



Appeal Decision

Site visit made on 16 January 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2024

Appeal Ref: APP/D1265/C/23/3319224

Land at Coach and Horses Inn, South Perrott, Beaminster DT8 3HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Parrett Hotel against an enforcement notice issued by Dorset Council.
 - The notice was issued on 17 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of part of the hotel on the land to two separate dwellings.
 - The requirements of the notice are: 1. Cease the use of part(s) of the hotel as a dwelling house (i.e., 'Coaching Corner' and 'Riverview Cottage'). 2. Reverse all the unauthorised changes made to create the dwelling(s). Remove all partition walls, separate entrance doors, staircases, windows, kitchen cooking facilities, bathrooms, and return the converted rooms to use as rooms for the hotel and former manager's living accommodation. 3. Return the hotel to a fully operational nine-bedroom hotel. 4. Remove from the land all material used for the construction of the dwelling(s). Remove sheds, garden ornaments, outbuildings and fencing and car parking spaces.
 - The period for compliance with the requirements is twelve months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) & (f) 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 have lapsed.
-

Decision

1. It is directed that the enforcement notice be varied by in paragraph 4 ('what you are required to do') substituting at the end of step 2 *'and return the converted rooms to use as rooms for the hotel and former manager's living accommodation'* with *'and restore the land to its condition before the breach took place'* and by deleting step 3, with the consequential renumbering of step 4 to step 3. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. There is no deemed planning application arising from an appeal on ground (a) and the relevant fee has not been paid. Consequently, the planning merits of the matters alleged in the enforcement notice do not fall to be considered.
3. Although the appeal was initially made on ground (b)- *'that those matters (i.e., the matters specified in the notice) have not occurred'*, additional points more relevant to an appeal on ground (c)- *'that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control'*-were raised by the appellant. Consequently, I intend to consider the appeal as if it had also

been made on ground (c). There would be no unfairness, the Council having been afforded an opportunity to respond on the additional ground.

Ground (b) and (c) appeals

4. In relation to both of these grounds, the onus is on the appellant to show why their appeal should succeed, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a substantial two storey hotel building. The building fronts the main street running through the village and projects at the rear adjacent to a large associated car park. The notice alleges a material change of use of the property to two separate dwellings.
6. At one end of the building is a unit of living accommodation known as 'Coaching Corner.' Previously part of the hotel bar and rooms used by guests, the accommodation is arranged over two floors and includes a shared kitchen and lounge, together with two bedrooms and a bathroom. At the opposite end of the building is another unit of living accommodation, known as 'Riverview Cottage.' Previously further guest rooms and a manager's flat, this accommodation is also arranged over two floors and includes a kitchen and lounge together with three bedrooms and a bathroom.
7. Both units of living accommodation are self-contained. In the case of each unit there is the ability to afford to those who use it the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwelling for planning purposes. Therefore, the available evidence shows that there are in fact two dwellings at the property and the matters alleged in the notice have occurred. The ground (b) appeal fails.
8. I turn now to ground (c). The definition of development set out at s55 (1) of the 1990 Act includes the making of any material change in the use of any buildings or other land. Use as a dwelling is of a materially different character to the primary use of the property as an hotel. Dwellings and hotels are in a different Use Class-the latter being in Class C1 and the former in Class C3¹. Generally, use as a dwelling is a separate primary use and would not be regarded as ancillary or incidental to some other primary use of land.
9. Activities that are ancillary to the hotel use, or part and parcel of that use, could nevertheless take place at the property without necessarily involving a material change of use. The extent of the property associated with such activities might also alter over time, provided those activities remained subsidiary to or part and parcel of the primary use as an hotel. It is possible for living accommodation for staff expected to live on the premises to be regarded as ancillary to or part and parcel of use as an hotel-as in the case of the pre-existing manager's flat for example. Therefore, whether formation of the units has involved a material change in the use of the property also requires assessment of the extent to which the units are separate, physically and functionally, from the use as an hotel and is a matter of fact and degree.
10. Apart from a shared external entrance, 'Coaching Corner' is otherwise physically separate from the rest of the hotel building. Although not in itself decisive, the extent of the physical separation from the rest of the property is not supportive of the unit being ancillary to or part and parcel of the hotel use.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended).

Furthermore, the available evidence does not show that the unit is functionally ancillary to or part and parcel of the hotel use, in the same or in a similar way to, for example, the pre-existing manager's flat. The existence of an individual postal address for the unit, together with a separate Council Tax rating, is not consistent with it having a functional relationship with the use of the hotel. Ordinarily, one would not expect on-site staff/manager accommodation at an hotel or similar business to have a separate address and be separately rated for Council Tax. Occupation by the family who own and are employed in the running of the hotel does not necessarily weigh against the unit being other than separate, physically and functionally, from the hotel use. A similar situation might arise for example at a farming enterprise where there is a functional requirement for employees to live on site, but any associated dwelling would still generally be regarded as a separate primary use.

11. 'Riverview Cottage' is also largely separate physically from the hotel-apart from an inconveniently located internal doorway-and has its own private amenity space. There is little firm evidence of this unit being functionally related to that of the hotel. Factors including the unit being registered with the Land Registry under a different ownership title to that of the hotel, as well as having a separate postal address and Council Tax rating, weigh against there being such a relationship. The unit is no longer occupied by relatives of the family who reside at 'Coaching Corner.' In any event, this would not be indicative of a functional link between the unit and the use of the hotel.
12. Accordingly, based on the available evidence and as a matter of fact and degree, 'Coaching Corner' and 'Riverview Cottage' are individual units of occupation, each of which are physically and functionally separate from the hotel use. Although maybe not what the appellant originally intended, the evidence points towards formation of the units as having resulted in a material change of use at the property, falling within the definition of development.
13. At s57 (1), the 1990 Act provides that planning permission is required for the carrying out of any development of land. No authority for the units was drawn to my attention. An application for express planning permission for development at the property including two dwellings was refused by the Council and a subsequent appeal was dismissed in November 2022². The definition of a breach of planning control in s171A (1) of the 1990 Act includes carrying out development without the required planning permission.
14. Therefore, the matters alleged in the notice constitute a breach of planning control, the appellant being unable to show otherwise. The ground (c) appeal also fails.

Ground (f) appeal

15. The ground of appeal is that the notice requirements are excessive.
16. An enforcement notice can have the purpose of remedying the breach, including by restoring land to its condition before the breach took place, or it can remedy any injury to amenity which has been caused by the breach. The notice did not state which purpose that it sought to achieve. Even so, by requiring the use of both dwellings to cease together with the reversal of associated works and removal of all materials and incidences of such use, the

² Appeal Ref: APP/D1265/W/22/3300725.

purpose of the notice must be to remedy the breach. Complying with those requirements would restore the property to its condition prior to the breach taking place.

17. If one or both of the dwellings were to remain in situ, part or all of the breach would be sustained. That would not restore the property to its condition prior to the breach taking place and so would not achieve the purpose of the notice. Moreover, in the absence of a ground (a) appeal and the deemed planning application that would have arisen therefrom, the notice cannot be varied where to do so would attack its substance. The reasonableness of the compliance period in relation to 'Riverside Cottage,' ordinarily a matter relevant to ground (g), does not warrant further consideration as the dwelling is vacant.
18. The notice also contains other requirements, however. Step 2 includes a requirement to return to the use as hotel rooms and manager's accommodation, whilst step 3 requires the property to be used as a nine-bedroom hotel. Providing positive requirements in the notice is excessive, as it goes beyond what is necessary to restore the property to its condition prior to the breach taking place. Consequently, I shall exercise the power in s176 (1)(b) of the 1990 Act to vary the notice to substitute the excessive part of step 2 with a requirement to restore the property to its condition before the breach took place and to delete step 3 in its entirety. Since the requirements as varied would be sufficient to remedy the breach, the purpose of the notice would still be achieved. Given that the condition of the property prior to the breach taking place is well documented, there would be no uncertainty. No injustice would be caused.
19. Therefore, the ground (f) appeal succeeds to the limited extent set out above.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Stephen Hawkins

INSPECTOR