



Appeal Decisions

Site visit made on 29 November 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST FEBRUARY 2023

Appeal A Ref: APP/C3620/C/21/3269098

**Land known as Springfield, Church Lane, Headley, Epsom, Surrey
KT18 6LG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Kimbillie Breakspear against an enforcement notice issued by Mole Valley District Council.
 - The notice, numbered 2020/0102/ENF, was issued on 18 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of a stable building to a self-contained dwelling house.
 - The requirements of the notice are to:
 - (1) Cease use of the premises as a self-contained dwelling
 - (2) Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the premises; and
 - (3) Remove all resultant debris from the land.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) 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/C3620/X/20/3259376

Land at Springfield, Church Lane, Headley KT18 6LG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss K Breakspear against the decision of Mole Valley District Council.
 - The application ref MO/2019/2258/ELC, dated 20 December 2019, was refused by notice dated 11 March 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: Use of former stable building as a single dwelling.
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Summary Decision: The appeals are allowed and the enforcement notice is corrected and quashed in the terms set out below in the Formal Decision.

Applications for costs

1. An application for costs was made by Miss Kimbillie Breakspear against Mole Valley District Council. This application is the subject of a separate decision.

The Notice

2. Before considering the grounds of appeal made on Appeal A, I have a duty to put the enforcement notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
3. I note that the reasons for the issue of the notice refer to the development being 'tantamount to a new dwelling'. I have also had regard to the Council's case, which appears to also relate to the construction of a new building. However, the enforcement notice subject of this appeal is headed 'material change of use', and the allegation is of a material change of use of a building on the appeal site. The notice is clear in this regard and cannot reasonably be interpreted as relating to operational development, i.e. the construction of a new dwelling. Whilst the appellant's concerns in this regard are noted, these matters do not render the notice flawed in any way. Rather, they are matters to be considered under the ground (a) appeal made in this case.
4. The land outlined in red on the enforcement notice plan is occupied by two buildings, yet the description of the land to which the notice relates does not refer to buildings, only to land. In the interests of precision and clarity, I will include reference to the buildings in part 2 of the notice.
5. Despite there being two buildings on the land, it is clear that the stable building referred to in part 3 of the notice is that outlined in green on the enforcement notice plan. In the interests of precision, part 3 of the notice should refer to the building outlined in green. To be consistent, requirement 5.(1) and 5.(2) should also refer to the building outlined in green, rather than to 'the premises'.
6. In making the above-mentioned corrections, I am satisfied that no injustice would be caused to either party. These corrections are only made in the interests of precision and consistency.

Ground (d) and Appeal B

The Main Considerations

7. An appeal on ground (d) is that, at the date on which the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The starting point for the ground (d) appeal is the date of the breach. In order to succeed on this ground, the appellant must show that, prior to the issue of the enforcement notice, the use subject of the notice had been continuous for a period of four years beginning with the date of the breach. There is no dispute between the parties that the relevant time period is that specified in section 171B (2) of the 1990 Act. The relevant date for the ground (d) appeal is, therefore, 18 January 2017.
8. As for Appeal B, section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with

information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. For the appellant to succeed, they must demonstrate that on the date the LDC application was made, the use of the stable building on the appeal site as a single dwelling had been continuous for a period of four years or more. The relevant date for Appeal B is, therefore, 20 December 2015.

9. It is the appellant's case that the use of the stable building as a single dwelling commenced on 11 July 2015 and has continued uninterrupted since that time. The Council say that 'the evidence supplied shows that occupation began in July 2015'. I have regarded these comments as an acknowledgement from the Council that the material change of use first commenced on 11 July 2015. The dispute between the parties is whether or not the use of the stable building as a single dwelling had continued uninterrupted for a period of four years or more beginning with this date. This is the main consideration in this case. In this regard, I am mindful of settled caselaw which confirms that a use could only become lawful if it continued throughout the relevant period, to the extent that the Council could have taken enforcement action at any time.
10. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates (the PPG) advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to the ground (d) appeal, as well as Appeal B.

Reasons

11. The appellant has supplied a statutory declaration dated 3 December 2019 in which she states that she moved into the stable building on 11 July 2015, after it having been converted, and that she has resided in the building as her sole residence since that time. The appellant has also provided a supplementary statement prepared for the appeals in which she indicates her continued residence at the appeal site.
12. The above is supported by three statutory declarations from other parties. In her declaration, signed in February 2020, Philippa Jolly corroborates the appellant's case by stating that the appellant has lived in the stable building since 11 July 2015. The evidence of the two other parties is of a more limited period of time. Lynne Patrick refers only to the period of July 2015 to May 2016; a period during which she managed the nearby village shop. Similarly, Miss Cox only refers to the year 2017, up until November 2017, when she stayed with the appellant's parents at Oyster Cottage. I am told that this property adjoins the appeal site. These declarations corroborate the evidence of the appellant with regard to her residence at the appeal site.
13. I am mindful of the significant weight that is carried by evidence provided in statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence. Although brief, I do not find the statements made in any of the declarations to be ambiguous or imprecise. They are corroborative of the appellant's claims in this case.

14. In addition to the above, I have also had regard to the documentary evidence provided by the appellant. This includes documents that relate to items that the appellant says were purchased for, or were installed at, the dwelling. Some of the documents are of limited support to the appellant's case as they refer to items or services that might easily have been for the building in use as a stable, as well as its use as a dwelling. These include the delivery note for gates, as well as the invoices for builders' materials and services, which are particularly vague in what they relate to.
15. However, the items and services referred to in other of the documents are more likely than not to relate to a residential property. These include the estimates for the purchase of radiators and windows, the invoice for the shower glass, and the receipts for floor varnish and the fridge freezer. Whilst most of these are dated after the appellant says that the material change of use took place, this is consistent with her suggestion that she has undertaken improvements to the property whilst living at the appeal site¹.
16. Notwithstanding the above, I note that some of the documents give the appellant's address as Oyster Cottage and not the appeal site. At that time Oyster Cottage was her parents' property. Whilst this arrangement is unusual, I have no reason to doubt the appellant's claim that the items and services were for the appeal site.
17. The documentary evidence also includes a series of insurance documents and utility bills covering a substantial portion of the period between the suggested date of the material change of use and the respective dates of the LDC application and enforcement notice. I note the four insurance documents, which give the address of the appeal site as the risk address. These cover a four year period from December 2016 to December 2020. It is unusual that two of the documents refer to landlord household insurance. Nevertheless, they show consistent insurance cover for the four year period for a residential property at the appeal site.
18. Turning to the electricity bills, these show a mains connection at the appeal site, as well as consistent usage of this utility for a period of four years or more prior to the date of the LDC application and the issue of the enforcement notice. That they do not give the billing address as the appeal site creates a little ambiguity in the appellant's case. I note, however, that the address given is that of the appellant's parents' home, which the appellant appears to have done in other of the documentary evidence, as referred to above. Nevertheless, the appellant has presented these documents as bills for a domestic electricity supply to the appeal site, rather than for a supply for any other type of use of the appeal site, and I have been given no reason to find that they do not, on the balance of probability, relate to an electricity supply for a domestic property at the site.
19. I note the Council's concerns with regard to the utility bill for the water supply. Most of the water bills provided refer to 'SES **business** water', which is unusual for a domestic water supply. They also give an address for the supply which is not the appeal site. The appellant maintains that these relate to the appeal site and that she has attempted to resolve the matter of the supply address with the water supplier.

¹ The appellant's supplementation appeal statement.

20. The Council say that the water bills are not 'consistent with an occupation over the period'. In commenting as such, the Council appear to suggest that the water usage is too low for a domestic property, although it has not suggested the level of usage that might be expected from a property such as this. Nevertheless, the appellant has explained that over the period covered by the water bills she used the shower facilities at her work place, she did not own a washing machine, and that she collected and used stored rainwater. The evidence also indicates that the appellant has only ever lived at the appeal site alone.
21. Whilst there is a reasonable explanation for the low water usage, the water bills provide little support for the appellant's case in view of the discrepancy with the supply address, and because the bills relate to a business water supply. Despite this, this evidence does not contradict the appellant's case. Rather, it appears on its face to be not relevant to the appeal site.
22. I have had regard to the representations from interested parties, including those from the Parish Council. There is some suggestion that the appellant has concealed her use of the site in some way during the relevant periods in this case. The matter of concealment has not, however, been pursued by the Council. The interested parties may not have observed a residential activity at the site during the relevant periods. However, I do not find this decisive in this case, having regard to the frequency of the observations, the appellant's work pattern and that she has only lived alone at the appeal site.
23. There may have been a short period between the completion of the stable building and its conversion to a dwelling. Indeed, I note that the Council refer to this in their response to the ground (a) appeal for Appeal A. Whilst this might be relevant to the consideration of the deemed planning application, it is of no consequence to my consideration of the ground (d) appeal. The allegation is of a material change of use of an existing building to a dwelling. The period of use of the building as a stable prior to the material change of use taking place is not relevant to the main considerations in this case. Furthermore, there is no evidence before me that leads me to find that the allegation of a material change of use is not correct and that the notice should allege the erection of a dwelling.
24. Bringing all of the above together, my decision in this case is finely balanced. I am mindful of the relevant test of the evidence and the advice at paragraph 006 of the PPG. The statements made in the statutory declarations are precise and corroborate the appellant's claim. For reasons I have already given, this evidence carries significant weight in this case. I acknowledge that some of the documentary evidence might introduce a degree of ambiguity, whilst other documents do not provide assistance either way. However, the remainder of the documentary evidence provides general support for the claim made by the appellant.
25. Whilst I have had regard to the opposing evidence and questions asked of the appellant's evidence by the Council and interested parties, I am not persuaded that this contradicts or makes the appellant's version of events less than probable. I have insufficient evidence to conclude that it is more likely than not that there were times during the four year period beginning with the date of the breach that the Council could not have taken enforcement action in respect of the use of the stable building as a dwelling. Considered as a whole,

I find the appellant's evidence sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the stable building as a single dwelling had been continuous for a period of four years or more beginning with the date the material change of use took place, which in this case is 11 July 2015. Accordingly, both the ground (d) appeal and Appeal B should succeed.

26. Notwithstanding the above, the Council has asked that, in the event that I allow Appeal B, I do so with reference to the curtilage of the dwelling. As curtilage is not a use of land, it appears that the Council is asking that I identify an area of the appeal site that is used as garden associated with the dwelling. However, the description of the development referred to in the LDC form, as well as that given in the enforcement notice, relate to the use of the stable building alone. Neither relate to the use of land around the building.
27. I noted the enclosure around the stable building at my site visit, which might be indicative of the curtilage of the building. It is, however, beyond my remit in these appeals to determine whether this land is used as garden associated with the dwelling and, if so, whether its use as garden is lawful. The evidence before me does not, for example, indicate how the land surrounding the building is used or when the enclosure was erected.
28. Accordingly, and for the avoidance of doubt, the certificate of lawfulness I will grant in this case will relate to the use of the stable building alone and not to the use of any other surrounding land. Similarly, my formal decision on Appeal A will relate only to the use of the stable building.

Conclusions – Appeal A

29. I conclude on the balance of probabilities that the alleged material change of use of the stable building on the appeal site took place more than 4 years prior to the issue of the enforcement notice and so, at the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(2) of the 1990 Act had expired. The appeal succeeds on ground (d).
30. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered.

Conclusions – Appeal B

31. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the former stable building as a single dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Formal Decision – Appeal A

32. It is directed that the enforcement notice is corrected by:
- The insertion in part 2 of the words 'and buildings' between the words 'land' and 'known as Springfield';

- The insertion in part 3 of the words 'in the approximate location outlined in green on the attached plan' between the words 'stable building' and 'to a self-contained dwelling house'; and
- The deletion of the word 'premises' from part 5.(1) and 5.(2) and its substitution with the words 'stable building in the approximate location outlined in green on the attached plan'.

33. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

Formal Decision – Appeal B

34. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

J Moss

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 December 2019 the use described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and indicated with an 'A' on the land edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the use of the stable building as a single dwelling had been continuous for a period of four years or more beginning the date the material change of use took place on 11 July 2015.

Signed

J Moss

Inspector

Date: 1ST FEBRUARY 2023

Reference: APP/C3620/X/20/3259376

First Schedule

The use of a former stable building as a single dwelling.

Second Schedule

The former stable building on land at Springfield, Church Lane, Headley KT18 6LG

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land or buildings specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 1ST FEBRUARY 2023

by J Moss BSc (Hons) DipTP MRTPI

Former stable building on land at Springfield, Church Lane, Headley KT18 6LG

Appeal ref: APP/C3620/X/20/3259376

Scale: Not to scale

