



Appeal Decision

Site visit made on 5 December 2023

by D Hartley BA(Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/M2270/C/22/3295165

Land at High Birch Cottage, 21a Broadwater Down, Tunbridge Wells, Kent, TN2 5NL shown edged red on the attached plan ("the Land")

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Sharon Wood against an enforcement notice issued by Tunbridge Wells Borough Council.
 - The enforcement notice was issued on 16 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from residential garage to florist workshop.
 - The requirements of the notice are 1) cease the business use (currently as a florist workshop) of the Land, 2) return the garage on the Land to a residential use, and 3) permanently remove all items, fixtures and fittings, equipment and furniture brought into the premises for the purposes of and in connection with the use as a florist workshop.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the plan attached to the notice and replacing it with an amended plan as appended to this decision and varied by deleting all the words in paragraph 5(2) and deleting all of the words in paragraph 6 and replacing them with '*two calendar months after this Notice takes effect*'. Subject to this correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mrs Sharon Wood against Tunbridge Wells Borough Council. This application is the subject of a separate Decision.

Reasons

Ground (b) appeal

3. The appeal made on ground (b) is on the basis that the matters comprising the alleged breach of planning control have not occurred. The appellant's claim under ground (b) is that the allegation in the notice is not correct in so far that a mixed residential and florist workshop use has taken place within one planning unit.

4. In order to determine whether a material change of use of the land has occurred, it is necessary to define the correct planning unit and then to determine whether what has occurred amounts to a significant difference in the character of activities from what has gone on previously, as a matter of fact and degree.
5. The undisputed evidence indicates that the planning unit includes a dwellinghouse. This is occupied by the appellant's parents. There is a detached two-storey outbuilding on the land and the evidence indicates that planning permission was approved for it on 27 November 1978¹ with a garage on the ground floor and subject to condition No. 3 which states '*the accommodation on the first floor shall be used solely for purposes ancillary to the occupants of High Birch Cottage*'.
6. The evidence is that the whole site edged in red was, at the time of the planning permission and prior to the alleged 'florist workshop' use occurring, a single unit of occupation. There was one primary use of the land, i.e., a dwellinghouse, and the two-storey outbuilding was being used as part and parcel of that residential use on a functional and related basis.
7. There is no dispute between the parties that the first floor of this building is being used as a florist workshop. Indeed, it was in use for this purpose on my site visit. However, the local planning authority (LPA) evidence also shows that the ground floor (i.e., the garage) of the outbuilding has also been in such a use based on its photographs taken on 23 August 2021. There is no credible or objective case made by the appellant that the ground floor of the two-storey outbuilding was not also in use as a florist workshop when the notice was issued. On my site visit, it was evident that the ground floor of the two-storey outbuilding was being used in connection with the florist in that it included a very large fridge containing flowers.
8. The evidence is that the appellant has been operating an on-line florist business from the two-storey outbuilding since May 2019. Prior to this, the appellant had a florist shop in Monson Road, Tunbridge Wells which had operated for about twenty years. Based on the appellant's evidence, which is not disputed by the LPA, since December 2021 the on-line business has operated from the two-storey outbuilding as follows: -
 - Fresh flowers are delivered two or three times per week: the appellant indicates that these are collected from a rented garage in Southborough and taken to the appeal site rather than delivered via a courier on the main road.
 - The appellant delivers flowers to customers twice per day and '*very rarely it will be necessary to make a third trip*'.
 - An arrangement is in place with Cook, Monson Road, Tunbridge Wells where customers can collect bouquets.
 - A delivery company delivers flowers from the appeal site and across the UK three or four times per week – collections are from the main road only.

¹ Planning permission ref TW/78/0983

- There are two employees - the appellant and an assistant. The assistant parks on the main road.
 - Customers do not visit the premises. Customer visits take place at home addresses or via Zoom calls.
9. Prior to the breach of planning control taking place, the primary use of the land was that of a dwellinghouse. In respect of the 'florist workshop', I find that the scale of the use in terms of comings and goings to the site arising from the collection and delivery of flowers combined with employee activity, is such that it collectively gives rise to significantly different planning consequences and activities to the extent that it has materially changed the residential character of the site/area. In reaching this conclusion, I have taken into account the way that the business currently operates from the point of view of no collections or deliveries taking place by couriers alongside the flats at 21 Broadwater Down. However, the evidence is that there is still employee activity/movement to and from the appeal building from a delivery and/or collection point of view.
10. In reaching the above conclusion, it is important to recognise that I am not reaching a view in terms of the planning merits of the florist workshop business. I accept that a planning application for '*change of use of garage to florist workroom to prepare flowers for sale*' was considered by a previous Inspector in May 2021 as part of an appeal under s.78 of the Act². However, the evidence is that some changes have been made to the way that the business operates since such an appeal decision was made. As no ground (a) appeal has been lodged it is not possible for me to consider the planning merits of the florist business operation, as it existed on 16 February 2022, and whether the concerns raised by the previous Inspector have been or could be overcome. Nonetheless, it is noteworthy that the previous Inspector was explicit in terms of the ability or otherwise to control matters by planning condition.
11. The two-storey outbuilding is physically separate from the dwellinghouse on the land. There is no evidence before me to indicate that when the enforcement notice was issued, it was not being used as a functionally separate and independent business. I find that the florist workshop is not integral to, or part and parcel of, the primary use of the land as a dwellinghouse. This appears to be accepted by the appellant in so far that it has been previously stated, as part of the submission of a regularising planning application which was dismissed as part of the aforementioned appeal, that '*it is also worth noting that the garage is entirely self-contained, it is detached from the main house by a considerable way and has its own entrance. It also has drinking water, hot water and a toilet, so there is never any need for either of us to enter the main house*'. In my judgement and based on the collective evidence that is before me, the breach of planning control constitutes a separate planning unit.
12. Given the above, there are two separate and distinct planning units falling within the red edge of the plan attached to the enforcement notice. Consequently, the breach of planning control as alleged in the enforcement notice is not in itself incorrect as alleged by the appellant. Instead, it is the red edged plan as attached to the enforcement notice that is incorrect. I have considered whether I could correct the red edged plan attached to the

² Appeal Ref APP/M2270/W/21/3268269

- enforcement notice, without injustice being caused to the main parties, so that it relates solely to the two-storey outbuilding.
13. I find that such a correction would not result in any onerous consequences in relative terms. Reducing the red edged land on the plan such that the enforcement notice is focused solely and squarely on the two-storey outbuilding would not lead to injustice being caused to the main parties.
 14. The appellant asserts that it has not been possible, given the way that the enforcement notice is drafted, to determine whether the LPA considers that a mix of uses within one planning unit has occurred or whether two uses within two separate planning units have occurred. The appellant claims that injustice would be caused as she cannot apply for planning permission under ground (a) retrospectively. It was open to the appellant to apply for planning permission under ground (a) when the appeal was lodged.
 15. I accept that the plan attached to the notice was not correct, but I have found above that the breach of planning control was not incorrect. The appellant, who is professionally represented, is aware that there are powers of correction under s.176 of the Act as she explicitly refers to such a power at paragraph 4.4 of her statement of case. In this context, it was open to the appellant to lodge a ground (a) appeal, based on the alleged breach of planning control, and in the clear knowledge of s.176 of the Act. I do not therefore find that correcting the plan attached to the notice would lead to injustice from the point of view of ground (a) appeal considerations.
 16. The LPA raise concern about the potential for the florist workshop business to operate elsewhere on the wider appeal site. However, should that happen, it would be open to the LPA to issue a further enforcement notice, should it be expedient to do so. Furthermore, and, in any event, the LPA states that it *'does not object to the red line being reduced to the garage only'*. I shall accordingly correct the plan attached to the notice.
 17. Given the above, and, as a matter of fact and degree, I find that the florist workshop is being used as a primary use of land and within a separate planning unit. I find that the breach of planning control, as alleged, has occurred. I therefore conclude that the ground (b) appeal fails, albeit that the plan attached to the enforcement notice will be corrected.

Ground (f) appeal

18. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. The appellant makes the claim that the florist workshop is on the first floor of the outbuilding and, furthermore, that any steps should be related to the outbuilding and not the entire site.
20. The onus is on the appellant to make the case that when the enforcement notice was issued, the ground floor was not in use as a florist workshop. The LPA provides dated photographs showing flowers within the ground floor of the garage and prior to the notice being issued. I accept that such photographs were taken some time before the enforcement notice was issued, but it does cast doubt about the appellant's unsupported claim that the florist workshop

was only on the first floor. This doubt is also compounded because as part of my site visit, I was able to see that there was a large fridge located within the ground floor of the outbuilding which was being used for the storage of flowers. The appellant has not demonstrated, with sufficient precision and clarity, that the ground floor of the outbuilding was not in use as a florist workshop when the enforcement notice was issued.

21. The appellant also makes the claim that the steps in the enforcement notice should relate to the outbuilding and not to the entire site. As part of my consideration of the ground (b) appeal, I have corrected the enforcement notice in terms of amending the red edged plan attached to it. The red edge of the amended plan attached to the enforcement notice, as provided at the end of this decision, is now focussed solely on the two-storey outbuilding. The requirement to remove all items, fixtures and fittings which facilitated the unauthorised change of use is not excessive as it remedies the breach of planning control.
22. Notwithstanding the above, paragraph 5(2) of the enforcement notice states, '*return the garage on the land to a residential use*'. This is an excessive requirement as it is not necessary to remedy the breach of planning control. Clearly one could continue to use the two-storey outbuilding for its lawful use, should that be so desired, but the enforcement notice should not expressly require it to be used in such a way. I shall correct the notice by deleting all the words in paragraph 5(2) and, in doing so, am satisfied that no injustice would be caused to the main parties.
23. I conclude that the ground (f) appeal succeeds in so far as the requirement in paragraph 5(2) is not necessary and hence is excessive.

Ground (g) appeal

24. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s.173(9) of the Act falls short of what should reasonably be allowed.
25. The claim made by the appellant is that a compliance period of one month would not provide enough time to find alternative workplace premises, relocate and establish a new phone/internet line. The appellant requests a compliance period of six months.
26. I do not doubt that in upholding the enforcement notice it would have some adverse consequences in terms of the smooth operation of the appellant's business. It is noteworthy, however, that the appellant has commented that they partly operate from a rented garage in Southborough and that wholesale flowers are delivered to a lockout unit on the borders of Tunbridge Wells. I have little information from the appellant about the garage and 'lockout' unit operations, but, in the absence of any detailed evidence to the contrary, it need not be the case that the on-line business could not continue to operate, at least to some degree, until any necessary alternative premises was found.
27. Notwithstanding the above, I do accept that a reasonable period would be needed for the appellant to put in place planned and lawful operations thereby ensuring continuity in terms of fully running the on-line business. I find that a reasonable period would be two months, rather than the stated one month. This strikes a reasonable balance between ensuring minimal disturbance from a

business continuity point of view and the need to bring the unauthorised development to a halt. I shall accordingly vary the compliance period in the enforcement notice. In this regard, I conclude that the ground (g) appeal succeeds.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

D Hartley

INSPECTOR

Plan

This is the plan referred to in my decision dated: 08 December 2023

by D Hartley BA(Hons), MTP, MBA, MRTPI

Land at: High Birch Cottage, 21a Broadwater Down, Tunbridge Wells, Kent, TN2 5NL

Reference: APP/M2270/C/22/3295165

Scale: Do not scale

