



Appeal Decision

Site visit made on 5 July 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/P3610/C/20/3260198

113 Longdown Lane South, Epsom KT17 4JL

- 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 Mr Jason Stephenson against an enforcement notice issued by Epsom & Ewell Borough Council.
 - The enforcement notice was issued on 17 August 2020.
 - The breach of planning control as alleged in the notice is 'Without planning permission, there has been a change of use of the outbuildings, shaded yellow on the attached plan, to a separate dwelling house.'
 - The requirements of the notice are
 - 1) Cease the use of the outbuildings as a separate dwelling house or dwelling houses and
 - 2) Remove all kitchen fixtures and fittings and kitchen appliances from the outbuildings.
 - The period for compliance with the requirements is twelve weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Background

2. No 113 is a detached dwelling on a large plot, set back from Longdown Lane South, on the east side. The outbuilding attacked by the current Enforcement Notice (2020 EN) extends along the northern (flank) boundary and along the eastern (rear) boundary. It is of brick construction with a tiled roof, windows and external doors. There are roof level projections facing the garden on the northern element.
3. In 2010 planning permission (reference 09/00984/FUL) was granted for conversion of part of the outbuilding (the western part of the northern element) to a self-contained one bedroom unit for use as an annexe for a relative, along with changes to windows and the addition of a blind dormer. In 2011 planning permission (reference 10/01358/FUL) was granted for conversion of part of the former stables building to an additional bedroom to the annexe granted in 2010 (this related to more of the northern element extending further towards the rear boundary). The eastern part of the outbuilding along the rear boundary was not part of either consent.
4. In 2013 the Council visited the site and noted the outbuilding had been reconfigured to provide two separate units of residential accommodation. The first with two double bedrooms, a kitchen and bathroom and the second having

a sitting room double bedroom and bathroom. In April 2014 one of the kitchens had been removed and a doorway formed between the units¹.

5. An Enforcement Notice (EN) was issued in February 2014 (2014 EN) and appeals were dismissed and the enforcement notice upheld. That EN alleged a change of use of the outbuilding to a separate dwellinghouse and required the removal of the kitchens including all fixtures and fittings and kitchen appliances from the outbuilding. The building identified in the 2014 EN was the whole L shaped structure along the northern and eastern boundaries. The 2014 EN did not require the use to cease.
6. In these circumstances s173(11) is quite clear. Where a notice could have required an activity to cease but does not do so (s173(11)(a)) when all the requirements have been complied with, then so far as the notice did not so require planning permission shall be treated as having been granted by virtue of s73A in respect of the carrying out of the activities (s173(11)(b)).
7. The Council could have explicitly required the use alleged i.e. the dwellinghouse use, to cease by the inclusion of a requirement to that effect, but did not do so. There was a single requirement *'To remove the kitchens including all fixtures and fittings and kitchen appliance from the outbuilding.'* The Council have confirmed that an inspection was carried out on 11 September 2018 and the 2014 EN had been complied with. Therefore, planning permission for a single dwellinghouse is treated as having been granted by virtue of s73A of the Act.
8. S180(1)(a) states that where after service of a notice, planning permission is granted for any development carried out before the grant of that permission the EN shall cease to have effect so far as it is inconsistent with that permission. In the case of the 2014 EN the material change of use to a dwellinghouse was carried out before the grant of permission. The development was being carried out when the 2014 EN was issued. Following compliance with the 2014 EN, curtesy of s173(11), the use has planning permission. This means that the planning permission granted overrides the 2014 EN to the extent that the planning permission authorises what is being enforced against.
9. The Council relies on s181(1)(b) and (c) which state that compliance with an enforcement notice in respect of the discontinuance of any use of land or any other requirements contained in the notice shall not discharge the notice. As explained above s180 is engaged in this situation and s181 does not therefore apply in relation to the requirement of the 2014 EN as that would be inconsistent to the dwellinghouse use which has planning permission by virtue of s173(11).

The Notice

10. The residentially laid out part of the outbuilding extends along the flank (northern boundary) to the rear boundary. The section of the structure which then continues along the rear of the boundary is used for domestic storage. This part of the building is not part of the residentially laid out section of the building, albeit it is physically attached to it. On the evidence before me, and what I saw on site, I consider that the storage section of the building should not therefore have been included in the area shaded yellow on the plan attached to the EN.
11. I went into each room in the northern part of the building and viewed the eastern part of the building from an open access door. The section of the structure running along the flank northern boundary was laid out as two

¹ Information recorded in the appeal decisions references APP/P3610/C/14/2215861 and 2215862 (2015 appeal decision).

separate units of accommodation at the time of my site visit. The section nearest the main dwelling, No 113, appeared unoccupied. The Council has confirmed that the layout of the structures was the same layout as at the time of the service of the EN.

12. In the northern flank part of the building there are two entrance doors, one serving each unit of accommodation. The western door led to a kitchen area with a freestanding cooker, microwave, washing machine and boiler. Beyond the kitchen there was a corridor linking other rooms. There was no sign of occupation at the time of my site visit. There were two bedrooms with beds and wardrobes within them. The eastern most bedroom had a wardrobe in front of a door leading to the second unit of accommodation which was inaccessible from that route. There was also a bathroom with a bath, sink and WC.
13. The second unit was clearly in occupation with personal items around. The kitchen area had no cooker but did have a microwave, air fryer and washing machine. A fridge freezer was within the living area. There was also a bath, WC and sink in a separate room. The door from this second unit to the first unit was behind a wardrobe and was inaccessible via that route.
14. The door linking the first and second unit was clearly, at the time of my site visit, inaccessible and not in use. The wardrobes either side of the door blocked any access to the door and appeared to be permanently sited in their positions and would be difficult to move. A person in the first unit could not move the wardrobe on the other side of the door and sited in the second unit, and vice versa. While the first unit appeared unoccupied the second was clearly being occupied with food items in cupboards and a fridge freezer.
15. The way in which the northern flank part of the building is laid out is as two units of occupation with the necessary facilities for day to day living. The door between the two units, while indicating that at some stage the two units may have been linked, the layout I saw meant that no practical link between the two units exists day to day. The positioning of wardrobes either side of the door results in neither occupant of either unit being able to access the other unit even if they wanted to. In my judgement the northern flank part of the structure is laid out as two dwelling houses with the facilities for day to day living in each one.
16. The allegation is for the material change of use of the structure coloured yellow to one dwellinghouse. The first requirement does not follow on from the allegation as it requires the use as a dwelling house or dwelling houses to cease albeit that what is alleged is the use as one dwelling house. Furthermore, the identified structure includes the eastern element which is not in use for a dwelling house or as part of one.
17. I find, on the evidence available, that the layout of structure along the northern flank boundary to the rear boundary is as two dwelling houses and the rest of structure along the eastern boundary is used for storage ancillary to the planning unit. I have considered whether or not I could correct the allegation, correct the attached plan to exclude the eastern part of the structure, and vary the requirements without causing prejudice or injustice to either party. To correct the allegation from one dwelling house to two dwelling houses would be likely to lead to injustice to one or both parties. I also consider that it may cause injustice to either party to vary the extent of the building attacked by the notice.
18. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so subject to the provisions of s.171B(4) of the 1990 Act.

Conclusion

19. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the extent of the outbuilding attacked. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
20. In these circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Hilda Higenbottam

Inspector