



Appeal Decisions

Site visit made on 7 December 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 29th December 2021

Appeal A Ref: APP/X0360/C/21/3278323

The Annex, 1 Eastcourt Avenue, Earley, Wokingham, RG6 1HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mahtab Quadri against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 14 June 2021.
 - The breach of planning control as alleged in the notice is a material change of use of existing single storey side extension to a single dwellinghouse.
 - The requirements of the notice are to: (i). Cease use of the side extension edged in blue on the attached plan as an independent dwelling house; (ii). Remove all fixtures and fittings forming the kitchen within the side extension edged in blue on the attached plan.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) 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.
 - An identical appeal has been made by Mrs Naila Quadri reference APP/X0360/C/21/3278324
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Decisions 3278323 and 3278324

1. Both appeals are dismissed and the enforcement notice is upheld.

The Appeal on Ground (d)

2. The appellant's evidence is that at some time, possibly around 2013, he built an extension to his house. He says at that time he did not realise he was not allowed to use it as a separate dwelling. Once the extension was completed, he was contacted by the Council who informed him that because the extension had a bathroom and kitchen it was liable for Council Tax, so he decided to rent it out to a tenant.
3. In 2017 the Council issued a PCN which he returned declaring the tenancy, but because the Council were not happy he asked for a visit. The result of this is that he was advised to apply for planning permission for a separate studio/annex. This application was refused. His architect, who processed the application for him failed to make an appeal within the timescales allowed. However, on hearing nothing further, the appellant continued to let out the annex until 2020 when a further PCN was issued by the Council. At this time, as the country was in lockdown, the annex was empty, which he duly reported in the response to the PCN. He was advised by the Council the file was now closed and so when lockdown was eased another tenant was installed.

4. However, in 2021 the Council were still concerned about this so the appellant took legal advice and was advised he should apply for a Lawful Development Certificate as the use had been going on for more than 4 years. As far as I am aware no LDC has been applied for.
5. The Council's version of events is somewhat different. They opened an enforcement investigation in 2015 following a complaint the extension was being let out as a separate dwelling. A PCN was issued in January 2016 (not 2017) and in response to that the appellant stated the annex was only for family use. Officers visited the property and found no breach and closed the case. The Council have provided a copy of the PCN reply where the appellant states the current use of the extension is "*ancillary use by family eg utility room, tv room, socialising by family members*". He says clearly that nobody lives there except occasionally his elderly mother who stays there some weekends when she comes back from her care home.
6. The PCN was accompanied by a letter in which the appellant explains in detail the use being made of the extension by his family and in which he is quite indignant that anyone should suggest it was being let out as a separate annex.
7. On the 18th March the Council confirmed in writing that no-one was living there at the moment and it was used only as ancillary accommodation by the family. The letter goes on to record that the appellant suggested he may wish to rent out the extension in the future, but this would require a separate planning permission. An application for residential use was made in September 2016 and subsequently refused in April 2017.
8. In April 2020 a further PCN was issued as the Council again suspected the extension was being let out as a separate dwelling. In this PCN the appellant again denies any separate use. He says it has been used only for his family and that use has been going on since 2014. Again he says he is interested in making use of it as a studio flat in the future. This is accompanied by a letter confirming the use has only ever been family members but he may wish to obtain permission for a separate use in the future.
9. There is further correspondence in which the appellant asks what the chances of success for an application for a separate use would be and is advised to speak to a planning agent. In May 2020 he again confirms the only occupants are members of his family but asks for help in getting permission for use as a studio flat. In June 2020 the Council wrote back to confirm that as there was no separate use they were closing the file, but if that changed in the future a separate planning permission may be necessary. The appellant complains that he has been paying separate Council Tax for the annex and is advised to take this up with the Council Tax department. In April 2021 following further investigation by the Council, Estate Agents informed the Council that a new tenant moved into the property on the 16th April and in June the Council issued the enforcement notice. All of this is evidenced by copies of the relevant correspondence.
10. Other evidence that has been presented is an AST for the annex dated 27 August 2020. A gas safety inspection record dated 28 August 2020, an Electrical installation condition report dated 25 August 2020 and a tenancy deposit scheme document which is undated but is valid to 31 March 2021, so may date from 12 months before. All of this is consistent with the Council's

argument that as the appellant is adamant that he has never concealed anything from them then the first tenant did not move in until August 2020.

11. The only contradictory evidence is an energy performance certificate for "The Annex, 1 Eastcourt Avenue". This is dated November 2013 and presumably was issued when the extension was originally completed. Obviously given the appellant's PCN replies this was a mistake and it may explain why the extension was incorrectly rated separately for Council Tax in the first place. However, apart from this all the evidence, including the appellant's own PCN replies and letters all confirm the view that the extension was not used as a separate annex until the summer of 2020 and so the required 4 years cannot be demonstrated and the appeal on ground (d) must fail.

The Appeal on Ground (f)

12. No specific evidence or arguments have been put forward on ground (f). It is clear the appellant is currently letting out the annex and intends to continue doing so. He is of the opinion the annex is perfectly suited for such a use, although the Council refused it in 2017. In my view the only way to be certain this unlawful use is not continued is to remove the kitchen as required in the notice. I agree with the Council that the notice identifies a breach of planning control and the steps required are not excessive in order to remedy that breach. The appeal on ground (f) fails.

Conclusion

13. I shall dismiss the appeal and uphold the enforcement notice. The appellant will have 6 months from the date of this decision letter to comply with the requirements of the notice.

Simon Hand

INSPECTOR