or fences that subdivide the land to be removed. Accordingly, there is no need to consider the fence on the Weston Way boundary in this appeal.
2. The separate dwelling the subject of the notice, The Studio, arose through a change of use. The breach would therefore be more precisely described as the change of use of part of the property to use as a separate dwellinghouse. Consequent to this, requirement (i) should be to cease the use of The Studio as a separate dwellinghouse. This would also avoid any perception of conflict with the intention of requirement (iii) to facilitate lawful residential use.
3. It is not possible for an enforcement notice to compel any person to use land. Accordingly, requirement (ii) should not include returning the land to single amenity use and requirement (iii) should not be worded to require, but rather to facilitate, use as a single dwellinghouse.

The appeal on ground (d)

4. The appeal on this ground, would succeed if the appellant can demonstrate, on the balance of probability, that the use of The Studio as a separate dwellinghouse was instituted on or before 11 February 2017, 4 years before the notice was issued, and continued thereafter without significant interruption. If this can be demonstrated, the use would be immune from enforcement action.
5. The Studio is within a single-storey extension to 15 Weston Way (the main dwellinghouse). The appellant states that the building works to facilitate the change of use to a separate dwellinghouse were completed in January 2017, more than 4 years before the notice was issued. Evidence in support of this claim is provided by receipts and invoices and in certification relating to electrical installation. However, this evidence cannot demonstrate that a separate residential use was instituted on or before 11 February 2017. Nevertheless, the last invoices from before that date confirm that a water heater was installed, and carpet was laid during January 2017. This indicates, as a matter of fact and degree, that separate residential occupation would have been possible from around that time.
6. Council Tax records for The Studio only go back to 14 October 2017 and therefore do not demonstrate that separate residential occupation was instituted on or before 11 February 2017.
7. The earliest documented evidence that a separate residential occupation occurred is an agreement for a tenancy that commenced on 12 March 2017. A second tenancy began on 14 November 2017 and the tenant is still in occupation. While these tenancy agreements confirm continued separate residential occupation of The Studio, they do not confirm that it was instituted on or before 11 February 2017.
8. The only evidence of use of The Studio before 11 February 2017 is a statement that the appellant occupied 'the unit' for 2 months before the first tenancy began on 12 March 2017. It is not stated whether this was a residential occupation or, if it was, whether it was independent of, in association with, or incidental to any residential occupation of the main dwellinghouse. No other evidence of this claimed period of occupation has been provided.
9. While none of the invoices, receipts or certificates relating to the works are from the critical period of 11 February to 12 March 2017, they confirm that the appellant used 3 different addresses, sometimes as little as one day apart¹ and once on the same day², during a 7-week period. Regardless of chronology, this introduces ambiguity in terms of the appellant's living arrangements. That, and the paucity of evidence relating to the claimed 2-month period, diminish the credibility of the claim that the appellant instituted separate occupation of The Studio, whether residential or not, on or before 11 February 2017.
10. Furthermore, an invoice dated 19 March 2017 includes the supply and erection of a fence for the Studio. This aspect of the appellant's evidence introduces ambiguity as to whether the front garden was divided into separate amenity spaces on or before 11 February 2017. While the appellant states the front hedgerow was replaced with a section of fence in February 2017, there is no mention of the fence that divides the front garden into separate amenity

¹ Magnet Trade invoice dated 16 January 2017 and DJ Floors invoice dated 17 January 2017

² Tradepoint receipts and DT Rubbish Clearance invoice dated 6 January 2017

spaces. While this section of fence is visible in several images the only one with a date is from July 2017.

11. The foregoing implies that a significant change occurred after 11 February 2017 through the erection of the fence that physically separates the 2 curtilages and thereby defines the units of occupation. The materiality of a change of use should be assessed in terms of the whole site concerned. It would therefore follow that what is now a second planning unit was not physically separate from the main dwellinghouse 4 years before the notice was issued.
12. It is also of note that when the appellant applied for planning permission to regularise the division of the property to retain The Studio³, it was stated on the form that 'the building work or change of use' had been completed on 20 February 2017, less than 4 years before the date the notice was issued.
13. For these reasons, and taken overall, the evidence provided by the appellant does not demonstrate, on the balance of probability, that the use of The Studio as a separate dwellinghouse was instituted on or before 11 February 2017. The use is therefore not immune from enforcement action and the appeal on ground (d) must fail.

The appeal on ground (a)

14. The main issues in this appeal are:

- The effect of the change of use of part of the property to use as a separate dwellinghouse on the living conditions of the occupiers of both dwellinghouses.
- The effect of the subdivision of the outdoor amenity space on the character and appearance of the area.

Reasons

Living conditions

15. The floor space of The Studio is below the nationally described space standard of 37 square metres for a one-bedroom dwelling with a shower room, although storage available in a garden shed does not appear to have been considered. The development plan pre-dates the standard and instead includes a guideline that the total space and the size of rooms should meet the reasonable requirements of the expected occupants and serve their intended purposes. The appellant contends that to be the case, and that the occupation of The Studio by the same tenant since October 2017 demonstrates it.
16. While The Studio may be small, it has a dedicated garden area comparable in size with some in the immediate vicinity and there is an open space approximately 100 metres away. Considered in this context, the dwellinghouse would meet the reasonable requirements of the expected occupants and serve their intended purposes. Accordingly, I find no conflict with saved policy 57 of the North Hertfordshire District Local Plan No. 2 with alterations, April 1996 (the NHDLP).
17. The Council intends to adopt the nationally described space standards under policy D1 of the emerging North Hertfordshire Local Plan 2011-2031 (the

³ 17/02761/1, dated 12 October 2017, refused 26 January 2018

emerging plan). The examining Inspector's final report is expected by the end of 2021 and the Council is confident he will find the emerging plan sound. It also considers that objections to policy D1 were not significant and have been resolved, and that there is no conflict between the policy and the National Planning Policy Framework. However, it remains that policy D1 does not have statutory force and has not yet been found to be sound. Accordingly, I do not afford it significant weight.

18. The internal space is an important indicator of whether accommodation provides satisfactory living conditions. However, it is not the only factor, and the garden and storage space make a significant contribution. Accordingly, in this instance, a sufficiently high standard of amenity is achieved, albeit below the nationally described space standard, and there is no reason to determine the deemed planning application other than in accordance with the development plan in this regard.
19. The Council suggests that direct views from the rear garden of the main dwellinghouse into the kitchen of The Studio would result in a loss of privacy. However, the kitchen window is obscure glazed, so it would not be necessary to subdivide the rear garden to protect living conditions. I therefore find no conflict with saved policy 26 of the NHDLP or policy D3 of the emerging plan.

Character and appearance

20. The section of fence separating the amenity area of The Studio and the front garden of the main dwellinghouse can be seen in views from Weston Way across the adjacent front garden of No. 13. It therefore has some effect on the character and appearance of the area. However, other front gardens in the area are separated by tall fences, so it is not unusual when viewed in context. Furthermore, its removal would reveal a similar fence on the side boundary in views across the front garden of No. 13 and would thus have a neutral effect.
21. The Council considers the amenity space associated with The Studio has brought about a re-orientation of the dwellings in terms of their relationship with the street, although it is not clear why this is held to be harmful to the character of the area. The use of this space, and any resultant effect it may have on the character of the area, cannot be perceived due to the screening provided by the boundary fences that are not subject of the notice. Consequently, the fence is acceptable in environmental terms and I find no conflict with saved policies 26 and 57 of the NHDLP.

Conclusions

22. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice with a correction and variations.
23. In these circumstances, the appeal on ground (g) does not fall to be considered.

Formal Decision

24. It is directed that the enforcement notice is corrected by the deletion of the words "creation of a separate residential dwelling" and their replacement with the words "change of use of part of the property to use as a separate dwellinghouse" in section 3.

25. It is further directed that the enforcement notice is varied by:

- The deletion of the words “for residential purposes” and their replacement with the words “as a separate dwellinghouse” in section 5(i);
- The deletion of the words “and return the land [to] single amenity use” in section 5(ii); and
- The deletion of the words “is used” and their replacement with the words “may be used as” in section 5(iii).

26. Subject to the correction and variations the appeal 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 Act for the development already carried out, namely the change of use of part of the property to use as a separate dwellinghouse at 15 Weston Way, Baldock SG7 6EY as shown on the plan attached to the notice.

Mark Harbottle

INSPECTOR