



Appeal Decision

Site visit made on 17 August 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/A3655/C/21/3266591

Land at 19 Sanway Road, Byfleet, West Byfleet, Surrey KT14 7SF

- 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 Geraldine Milward against an enforcement notice issued by Woking Borough Council.
 - The enforcement notice was issued on 4 December 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of part of the land, namely the garage as shown edged blue on the Plan to a self-contained residential unit.
 - The requirements of the notice are:
 - (i) Cease the use of the garage as a separate self-contained residential accommodation contrary to condition 5 of 87/437, and
 - (ii) Remove all facilitating cooking, bathroom, sleeping facilities, fixtures and fittings and all internal walls from the garage used in connection with the conversion of the garage to habitable accommodation so that the garage can be made available for the parking of vehicles, and
 - (iii) Remove the plasterboard wall to the front elevation used in connection with the conversion of the garage to habitable accommodation so that the garage can be made available for the parking of vehicles by the provision of garage doors in accordance with Condition 5 of 87/437, and
 - (iv) Remove from the Land all materials, rubble, and debris arising from compliance with requirements (i), (ii), (iii) and (iv) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:
 - the deletion of the numbering '(iii) and (iv)' from sub-paragraph 5.(iv) and the substitution with 'and (iii)'; and
 - the deletion of three months and the substitution with six months for the time for compliance.
2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Background

3. The enforcement notice relates to a linked detached garage which forms part of the southern boundary to the rear garden of the detached two storey dwelling at No 19 Sanway Road.

4. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the garage to a self-contained residential unit. One of the reasons for issuing the notice is that Condition 5 of associated planning permission reference 87/437¹ states, that the garage '*shall not be converted into habitable accommodation including utility room, domestic workshop, studies and similar uses, without the prior written approval of the Local Planning Authority*'. The reason for imposing the condition is to maintain car parking provision in accordance with Surrey Design Scheme.

The Appeal on Ground (d)

5. In order to succeed on ground (d), it is for the appellant to demonstrate, on the balance of probabilities, that the use of the garage as a separate self-contained residential unit began more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement action². The material date is therefore 4 December 2016.
6. However, the appellant acknowledges that the garage was rented out as a separate unit of accommodation for a brief period only. Although the actual timescale is not specified, the appellant does not seek to argue that the four-year immunity period has been met. Rather, the appellants ground (d) case is that the garage has not been in its authorised use, and therefore in breach of condition, for a period in excess of 10 years and is therefore immune from enforcement action.
7. On the basis of the evidence submitted, it is the appellant's view that a certificate should be granted for the continued use of an ancillary habitable room to the main dwelling. However, the appeal is not made against the refusal of the Council to grant a certificate of lawful use or development under s195 of the Town and Country Planning Act 1990 (the 1990 Act) for an ancillary habitable room. The appeal is made under s174 of the 1990 Act against an enforcement notice issued by the Council. Even if the garage has been used as a habitable room as stated, and in breach of condition for over 10 years, that is not the material change of use alleged in the notice.
8. Moreover, it is not argued, under a ground (c) appeal, that changing its use, from one that is ancillary, to a self-contained residential unit, would not constitute a breach of planning control. Indeed, s55(3)(a) of the 1990 Act provides that 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 and of each part of it which is so used.
9. I therefore conclude that appellant has failed to demonstrate, on the balance of probabilities, that the use of the garage as a self-contained residential unit has gained immunity from enforcement action through the passage of time. It follows that the appeal on ground (d) does not succeed.

¹ To amend application 86/366 (layout and house types) of the erection of four chalet bungalows and four detached dwellings with for [sic] garages and internal access road

² s171B(2) of the Town and Country Planning Act 1990

The Appeal on Ground (f)

10. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
11. In this case, the requirements of the notice are, in short, to cease the use of the garage as separate self-contained residential accommodation, to remove all facilitating fixtures, fittings, facilities and internal walls used in connection with the conversion of the garage, and the removal of all resulting materials so that the garage can be made available for the parking of vehicles in accordance with Condition 5 of planning permission 87/437. The purpose of the notice is therefore to remedy the breach of planning control.
12. The appellant considers that the requirements of the notice are excessive because there is ample external parking and that reverting the use to a garage is unnecessary and would be harmful to amenity. Further submissions are made regarding the reasonableness and precision of Condition 5 and whether it allows the garage to be used as storage space. However, since the appellant chose not to pursue an appeal on ground (a) for consideration of the deemed planning application, it is not open to me to consider matters relating to the planning merits under ground (f). The only point at issue is whether the requirements exceed those necessary to remedy the alleged breach of planning control.
13. The appellant requests that lesser steps be considered such that the garage can be used for storage for the main house and that partitioning should be allowed to be retained to distinguish between the storage area and any necessary parking space within the garage. However, it has not been shown that there is sufficient space within the garage to retain internal partitioning without compromising the requirement to make the garage available for the parking of vehicles. Physically the requirements of the notice are unlikely to preclude an element of ancillary storage. Whether that is permissible within the context of Condition 5 again relates to matters of planning merit.
14. I find that the requirements of the notice tally with the allegation and are not excessive but are necessary to remedy the breach of planning control. There is a numbering error in requirement (iv), which I have addressed in my decision. Nevertheless, the appeal on ground (f) fails.

The Appeal on Ground (g)

15. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellant requests a period of eight months to secure alternative storage and a contractor to undertake the physical works.
16. Whilst I do not consider a period of three months to be too onerous to find alternative storage arrangements, I am nonetheless mindful that it might take the appellant longer than usual to procure the services of a contractor having regard to the effects of the COVID-19 pandemic.
17. I therefore agree that the period for compliance should be extended, but to six months, rather than eight as requested. A period of six months would be a reasonable and proportionate response to the breach of planning control.

18. I shall therefore vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Other matters

19. I note the appellant raises concerns over how the Council dealt with a previous planning application for the use of the garage, but that is not a matter for this appeal.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Richard S Jones

INSPECTOR