



Appeal Decisions

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: 25 October 2022

Appeal A Ref: APP/A3655/C/20/3265368

Land at 30 Winern Glebe, Byfleet, West Byfleet, Surrey KT14 7LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kaushik Trivedi against an enforcement notice issued by Woking Borough Council.
 - The notice was issued on 18 November 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 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 garage as separate self-contained residential accommodation contrary to condition 3 of PLAN/2004/1192, and
 - (ii) Remove the cooking, bathroom and sleeping facilities, 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 blockwork/brickwork 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 the Condition 3 of PLAN/2004/1192, and
 - (iv) Amend the side elevation of the garage by removing all doors and windows to accord with planning permission reference PLAN/2004/1192 and the approved plans therein, and
 - (v) Remove from the Land all materials, rubble and debris arising from compliance with requirements (i), (ii) and (iii) above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended. 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.
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Appeal B Ref: APP/A3655/D/20/3263742

30 Winern Glebe, Byfleet, KT14 7LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Kaushik Trivedi against the decision of Woking Borough Council.
- The application Ref: PLAN/2019/1214, dated 10 June 2020, was refused by notice dated 10 September 2020.
- The application sought planning permission to demolish existing garage and construct new garage with shared access with No 32 without complying with a condition attached to planning permission Ref: PLAN/2004/1192, dated 25 November 2004. The condition in dispute is No 3 which states that: *The garage shall only be used for the parking of vehicles ancillary and incidental to the residential use of the dwelling house*

and shall be retained thereafter solely for that purpose and made available to the occupiers of the property at all times for parking purposes unless the Local Planning Authority otherwise first agrees in writing.

The reasons given for the condition is: To preserve the amenities of the neighbourhood and ensure the provision of off street parking facilities.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting the word 'accommodation' in paragraph 5.(i) and substitute with 'unit'.
 - Deleting the words 'contrary to condition 3 of PLAN/2004/1192' from paragraph 5.(i).
 - Deleting the words 'used in connection with the conversion of the garage to habitable accommodation' from paragraph 5.(ii).
 - Inserting the words 'facilitating the material change of use' after the word 'garage' in paragraph 5.(ii).
 - Deleting paragraph 5.(iii) and substituting with 'Remove the wall behind the garage door so that the garage door can be opened and the garage made available for the parking of vehicles'.
 - Deleting the words 'by removing all doors and windows' from paragraph 5.(iv).
2. Subject to the corrections and variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is allowed and planning permission is granted to demolish existing garage and construct new garage with shared access with No 32 at No 30 Winern Glebe, Byfleet, KT14 7LT, in accordance with the application Ref PLAN/2019/1214 dated 10 June 2020, without compliance with condition number 3 previously imposed on planning permission Ref PLAN/2004/1192 dated 25 November 2004 and subject to the following condition:
 - (i) The garage shall not be used other than as part of and/or for purposes ancillary or incidental to the use of the dwelling known as No 30 Winern Glebe.
4. By virtue of s180 of the Town and Country Planning Act 1990, as amended, (the 1990 Act), the planning permission granted under Appeal B overrides the enforcement notice issued on 18 November 2020 to the extent that the notice shall cease to have effect so far as it is inconsistent with that permission.

Preliminary Matters

Appeal A

5. The appeal has been made on grounds (a), (b), (d) and (f). However, the appellant's evidence raises issues that fall within ground (c). The Council has had an opportunity to consider the representations made by the appellant and I will therefore determine the appeal with the additional ground.
6. For legal grounds (b), (c) and (d), the burden of proof lies with the appellant, and the test of the evidence is on the balance of probabilities.

Appeal B

7. Planning permission was granted in 2004¹ to demolish a pre-existing garage and construct a new garage at No 30 Winern Glebe. Condition 3 of that permission states that *'The garage shall only be used for the parking of vehicles ancillary and incidental to the residential use of the dwelling house and shall be retained thereafter solely for that purpose and made available to the occupiers of the property at all times for parking purposes unless the Local Planning Authority otherwise first agrees in writing'*. The application sought to remove that condition *'in order for the applicant to use it as an ancillary annex [sic] for the sole enjoyment of the host dwelling house'*.
8. From the evidence it is clear that the garage had been adapted to provide living accommodation, in breach of Condition 3, before the application was made. I therefore considered whether the appeal should be determined under s73A of the 1990 Act². However, for the reasons explained under Appeal A, the development carried out comprises a material change of use of the garage to a separate self-contained residential unit, rather than its use for ancillary accommodation. For that reason, I have determined the appeal under s73 of the 1990.
9. The appellant has raised concern that the Council added *'along with a single storey rear addition to the garage'* to the description of the application, which was not sought. S73(2) of the 1990 Act requires that the Council *'shall consider only the question of the conditions subject to which planning permission should be granted'*. As that single storey addition is not subject to Condition 3 and that aspect was not sought by the appellant, I have determined the appeal on the basis of what was applied for.
10. I have taken the spelling of the appellant's surname from the appeal form, which matches that of Appeal A, rather than the planning application form.

Appeal A on Ground (b)

11. The ground (b) appeal is that the matters stated in the enforcement notice, namely the material change of use of the garage to a separate self-contained residential unit, have not occurred as a matter of fact.
12. The appellant states that the inside of the garage was firstly divided by the previous owner of the property into two spaces approximately 10 years ago. One side remained as a functional garage and the other side was turned into a bedroom with an ensuite bathroom. Both parts had their own entrance. It is further explained that after buying the property in March 2018, the appellant turned the remainder of the garage into a kitchen/living room space and installed an internal door between that space and the bedroom. He also

¹ Planning Application Ref: PLAN/2004/1192

² Planning permission for development already carried out

acknowledges that he erected a fence around the site thereby creating a self-contained annexe.

13. Therefore, prior to issuing the enforcement notice, the garage building was capable of being used as a dwelling, in that it contained all the facilities necessary for day-to-day domestic existence. The fact that the accommodation falls below the Government's nationally described space standards³, does not mean that it wasn't being used as such.
14. The appellant's position is that he converted the garage, not to create a separate dwelling, but to provide ancillary accommodation for elderly parents who require separate residential facilities due to religious/dietary considerations when making their extended annual visits to the UK. However, no evidence is provided to demonstrate use on that basis.
15. The Council on the other hand has produced a screen shot relating to a building control application for '*part garage conversion to habitable room (front of double garage only)*'. The Inspecting Officer's notes from October 2019 contained therein refer to the whole garage being let out as a self-contained unit and that it was made clear that it was to be used as a separate dwelling.
16. The appellant argues that the converted garage does not have its own address and that it is still ancillary to the main dwelling. Nevertheless, the Council has provided further evidence from October 2019 of an application made by the appellant, for a new address (30a Winern Glebe) for a one-bedroom ensuite apartment with an open plan kitchen and lounge.
17. The email produced by the Council from one of its planning officers does not, as stated, say that the unit had been found for rent on Zoopla. Rather it was the bungalow that had been found for rent. The hyperlink provided has expired so that cannot be confirmed. Nevertheless, the photograph does show that the garage at that time had been fenced off from the rear amenity space of the bungalow. The photographs in the appellant's Planning Statement also confirm the same and appear to show its own independent gated access and private amenity space.
18. I appreciate that the appellant may not have been aware of applicable policies and legislation and sympathise that he may have been misled by other parties. Nevertheless, even if the converted garage doesn't have its own dedicated utility meters, I find, on the balance of probabilities, that at the time the enforcement notice was issued, the change of use of the garage to a separate self-contained residential unit had occurred. The appeal on ground (b) fails.

Appeal A on Ground (c)

19. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control.
20. S55(2)(d) of the 1990 Act 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. As noted, it is the appellant's position that he converted the garage to provide ancillary accommodation for

³ Technical housing standards – nationally described space standard - Published 27 March 2015 – Department for Communities and Local Government

elderly parents, to be used infrequently and as necessary as an annexe to the main dwelling.

21. However, where a garage within the same planning unit as the dwellinghouse is used for the provision of additional living space, it will not be an ancillary use. It will be in the same use as the dwellinghouse. The garage will either be used for residential purposes that are integral to the residential use of the bungalow, or there will have been a material change of use through subdivision of the planning unit and the creation of a separate dwelling. For the reasons explained under ground (b), I have found it to be the latter. A breach of planning control has therefore occurred.
22. In any case, planning permission was granted for the garage in 2004, subject to Condition 3, which states that the garage shall only be used for the parking of vehicles and retained for that purpose unless the Local Planning Authority otherwise first agrees in writing. It has not been shown that such approval has been given.
23. The appeal on ground (c) fails.

Appeal A on Ground (d)

24. A ground (d) appeal is that, on the date that the enforcement notice was issued, it was too late for the Council to take enforcement action.
25. The time limit set out in s171B(2) of the 1990 Act applies where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use. The condition need not expressly prevent use as a dwellinghouse; it may require, as in this case, that the garage shall only be used for the parking of vehicles ancillary and incidental to the residential use of the dwellinghouse. Under s171B(2), no enforcement action may be taken after the end of the period of four years beginning with the date of the breach consisting of the change of use of any building to use as a single dwellinghouse. The material date in this case is 18 November 2016.
26. It is unclear from the evidence when the use of the garage as a self-contained residential unit commenced, although for the reasons set out under ground (b), I am satisfied to the required standard of proof, that it had occurred by the time the enforcement notice was issued. However, it is clear from the evidence that the garage did not provide viable living facilities until after the appellant purchased the property in March 2018, when the kitchen and living space was added to the bedroom with ensuite bathroom. That is significantly later than the material date. The alleged use of the garage as a self-contained residential unit has not therefore gained immunity from enforcement action through the passage of time.
27. I do not disagree, based on the aerial photograph of May 2009, that the extension to the rear of the garage, which contains a shower room, was in place over 10 years before the date of the enforcement notice. However, the Council has confirmed that element does not form part of the of the notice.
28. The appellant submits that the conversion of the garage to provide an additional bedroom took place more than four years ago and that is evidenced in the estate agent's details of the property when it was marketed in May 2016. However, as noted, the four year time limit of s171B relates to the change of use of any building to use as a single dwelling house. The 1990 Act does not

define a dwellinghouse but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Clearly a bedroom with ensuite bathroom but without a kitchen/living room, would not have the characteristics of a dwellinghouse.

29. The conversion of part of the garage to provide a bedroom therefore amounts to a breach of Condition 3 of planning permission reference PLAN/2004/1192, and is subject to a ten year immunity period under s171B(3) of the 1990 Act. The material date in that respect is 18 November 2010. The evidence of May 2016 does not therefore assist the appellant.
30. Whilst I have accepted above that the extension to the garage was in place in May 2009, the appellant has not evidenced that it accommodated an ensuite shower room to a bedroom at that time. The mere existence of the extension is not sufficient as I cannot assume or second guess why it was built or how and when it was used. The reference to the previous owner dividing the garage into two spaces approximatively 10 years ago, is not sufficiently precise and unambiguous, and again, is not evidenced.
31. Accordingly, it has not been shown, on the balance of probabilities, that the use of part of the garage for an additional bedroom, with or without the ensuite bathroom, has gained immunity from enforcement action through the passage of time. Therefore, regardless of whether there has been deliberate attempt at concealment by retaining the garage door to the street facing elevation, the appeal on ground (d) fails.

Appeal A on Ground (a) and the deemed planning application

Main Issues

32. The Council's second reason for refusal refers to aforementioned Condition 3 of planning permission PLAN/2004/1192 which restricts the use of the garage to the parking of vehicles. The reason for that condition is '*To preserve the amenities of the neighbourhood and ensure the provision of off street parking facilities*'. I am satisfied that issues relating to the '*amenities of the neighbourhood*' are covered under my consideration of character and appearance and living conditions, whilst the Council confirm that effect on car parking is acceptable.
33. The Council's third reason for issuing the enforcement notice alleges conflict with Development Management Policies (DMP)⁴ Policy DM9, which, amongst other matters, sets out the circumstances where ancillary accommodation will be permitted. However, I have found under ground (b) that the alleged material change of use of the garage to a separate self-contained residential unit has occurred. Consequently, matters relating to ancillary accommodation are not relevant. I do not therefore find conflict with Policy DM9, as the only relevant aspect is to direct that separate, freestanding, independent accommodation to be treated in the same way as a proposal for a new dwelling.
34. Therefore, the main issues are:

⁴ Woking Local Development Plan Documents - Development Management Policies - Development Plan Document - October 2016

- the effect of the alleged development on the character and appearance of the area;
- whether the alleged development would provide acceptable living conditions for occupants with particular regard to the provision of external living space; and
- the effect of the alleged development on the Thames Basin Heaths Special Protection Area.

Reasons

Character and appearance

35. The residential property at No 30 Winern Glebe essentially comprises a chalet style bungalow, extended garage building, summer house and associated front and rear amenity space laid out within a wedge shaped plot. The garage is detached from the dwelling but linked to the garage at No 32 Winern Glebe, accessed via a shared driveway. Because of its siting between and towards the rear of those bungalows and because the bungalows are angled towards each other, the garage has a limited presence in the street scene other than in direct views. Even then, its appearance is that of a garage, as the garage door has been retained on the front, street facing elevation.
36. Indeed, save for a roof light and additional window and door in the side elevation, the garage (excluding the extension) largely appears as that approved in 2004. Moreover, due to the solid gated access between the side of the bungalow and the front of the garage, those changes are not visible from the street scene. Nor are those alterations readily visible from any neighbouring dwelling.
37. Consequently, the external works facilitating the change of use of the garage have no discernible effect on the appearance of the street scene and little effect on the appearance of the appeal site.
38. However, Winern Glebe is largely characterised by detached bungalows. Although they vary in their design and appearance, they sit for the most part along a conventional building line, fronting onto and responding to the layout of the cul-de-sac. In contrast, the separate self-contained residential unit utilises a much smaller, linked garage building situated well behind the main building line, facing onto the rear garden of No 30.
39. Moreover, in an area characterised by relatively spacious rear gardens, the separate residential unit has no dedicated amenity space. The previous arrangement did colonise an uncharacteristically small part of the rear garden of No 30 but to facilitate suitable provision would involve inappropriate sub-division of the existing garden to a size below that prevailing in the area.
40. Accordingly, I find the scale, design and layout of the alleged separate self-contained residential unit to be out of character and harmful to the prevailing pattern of development in Winern Glebe, contrary to Woking Core Strategy⁵ Policies CS21 and CS24, DMP Policy DM10, West Byfleet Neighbourhood Plan (NP) Policy BE2, paragraph 130 of the National Planning Policy Framework (NPPF) and the Woking Design SPD. Those state, amongst other things, that

⁵ Woking Local Development Document – Woking Core Strategy – October 2012

housing development on garden land will be supported provided that it meets other relevant Development Plan policies and that it presents a frontage in keeping with the existing street scene or the prevailing layout of streets in the area, including frontage width, building orientation, visual separation between buildings and distance from the road.

Living conditions

41. As noted, at the time of my site visit the separate self-contained residential unit had no dedicated private amenity space. That results in a substandard form of development that is unable to meet the reasonable domestic needs of its occupants, including hanging out washing, sitting out and storage. Although the previous fenced off arrangement would have provided some dedicated amenity space, based on the evidence before me, it appeared to be constrained both in its size and shape.
42. Consequently, the self-contained residential unit does not provide acceptable living conditions for occupants, contrary to Core Strategy Policy CS21, DMP Policies DM10 and DM11, NP Policy BE2 and paragraph 130 of the NPPF. Those policies state, amongst other things, that development should provide appropriate levels of private amenity space.
43. The Council note that at 36.5m² the internal accommodation also falls marginally short of the nationally described space standards of 37m² for a one bed, one person dwelling. However, the reasons for issuing the enforcement notice do not take issue with that shortfall, which would be greater on the basis of a two person occupation. In any case, the appellant acknowledges that it is below the space standards and that it '*would not be suitable to be described as an independent dwelling*'. That adds further weight to the unsuitability of the use.

Special Protection Area

44. The site is located between 400m and 5km of the Thames Basin Heath Special Protection Area (TBH SPA), which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Core Strategy Policy CS8 states that new residential development which is likely to have significant effect on its purpose and integrity will be required to demonstrate that adequate mitigation measures are put in place to avoid any potential adverse effects. Saved Policy NRM6 of the South East Plan (2009) is similarly worded.
45. Decisions taken on likely significant effects and/or adverse effects on the integrity of a European site should adopt the precautionary principle. Where it is unclear whether an effect would be significant, it must be assumed that such an effect would be, unless there is objective evidence to the contrary.
46. That approach is reflected in Policy CS8 which states that development will only be permitted where the Council is satisfied that it will not give rise to significant adverse effects upon the integrity of the SPA. The policy states that new residential development beyond the 400m exclusion zone but within 5km of the SPA boundary, will be required to make an appropriate contribution towards the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). The purpose of SANG is to attract informal recreation users, such as walkers and dog walkers away from the SPA

by providing alternative open spaces for use by future occupants of development and existing residents so as to avoid the potential harm caused by more visitors to the SPA. The requirement to make an appropriate contribution to avoid harm to the SPA is also supported by DMP Policy DM11, relating to the sub-division of existing dwellings.

47. The justification to Core Strategy Policy CS8 explains that Natural England (NE) consider that the intensification of residential development up to a distance of 5km away from the SPA would result in a range of pressures with potentially adverse effects on the protected habitat. It is stated that without mitigation, planning applications for new residential development within 5km of the SPA will be refused. The mitigation is provided in the form of a financial contribution towards a SANG.
48. As part of the mitigation, NE requested that all Local Authorities affected by the SPA designation collect a contribution per dwelling, in addition to the above SANG financial contribution, towards the SAMM of the SPA. The SAMM contribution is to be used to implement an identified programme of works to mitigate the impacts of proposed development.
49. Regardless of whether there is an increase in built development, the material change of use of the garage to a separate, self-contained residential unit will result in a net increase in the number of residents living close to the SPA, which is anticipated to lead to an increase in recreational use of the heaths. The SPA is designated for its internationally important habitat which supports breeding populations of three rare bird species: Dartford Warbler, Woodlark and Nightjars, all of which nest on the ground and are likely to be affected by the disturbance associated with increased leisure use.
50. No objective evidence is provided to demonstrate that a precautionary principle should not be applied in this case. I am satisfied therefore that a planning obligation, or other appropriate mechanism to secure a contribution mitigation, is necessary to make the development acceptable in planning terms. Such a contribution is also directly related to the alleged development and is fairly and reasonably related in scale and kind. Although the appellant has submitted a unilateral undertaking (UU) pursuant to s106 of the 1990 Act, which seeks to provide that contribution, it refers to Appeal B only.
51. In the absence of a planning obligation or other appropriate mechanism to secure contributions towards mitigating measures for Appeal A, I am unable to determine that the occupants of the additional dwelling would not have a significant impact on the TBH SPA, contrary to the Habitats Regulations, Core Strategy Policy CS8, DMP Policy DM11, saved Policy NRM6 of the South East Plan and the Thames Basin Heaths Avoidance Strategy.

Conclusions on Appeal A on ground (a) and the deemed planning application

52. For the reasons given above, I conclude that the ground (a) appeal should not succeed and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A on Ground (f)

53. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the

injury to amenity caused by the breach. In this case the requirements of the notice are, in short, to cease the alleged use, remove the facilitating internal works and works that prevent use as a garage and the removal of doors and windows to the side elevation and all resulting debris. The purpose of the enforcement notice is therefore to remedy the breach.

54. The appellant argues that it is unreasonable to require the removal of an extension and facilities that have been on the site in their present form for more than 10 years. However, the enforcement notice does not seek removal of the extension building. Moreover, as discussed under ground (d), it has not been shown, on the balance of probabilities, that the bedroom with ensuite bathroom have been in place in breach of Condition 3 for a period of 10 years or more before issuing the enforcement notice, so as to be immune from enforcement action.
55. The appellant asserts that he only intends to use the building for ancillary accommodation and is prepared to accept a condition to that effect. However, the use of a condition in the manner suggested would be *ultra vires* as there would be a conflict between the planning permission, reflecting that alleged, and what would be required by condition. Moreover, having regard to my findings under ground (b), the allegation cannot not be varied so that planning permission may be granted for development which does not reflect the factual position.
56. Furthermore, such modified development would not form part of the matters stated in the enforcement notice, being materially different, and could not be granted by s177(1)(a) of the 1990 Act. Nevertheless, the merits of using the garage for additional accommodation as part of the main dwelling are considered for Appeal B.
57. The appellant has referred to the provision of a UU in mitigation of the effect on the TBH SPA as to one of the reasons why the enforcement notice is unreasonable. However, as noted under ground (a), that is made only in respect of Appeal B. Even if it had been made in respect of Appeal A, it would have afforded no weight as I have found it to be incomplete and flawed.
58. The appellant's Planning Statement refers to external works which have been carried out that do not require planning permission. However, a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works in their own might not constitute development, or may be permitted development, or are immune from enforcement, so that the land is restored to its condition before the change of use took place.
59. In the main I find that the requirements of the notice essentially tally with the allegation and are not excessive but necessary to remedy the breach. However, requirement (i) should be corrected so that the description matches that in the allegation. The words 'contrary to condition 3 of PLAN/2004/1192' should also be deleted from requirement (i), as it is not a requirement and essentially duplicates one of the reasons for issuing the enforcement notice.
60. Requirement (ii) should be corrected to refer to facilitating works rather than conversion. Requirement (iii) should be simplified and corrected to reflect that the garage door remains in place. Requirement (iv) requires the side elevation to be amended by removing all doors and windows to accord with planning

permission reference PLAN/2004/1192 and the associated approved plans. However, those approved plans include a door and window. I shall therefore vary the requirement to simply accord with that planning permission.

61. None of those corrections and variations expand the requirements or result in injustice to any party. Whilst requirement (v) should also be corrected to include removal of materials arising from requirement (iv), that would expand the requirements of the notice, albeit slightly.
62. The appeal on ground (f) fails.

Appeal B

Main Issues

63. The main issues relate to the nature of the accommodation and the acceptability of its relationship with the main dwellinghouse having regard to DMP Policy DM9, as well as the effect of removing Condition 3 on the character and appearance of the area, the living conditions of occupants, and the TBH SPA.

Nature of the accommodation and relationship with the main dwellinghouse

64. As noted under ground (b) of Appeal A, the garage building is capable of being used as a dwelling, in that it contains all the facilities necessary for day-to-day domestic existence. The unit was also previously fenced off from the main dwelling, breaking that physical and function link with the same.
65. However, the application sought to remove Condition 3, '*in order to use the garage as an ancillary annex [sic] for the sole enjoyment of the host dwelling house*'. That is materially different from the alleged use of the garage as a separate self-contained residential unit, which I have found to be unacceptable for the reasons explained under ground (a) of Appeal A.
66. Although described as 'ancillary' to the dwelling, its residential use will not be. The garage will either be used for residential purposes that are integral to the residential use of the house, or there will have been a material change of use through subdivision of the planning unit and the creation of a separate dwelling. Whilst I have found it to be the latter at the time the enforcement notice was issued, going forward, there is no reason in law why the garage accommodation should amount to a separate planning unit from the main dwelling. That would be a matter of fact and degree.
67. The requirement of DMP Policy DM9⁶ that the accommodation is *designed in such a way that renders it incapable of being occupied separately from the main dwelling*, relates to ancillary residential extensions, rather than a freestanding unit. For the latter, Policy DM9 states that '*Freestanding units that can demonstrate they are genuinely ancillary to the occupation of the main house will be considered in light of the character and amenities of the area and may be subject to conditions restricting their occupancy*'.
68. The appellant explains that he is seeking to provide ancillary accommodation for elderly parents who require separate residential facilities due to their religious, health and specific dietary requirements when making their extended annual visits to the UK, as well as for guests. Although that suggests a degree

⁶ Relating to ancillary accommodation

of autonomy and independence, whereby meals are at least prepared and potentially taken separately, such accommodation would normally be regarded as part and parcel of the main dwellinghouse.

69. The garage building is also clearly subservient in size compared to the main dwelling. It is positioned and arranged so that the lounge/kitchen window faces, in close proximity, into a side window and door of the main dwelling. The degree of mutual overlooking is such that the relationship would be unacceptable for two separate households. That is likely why the appellant previously undertook the severe measure of running a solid boundary fence directly in front of the side door and window of the main dwelling, as part of the use of the garage as a separate self-contained dwelling.
70. The bedroom window of the garage accommodation faces directly onto the private rear garden of the main dwelling, which would be shared. It would have no associated garden space of its own. The path running in front of the garage building also serves the side and rear of the main dwelling. The accommodation would also be occupied by family members, share the same address, services and utilities and main access from the highway.
71. I recognise that those occupying the garage accommodation would not have to physically interact with the main dwelling but the above factors combine to create a clear visual link and functional relationship between the main dwelling and the garage building. Although it has been found to be capable of being occupied separately from the main dwelling, it is not readily severable. Indeed, many of the reasons why the garage accommodation could in principle be acceptable as an annexe, also form some of the reasons why its use as a separate self-contained unit is unacceptable.
72. The reasoned justification to DMP Policy DM9 also states that the Council is mindful that housing development needs to respond flexibly to the changing needs of families by accommodating additional relatives, as is applicable here, albeit not on a permanent basis.
73. The removal of Condition 3 needn't mean that there would be no restriction on the use of the garage and allow for its use as separate detached habitable space with facilities capable of providing independent accommodation, as suggested by the Council. The use and occupancy of the garage building could be restricted by a suitably worded planning condition. I also see no reason why such a condition could not be monitored and readily enforced to ensure that the garage is not used as a separate dwelling. Indeed, DMP Policy DM9 states that conditions may be appropriate in order to set the parameters for the occupation buildings and to retain control where appropriate.
74. The final sentence of DMP Policy DM9 in respect of ancillary accommodation states that '*Separate freestanding, independent accommodation will be treated in the same way as a proposal for a new dwelling*'. Subject to the restrictive condition, the garage accommodation would not amount to independent accommodation, even if it has the facilities to do so. It would remain part and parcel of the main dwelling, although not physically attached to it. I do not agree that sentence means that the garage should be regarded as a freestanding dwelling with a consequential subdivision of the site.
75. I therefore find, subject to the considerations below, that the use of the garage accommodation as proposed would form part and parcel of the main house and

would not create a separate planning unit. Subject to a condition preventing the latter, I see no conflict with DMP Policy DM9.

Character and appearance

76. As per my findings under ground (a) of Appeal A, the garage building has limited presence in the street scene other than in direct views. Even then it has the appearance of a garage because the garage door has been retained on the front elevation. Within the site, save for a roof light and the additional door and window in the side elevation, the physical appearance of the garage (excluding the extension) largely appears as that approved in 2004.
77. Therefore, the works facilitating a use of the garage for a residential annexe have no discernible effect on the appearance of the street scene and very little effect on the appearance of the appeal site.
78. The harm that I have found under Appeal A relates to the creation of a separate self-contained residential unit that is out of character with the area in terms of scale, design and layout. As an annexe, that harm would be avoided. The garage has taken on a more residential character through the changes described but that is not in itself harmful and an unsatisfactory relationship with the main dwelling would be avoided by being part and parcel of the same planning and family unit.
79. Accordingly, the removal of Condition 3 from the original planning permission and the use of the garage as an annexe for the sole enjoyment of the host dwelling house would not result in unacceptable harm to the character and appearance of the site and surroundings. I do not therefore find conflict with Core Strategy Policies CS21 and CS24, DMP Policy DM10, NP Policy BE2, paragraph 130 of the NPPF or the Woking Design SPD.

Living conditions

80. The Council's third reason for refusal is that no private amenity space has been demonstrated for the independent accommodation. However, the application was not made in those terms. On the basis of what was sought, the garage accommodation would remain part and parcel of the planning unit of the main dwelling and would be expected to share facilities, such as a garden, with the main household. I would not therefore expect to see associated private amenity space for such accommodation. Indeed, if there were that would point to a subdivision of the plot and the creation of a separate planning unit and a material change of use of the land.
81. I therefore find that it is not necessary to demonstrate the provision of private amenity space and, on the basis of what was applied for, I see no conflict with, Core Strategy Policy CS21, DMP Policies DM10 and DM11, NP Policy BE2, paragraph 130 of the NPPF, or Supplementary Planning Documents on 'Design' and 'Outlook, Amenity, Privacy and Daylight'. Those seek, amongst other things that proposals for new development ensure appropriate levels of private amenity space.

Thames Basin Heaths Special Protection Area

82. The Council's fourth reason for refusal is that in the absence of a Legal Agreement or other appropriate mechanism to secure contributions towards

mitigation measures, it is unable to determine that the additional dwelling would not have a significant impact upon the TBH SPA.

83. As noted above, Core Strategy Policy CS8, states that new residential development beyond 400m threshold but within 5 kilometres of the SPA boundary will be required to make an appropriate contribution towards the provision of a SANG and the SAMM. The policy explains that details of how the contribution will apply are set out in the Council's Thames Basin Heaths Special Protection Area Avoidance Strategy. In terms of development covered, that document states that proposals for one or more net units should provide avoidance/mitigation in the form of contributions towards SANG. The explanation for Saved Policy NRM6 also refers to net additional housing.
84. However, the proposal does not amount to new residential development as such. It is for a residential annexe, which would be part and parcel of an existing residential unit and would not result in a net additional dwelling being created, thereby meeting that threshold.
85. I am therefore satisfied that allowing the garage accommodation to be used as an annexe to the main dwelling would not be likely to have a significant effect on the purpose and the integrity of the SPA such that avoidance/mitigation measures need to be put in place.
86. Accordingly, I do not find conflict with the Habitats Regulations, DMP Policy DM11, saved Policy NRM6 of the South East Plan, Core Strategy Policy CS8 or the Thames Basin Heaths Avoidance Strategy.
87. Nevertheless, it is appropriate that I acknowledge that the appellant has submitted a unilateral undertaking (UU) pursuant to s106 of the 1990 Act which covenants to provide a contribution prior to '*Commencement*'. However, the definitions provide that the commencement of the '*Development*' means the carrying out of a material operation within the meaning of s56(4) of the 1990 Act. '*Development*' is defined as the *removal of Condition 3 (use of garage) of planning permission ref PLAN/2004/1192 to allow the garage to be used as an annex for the sole enjoyment of the main dwelling along with a single storey rear addition to the garage (retrospective)*.
88. Notwithstanding any potential difficulties arising from the inclusion of the single storey rear addition, such use may be regarded as part and parcel of the use of the dwellinghouse and would not amount to a '*material operation*' for the purposes of s56(4). Consequently, the UU would not be effective as mitigation (payment) would not be triggered.
89. Moreover, the Procedural Guide for Planning Appeals states⁷ the planning obligation must be dated and executed by all the parties to it as a deed. Although the UU provided is signed and witnessed, it is not dated and as such may not be legally sound and capable of being enforced. Indeed, the appellant refers to it as a draft UU.
90. Therefore, if I had not concluded that a contribution is not required, I could not afford any weight to the UU as submitted, as I find it to be incomplete and flawed.

⁷ The Procedural Guide – Planning appeals – England - Paragraph N.6.2

91. I note the appellant requests that the Planning Inspectorate liaise directly with the Council regarding the approval and completion of UU. However, the Procedural Guidance makes clear that an executed and certified copy of the planning obligation should be received by the Planning Inspectorate no later than seven weeks from the start date of the appeal.

Other Matters and Planning Balance

92. As noted, the reason for imposing Condition 3 is *'to preserve the amenities of the neighbourhood and ensure the provision of off street parking facilities'*.
93. The Council confirm, and I agree, that the removal of the condition for the reasons sought would be acceptable in terms of its effect on the living conditions of neighbouring occupants. By remaining part and parcel of the main dwellinghouse, there would be no reason to provide private amenity space for future occupants. Moreover, the Council has confirmed, and again I agree, that the effects on car parking would be acceptable. Subject to the imposition of a condition which ensures the building is used as part of and/or for purposes ancillary or incidental to the host dwelling, unacceptable harm to the character and appearance of the area would also be avoided.
94. Accordingly, the condition is no longer necessary on the basis of the reasons for imposing it. I also find Condition 3 to be unreasonable in that it does not allow for incidental uses which are normally found in a garage, such storage.
95. Furthermore, the use of garage accommodation by elderly parents would, for the purposes of DMP Policy DM9, be genuinely ancillary to the occupation of the main house.
96. Accordingly, the removal of condition 3 for the purposes sought would accord with DMP Policy DM9 and no other policy conflict would arise on the main issues identified.

Conditions

97. In allowing the appeal, a new permission is created. The original planning permission also remains extant and unaltered, along with the conditions attached to it. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As the garage has been built, it is not necessary to reimpose the time period for commencement or the materials conditions of the original planning permission.
98. For the reasons explained it is necessary to impose a condition which would ensure that the garage is used as part and parcel of and/or ancillary or incidental to the use of the main house, thereby preventing use as a separate dwelling. The Council has suggested a similar condition and the appellant has confirmed such a condition to be acceptable.
99. The Council has suggested two conditions which remove permitted development rights. However, no clear justification has been advanced to show that they would pass the test of reasonableness or necessity.

Conclusion on Appeal B

100. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

101. As set out in my decision, by virtue of s180 of the 1990 Act, the planning permission granted under Appeal B overrides the enforcement notice issued on 18 November 2020 to the extent that the notice shall cease to have effect so far as it is inconsistent with that permission. However, the notice is not quashed and does not cease to have effect altogether. The critical words in s180 are 'so far as'. That means in this case that so long as the garage accommodation is used as part and parcel of and/or for purposes ancillary to the use of the main house, then requirements (ii) to (v) shall cease to have effect.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/A3655/C/20/3265368	Mr Kaushik Trivedi
Appeal B	APP/A3655/W/20/3263742	Mr Kaushik Trivedi