



Appeal Decisions

Site visit made on 26 October 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal A Ref: APP/A4710/C/22/3312920

Appeal B Ref: APP/A4710/C/22/3312921

Land and property at 63 Burnley Road, Mytholmroyd, Hebden Bridge, West Yorkshire, HX7 5PD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Richard Creese (Appeal A) and Mrs Lisa Creese (Appeal B) against an enforcement notice issued by Calderdale Metropolitan Borough Council.
- The enforcement notice, numbered 21/60089/ENF, was issued on 15 November 2022.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref 17/00494/HSE granted on 25 July 2017.
- The development to which the permission relates is: Demolition of existing garage/shed to facilitate annexe ancillary to dwelling
- The condition in question is no 4 which states that: The development hereby permitted shall only be occupied or used in connection with and ancillary to the occupation of the existing premises or use and shall at no time be severed and occupied as a separate independent unit.
- The notice alleges that the condition has not been complied with in that: The annexe on the Land is being used as separate independent holiday accommodation which use is not in connection with and ancillary to the occupation of the existing premises or use.
- The requirements of the notice are to:
 - (i) Permanently cease the use of the annexe on the Land as commercial holiday let accommodation
 - (ii) Permanently cease and remove all forms of advertising (including online) associated with the use of the annexe on the Land as commercial holiday let accommodation.
- The periods for compliance with the requirements are:
 - For 5(i) above: 6 (six) months from the date this Notice takes effect.
 - For 5(ii) above: 14 (Fourteen) days from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by (a) the deletion of Section 5(ii) in its entirety and (b) the deletion of the words '*For 5(ii) above: 14 (Fourteen) days from the date this Notice takes effect*' from Section 6.
2. Subject to the variation, Appeals A and B are dismissed and the enforcement notice is upheld.

The Notice

3. Section 5(ii) of the notice requires the appellants to permanently cease and remove all forms of advertising (including online) associated with the use of the annexe on the land as commercial holiday let accommodation. However, the requirement set out in Section 5(i) would be adequate to remedy the breach

alleged and to ensure that the purposes of serving the notice under the Town and Country Planning Act 1990 as amended (the Act) are met. Therefore, to ensure that the notice does not extend beyond the purposes set out in the Act, I shall vary the notice to delete requirement 5(ii) and the corresponding period for compliance with it that is set out within Section 6. I am satisfied that this can be done without causing injustice to either party.

Reasons

Ground (b)

4. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred. In this case, a breach of condition 4 on planning permission reference 17/00494/HSE is alleged. Condition 4 sets out that the annexe shall only be occupied or used in connection with and ancillary to the occupation of the existing premises or use (that being the dwellinghouse at 63 Burnley Road) and that it shall at no time be severed and occupied as a separate independent unit. The inclusion of the words 'shall only' and 'shall at no time' means that the condition sets out definitive requirements as to how the annexe can be occupied and used at any given time.
5. The annexe is let by the appellants as holiday accommodation on a commercial basis. It is not available to let every night of the year as at times it is used to provide accommodation for the appellants' family members, but there is no dispute that commercial letting has occurred regularly since 2019. The annexe is detached, set away from the dwellinghouse and is fully self-contained with a kitchen, bathroom, sitting area and two bedrooms. When let, it is likely that it would be occupied by persons previously unconnected to the appellants, these being people visiting the area for a short period who have found the accommodation via its advertisement on a well-known platform. There is no suggestion that there is any notable interconnection between those people that let the annexe and the appellants during their stay, or that the dwellinghouse provides any facilities for the occupiers of the annexe.
6. It is not, when used on that basis, being occupied or used in connection with and ancillary to the occupation of the existing dwellinghouse. Specifically, the use to provide accommodation on a commercial basis to people unconnected with the appellants and staying in the area for a short-term period, in what is a detached and fully self-contained building, means that at those times neither the occupation nor the use of the annexe is connected or ancillary to the dwellinghouse. Instead, at such times the annexe is being occupied as a separate unit independent from the dwellinghouse. In these respects therefore, such an occupation and use does not comply with the requirements of the condition and, consequently, is in breach of it.
7. In support of their case, the appellants refer to how frequently the letting of the annexe takes place. This they link to an assessment of whether a material change of use of the planning unit (consisting of the dwellinghouse, its curtilage and the annexe) has occurred. In all of the years it has been let, the letting has taken place on far less than 50% of nights in each calendar year. This is not in dispute, but the matter at hand in this appeal is whether condition 4 is breached or not at those times when it is occupied and used as a commercial holiday let. The frequency that this takes place is not relevant to the consideration of whether a breach has actually occurred. Whilst the

appellants also make reference to s55.2.d of the Act, occupation and use in breach of condition 4 would not be incidental to the use of the dwellinghouse.

8. For the reasons that I have set out above, I find that the breach of planning control alleged by the notice has occurred. Accordingly, the appeal on ground (b) fails.

Ground (c)

9. An appeal on ground (c) is made on the basis that the matters alleged by the notice (if they occurred) do not constitute a breach of planning control. The submissions made by the appellants in support of ground (c) again focus primarily on whether a material change of use has occurred, and not specifically on whether what has taken place is in breach of the restrictions set out in condition 4.
10. I have found that the letting of the annexe in the manner it has been is in breach of condition 4. The breach of a planning condition constitutes a breach of planning control. Therefore, the appeal on ground (c) fails also.

Other Matters

11. The appellants contend that the Council has estopped itself because it offered advice that the use of the building as it is being used would be in accordance with planning permission 17/00494/HSE and the conditions attached to it. Correspondence pertaining to this has been provided, albeit it is not comparable with a formal determination for a certificate of lawfulness made under s191/192 of the Act. Nonetheless, the courts have held that as a general principle public authorities cannot be estopped from performing their statutory duties. Therefore, any representation as to how an authority will or will not exercise its powers will not give rise to a binding estoppel. This matter cannot therefore be determinative on the outcome of this appeal.
12. I acknowledge that the appellants make reference to a previous appeal decision¹ and have provided an extract of wording from this. However, this refers primarily to the procedure to be followed in considering the different grounds put forward in an enforcement appeal, and not to the substantive matters arising in this case.

Conclusion

13. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations.

Graham Wraight

INSPECTOR

¹ APP/C4235/X/17/3170427