



Appeal Decision

Site visit made on 12 July 2022

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

an Inspector appointed by the Secretary of State

Decision date: 14 September 2022

Appeal Ref: APP/A3655/C/21/3272126

Land at 8 Lockwood Path, Sheerwater, Woking, Surrey GU21 5RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Fakhraan Jamil against an enforcement notice issued by Woking Borough Council.
 - The notice was issued on 23 February 2021.
 - 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 Outbuilding as shown hatched blue on the Plan to a separate self-contained residential unit.
 - The requirements of the notice are to:
 - (i) Cease the use of the outbuilding as a self-contained independent residential unit; and
 - (ii) Remove from the Land and lawfully dispose of all cooking, bathroom and bedroom facilities, fixtures and fittings facilitating the use of the Outbuilding as a self-contained residential unit; and
 - (iii) Remove from the Land all materials, rubble and debris arising from compliance with requirements (i) and (ii) above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appeal has been made on grounds (b) and (f). However, the appellant's case raises issues that fall within ground (c). The Council has had sight of those arguments and had opportunity to respond. I shall therefore proceed to determine the appeal with the additional ground.
3. The appeal relates to an outbuilding situated in the rear garden of a semi-detached house at No 8 Lockwood Path. The appellant explains, under ground (b), why she wishes to retain the facilities contained within the outbuilding, including medical and religious reasons, to look after the family dog, and for the enjoyment of the family home and garden. However, I am unable to consider such matters, insofar as they relate to the planning merits of the case, because an appeal has not been made under ground (a), which is that planning permission should be granted for what is alleged in the notice.
4. The appellant also submits that the requirements of the notice discriminate against her religious beliefs. Similarly, however, there is no scope to consider equality implications or human rights in an appeal made only on legal grounds (grounds (b), (c) and (e)) and/or under ground (f).

The Appeal on Grounds (b) and (c)

5. An appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. For both grounds the onus is on the appellant to make her case on 'the balance of probabilities'.
6. The alleged breach is the material change of use of the outbuilding to a separate self-contained residential unit. The notice does not concern itself with the outbuilding itself.
7. A planning application for the use of the outbuilding as a separate residential unit for renting was refused by the Council on 13 January 2021¹. It is evident from the associated officer report and the appellant's response to the Council's PCN² that prior to issuing the enforcement notice, the outbuilding was capable of being used as a dwelling, in that it contained all the facilities necessary for day-to-day domestic existence, including a bathroom with toilet, sink and shower, and kitchen and living space. Those facilities were also evident at the time of my site visit. However, just because the outbuilding has the characteristics of a dwellinghouse, it does not necessarily follow that it is being used as an independent self-contained residential unit as alleged.
8. S55(2)(d) of the Town and Country Planning Act 1990 as amended provides that the use of land or buildings within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development. In principle, the use of the outbuilding for storage and as a home office by family members is incidental to the primary residential use of the dwelling at No 8. The space available for those activities within the outbuilding, relative to the size of the dwelling, as well as the physical relationships, also point towards a reasonable functional relationship between the incidental and the residential use. Moreover, the outbuilding is also significantly smaller than the main dwelling, both in footprint and height.
9. However, it is implicit in the requirement for there to be some functional relationship that an incidental use will not be the same as the primary use. A toilet would usually be comprised within the everyday living facilities of the dwelling, and thus be part of the primary living accommodation. That said, I can see no reason why such a facility should not be regarded as part of an incidental office use if integrated within it and subservient to it. That is similarly so of a small kitchen facility for making coffee and tea or even the storage of food in a fridge.
10. On the face of it, the inclusion of a shower and small kitchen with cooking facilities go beyond what can reasonably be regarded as part of an incidental home office and storage use. However, the appellant explains that the kitchen space is used to store and cook large amounts of meat for the family dog, which for religious reasons (haram meat), cannot be done in the family kitchen. It is also explained that the dog is fed from the outbuilding kitchen and that for religious reasons the dog is not permitted in the main house. It is further stated the shower is used by her son after walking the dog and before entering the house, because of strict beliefs about cleanliness and the prayer

¹ Application reference: PLAN/2020/0819

² Planning Contravention Notice - dated 20 November 2020

areas. The appellant argues that the facilities in the outbuilding are the difference between the family being able to have a dog whilst reconciling that with their religious beliefs and requirements.

11. Nevertheless, I am mindful that where the outbuilding within the curtilage of a dwellinghouse provides all the facilities necessary for independent day-to-day living, that points to a residential use, rather than for a purpose incidental to the enjoyment of the dwellinghouse. In such cases, the residential use of the outbuilding may be regarded as part and parcel of (rather than incidental to) the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained dwellinghouse. However, a material change of use would arise if the main dwelling and outbuilding are sub-divided to form separate planning units. In such cases it is necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.
12. Although not attached, the outbuilding directly faces the rear of the dwelling at No 8, in close proximity. The relatively small intervening area of amenity space appears to be visually and functionally related to both the main dwelling and outbuilding. Moreover, the outbuilding can only be accessed via a lean-to extension attached to the side of the main dwelling. At my site visit, which obviously took place after the notice was issued, I saw that the space within the lean-to was used as part of the main house. Although a shared arrangement could have been made, doing so would have involved partitioning the space and/or compromising its usefulness. Although I appreciate that the planning application sought to use the outbuilding as a separate residential unit, physically and functionally it appears to form part of the same planning unit as the main house.
13. The officer report states that it is intended to serve as private letting accommodation '*indicating that the outbuilding is being used/proposed to be used for independent non-ancillary purposes*'. However, no evidence is provided that the outbuilding was actually being let out to a tenant or similar, and no other evidence is before me which suggests a use of the outbuilding as a separate self-contained residential unit. Moreover, the Council cannot issue an enforcement notice in anticipation of a breach – what is alleged must have taken place at some time before hand because s174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice.
14. I therefore find, on the balance of probabilities, that at the time the enforcement notice was issued, the material change of use of the outbuilding to a separate self-contained residential unit had not occurred. The appeal on ground (b) succeeds.
15. In arriving at that conclusion, I find, on the balance of probabilities, that at the time the enforcement notice was issued, the outbuilding was being used for purposes ancillary to the primary use of the dwelling at No 8. Even if I am wrong on that point, and the outbuilding was in residential use, it is more likely than not that the dwellinghouse and outbuilding were part of the same planning unit, functionally occupied as a single household. Accordingly, there was no material change of use requiring planning permission. Therefore, the

hidden ground (c) appeal would also succeed as there was no breach of planning control.

16. In these circumstances, the appeal on ground (f) does not fall to be considered.

Richard S Jones

INSPECTOR