



Appeal Decision

Site visit made on 5 December 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/R3650/C/22/3310766

Land at 11 Knights Road, Farnham GU9 9BX

- 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 Glenn Fairchild against an enforcement notice issued by Waverley Borough Council.
 - The enforcement notice was issued on 12 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of an outbuilding from a use that is ancillary to the primary dwellinghouse to that of a dwelling with an independent residential use.
 - The requirements of the notice are: 1. Cease the use of the building as a dwelling for independent residential use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

2. My assessment is confined to the grounds of appeal before me. It is therefore not for me to review the decisions made by the Council leading up to the issue of the notice or how it engaged with the appellant or other interested parties in discharging its duties.

The ground (b) and (c) appeals

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the change of use of the building the subject of the notice to a dwelling for independent residential use, has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

4. Planning permission was granted¹ in 2016 for the erection of a detached garden building to provide ancillary accommodation. Condition 3 of that permission stated that there should be no independent habitable use. A certificate of lawfulness² was then granted in 2018 for the use of a garden room/annexe as ancillary to main residence. This however did nothing other than reaffirm the limited scope of the planning permission.
5. The evidence before me is the certificate of lawfulness was predicated on the building the subject of the notice being occupied by the appellant's father, with the appellant staying in the original dwelling. There was therefore a physical and functional link with care also provided to the appellant's father.
6. When the notice was issued, this was however not the case, with the original dwelling having been rented to 3 other occupiers, albeit the appellant still owns the appeal site and the building the subject of the notice is occupied by his father. The appellant states the terms of the tenancy agreement/licence require those renting the original dwelling to provide care to the appellant's father, however no such documentation is before me.
7. The witness statements from the 3 occupiers of the original dwelling state that from time to time they receive requests from the appellant to undertake certain services to care for the appellant's father. However, the Council served Planning Contravention Notices on the 3 occupiers, and each responded that they do not carry out any caring duties for the appellant's father and no caring duties were then accordingly described. Moreover, it was stated that there is no agreement, tenancy agreement or other contract in place.
8. The responses to the Planning Contravention Notices therefore contradict the latter evidence from those 3 occupiers as well as the appellant. In such circumstances, I am only able to afford their evidence very limited weight.
9. In the circumstances envisaged by the planning permission and certificate of lawfulness there was a single planning unit. This was because the appeal site was occupied as a whole by a single family, albeit in two buildings, with the provision of care and associated overlap in day-to-day activities.
10. By contrast, this is not the case when the original dwelling is rented to 3 other occupiers who have no familial link. Moreover, I can place only very limited weight on there having been any care provided or that any such agreement is in place. I could also see during my site visit that the original dwelling and building the subject of the notice each had their own respective garden areas as well as parking areas. There is therefore very limited evidence of a physical and functional link.
11. The evidence before me is that the building the subject of the notice is fully equipped for day-to-day private domestic existence. The use of the appeal site by two separate sets of occupiers in two separate buildings, being the 3 occupiers in the original dwelling and the appellant's father in the building the subject of the notice, results in the creation of an additional dwelling. The use of the building the subject of the notice as a dwelling has resulted in the subdivision of the appeal site into two residential planning units. Planning permission is therefore required for the additional dwelling usage. That the appellant remains the legal owner of the appeal site has no bearing on how the

¹ Council Ref WA/2015/1934

² Council Ref WA/2018/1785

use of the site is actually subsisting. My findings are then entirely consistent with the relevant case law that has been brought to my attention³.

12. Accordingly, the appellant has not demonstrated on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact, or that there has not been a breach of planning control.

13. The appeals on grounds (b) and (c) therefore fail.

The ground (d) appeal

14. This ground of appeal is that at the date when the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to demonstrate, on the balance of probabilities, that the independent residential use of the building the subject of the notice as a dwelling began more than four years before the notice was issued. In addition, that the use continued such that at any time during a continuous four-year period the Council could have taken enforcement action.

15. The planning permission and certificate of lawfulness did not relate to the independent residential use of the building the subject of the notice as a dwelling. In any event, these are not relevant to this ground of appeal, and the ground (b) and (c) appeals have failed.

16. The Council states that the current occupiers of the original dwelling have only occupied that property since October 2021, based upon Council Tax records and their response to the Planning Contravention Notices. This is not disputed by the appellant. The appellant then provides very little evidence to demonstrate on the balance of probabilities that the building the subject of the notice has otherwise been occupied as a dwelling for a continuous 4-year period.

17. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate the lawful independent residential use of the building the subject of the notice as a dwelling for a relevant continuous period prior to the issue of the notice. The use is accordingly liable to enforcement action.

18. The appeal on ground (d) therefore fails.

The ground (f) appeal

19. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

20. I have already found there to be a breach of planning control and the ground (b) and (c) appeals have accordingly failed. The certificate of lawfulness merely related to a garden room/annexe as ancillary to the main residence and I have no powers, and indeed no need, to alter this.

³ *Gravesham BC v SSE & O'Brien* [1983] JPL 306; *Uttlesford DC v SSE & White* [1992] JPL 171

21. The notice has a single straightforward requirement which is to cease the use of the building the subject of the notice as a dwelling for independent residential use. The appellant then offers no specific lesser steps in order to remedy the breach of planning control.

22. The appeal on ground (f) therefore fails.

The ground (g) appeal

23. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 6 months is required in order for the occupiers of the original dwelling to tidy their affairs and vacate the property.

24. Whilst there is very little evidence before me as to the personal circumstances of the occupiers of the original dwelling, or indeed occupier of the dwelling the subject of the notice, a period of 6 months does not strike me as unreasonable in which to afford those involved to secure alternative accommodation.

25. Accordingly, the appeal on ground (g) succeeds to this extent.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice subject to a variation.

Formal Decision

27. It is directed that the enforcement notice be varied by:

- substituting '*six months*' as the time for compliance

28. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR