



Appeal Decisions

Site visit made on 24 May 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2022

Appeal A Ref: APP/R4408/C/21/3289933 and

Appeal B Ref: APP/R4408/C/21/3289934

94 Doncaster Road, Darfield, BARNSELY S73 9JA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Rita Shelbourne and Appeal B is made by Mr Kevin Shelbourne against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 2 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land and buildings from a detached garage to one of a residential dwellinghouse for human habitation (C3: Dwellinghouse Use Class).
 - The requirements of the notice are:
 - (i) Cease the unauthorised change of use of the Land for residential occupation
 - (ii) Amend the unauthorised development so that it accords with the structure in the Approved Plans (No's CAD/QA/1401, CAD/QA/P1402 & CAD/QA/P1403)
- OR**
- (iii) Demolish the building and remove all the associated materials & waste from the Land.
 - The period for compliance with the requirements is: three months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

Matters concerning the notice

1. It is clear, within the four corners of the notice¹, that the allegation relates to the creation of an additional dwellinghouse at 94 Doncaster Road. The appellant makes a case on ground (b) that an additional dwellinghouse has not been created and was therefore in no doubt as to what was being alleged. Even if the appeal on ground (b) succeeds, that does not make the notice a nullity.
2. The notice includes reasons for it being issued and these relate to planning merits and relevant planning policies are referred to. No appeal on ground (a) has been made and the planning merits of the development are not before me for consideration.

Background

3. The appeal premises is a mid-terraced dwellinghouse, which fronts on to Doncaster Road. There is a small garden to the front accessed by steps. At the southern end of the terrace, a shared access road leads through to the rear of the terraced block. The shared access also runs along the rear of the terraced block. Beyond the shared access road are a row of low brick sheds and beyond those sheds is an area of land belonging to the appellants, which has been used for parking and garaging of vehicles in association with the residential

¹ Miller-Mead v MHLG [1963] 2 QB 196 (CA)

occupation of No94. The appellant verbally confirmed at the accompanied site visit that they did not own or control any part of the shared access road.

4. Planning permission was granted for the '*demolition of existing garage and outbuildings and erection of a detached garage*' on 22 August 2014. That permission was not the subject of any conditions that required the use of the approved garage to be retained. There is no dispute that the garage granted planning permission was erected or that it was used for ancillary garaging purposes. It is this detached garage that is the subject of the notice. The plan attached to the enforcement notice only identifies the separate parcel of land occupied by the former garage.

Appeal on ground (b)

5. An appeal on this ground is that the matters alleged have not occurred as a matter of fact. The appellants need to show that the former garage has not been converted into a residential dwellinghouse. The onus of proof is on the appellants and the relevant test is the balance of probability.
6. There is no planning definition of what constitutes a dwellinghouse. A dwellinghouse is both a concept of design and use. In *Gravesham*² it was said, '*whether a building was or was not a "dwellinghouse"...was a question of fact; that a 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...*'.
7. The converted garage provides residential accommodation over 2 floors, which consists of kitchen/dining, seating area, playroom, utility and toilet on the ground floor and 2 bedrooms and a family bathroom on the second floor. The converted garage therefore has all the facilities for day-to-day private domestic existence.
8. This raises the question, does the use of the existing garage, within the curtilage of the original dwellinghouse, as self-contained residential accommodation amount to development as set out in s55(1) of the 1990 Act³. S55(2) of the 1990 Act provides a list of operations and uses that shall not be taken to be development. While s55(2)(d) states '*the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwellinghouse as such*', s55(3) confirms, for the avoidance of doubt, '*the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use in the use of the building and of each part of it which is so used*'.
9. This raises the second question of whether the use of the converted garage is 'incidental' to the residential occupation of the original dwellinghouse. Where a self-contained area within a planning unit provides all the necessary facilities for independent day-to-day living and it is used as someone's home or dwellinghouse, it would not normally be incidental or ancillary to some other main use of the land.
10. An exception to that approach is the use of part of a property as a granny annexe. A granny annexe, even in a separate building in the curtilage of the 'main' dwellinghouse, would normally be regarded as part and parcel of the

² *Gravesham BC v SSE* (1982) 47 P & CR 142

³ Town and Country Planning Act 1990

main dwellinghouse use rather than a use incidental to it, provided that the occupant uses facilities in the main house for some day-to-day residential activities. However, if the occupant occupies the accommodation entirely independently, the use of the granny annexe is likely to become an independent main use of the land as a separate dwellinghouse. It would not therefore be incidental to the enjoyment of the main dwellinghouse.

11. The original dwelling and the converted garage are physically detached from one another. Furthermore, the land occupied by the original dwelling is physically separated from the land occupied by the converted garage by the shared access road. Both the original dwelling and the converted garage contain kitchens, family bathrooms, living accommodation and multiple bedrooms. Neither unit is therefore subservient to the other. Each unit can also be accessed independently of one another, and each has its own independent gas and electric supplies and meters.
12. During the accompanied site visit, the appellant explained that the original dwellinghouse is occupied by appellant A's mother, sister and niece, and the converted garage is occupied by both appellants and their sons. Appellant A went on to advise that the extended family all eat together in the converted garage as the kitchen in the original dwelling is considered too small.
13. The kitchen/diner in the converted garage is substantially larger than the kitchen in the original dwelling, and the former garage also has a separate utility room. The 2 family bathrooms are of a comparable size, but the converted garage also has an additional, separate toilet on the ground floor. While the totality of the residential accommodation is occupied by 3 generations of the appellants extended family, who may share cooking and eating facilities, this is a personal choice and there are no physical reasons for them to do so. For the reasons given above, I find the amount and content of habitable accommodation contained within each separate residential unit, as a matter of fact and degree, amounts to 2 self-contained dwellinghouses.
14. While Building Regulations approval was secured for the conversion of the garage to habitable rooms and the Certificate of Completion is addressed to No94, this does not change the fact that the converted garage has been laid out and used as one residential dwellinghouse.
15. The appellants refer to 2 cases in support of their case, *Uttesford DC v SSE & White* [1992] JPL 171 and HC/111, and *Whitehead v SSE and Mole Valley District Council* [1992] JPL 56. In *Uttesford* it was held that it is a matter of fact and degree, for the decision maker, as to what is the appropriate planning unit. The *Whitehead* case can be distinguished from this appeal as I do not consider the proposed use to be clearly ancillary to the use of the main house.

Conclusion on ground (b)

16. The appellants have failed to show, on the balance of probability, that the material change of use from a detached garage to a residential dwellinghouse for human habitation has not occurred. The appeal in ground (b) fails.

Appeal on ground (f)

17. An appeal on this ground is that the steps required to be taken go beyond what is necessary to remedy the breach of planning control, or the injury to amenity, as the case may be. The purpose of this notice is to remedy the breach of

planning control arising from the provision of an additional residential dwellinghouse.

18. What is necessary to remedy the breach of planning control is the cessation of the use of the former garage as a single dwellinghouse. Step (i) requires the appellants to 'cease the unauthorised change of use of the Land for residential occupation'. The land to which the notice relates was previously occupied for residential purposes. Step (i) therefore goes beyond what is required to remedy the breach of planning control. S173A(1)(b) allows me to waive or relax any requirement of the notice and I shall vary step (i) to address the breach that has occurred, namely the use of the former garage as a residential dwellinghouse.
19. Addressing the breach of planning control can be achieved by the removal of the kitchen and bathroom. It is not necessary for the building to be reinstated as a garage, providing its use is incidental or ancillary to the residential occupation of No94. Furthermore, as the building benefits from planning permission, it cannot be required to be demolished. Step (ii) shall be varied to require the removal of the kitchen and bathroom, and Step (iii) shall be varied to the removal of the debris arising from compliance with steps (i) and (ii).
20. The appeal on ground (f) succeeds to this limited extent.

Overall conclusion

21. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control, I shall vary the enforcement notice prior to upholding it.

Formal Decisions

22. It is directed that the enforcement notice is varied by:

*In section 5. **What you are required to do**, the deletion of all the words in Steps (i), (ii) and (iii) and the substitution of the words in (i) 'Cease the use of the former garage as a single dwellinghouse'; in (ii) 'Remove the kitchen and bathroom from the former garage'; and in (iii) 'Remove all debris and items arising from compliance with steps (i) and (ii) from the premises.'*

Subject to these variations, the appeals are dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR