



Appeal Decision

Site visit made on 6 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/L3625/C/22/3306650

Land at 8 Harpurs, Tadworth, Surrey KT20 5UD

- 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 Ms Amanda Strutt against an enforcement notice issued by Reigate & Banstead Borough Council.
 - The enforcement notice was issued on 5 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of the land from use as a studio/workshop/hobby room ancillary to the dwellinghouse to use for separate non-ancillary residential accommodation.
 - The requirements of the notice are: 1. Permanently cease the use of the Land and building as separate non-ancillary residential accommodation. 2. Restore the land to the condition it was in before the breach of planning occurred.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) 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.

Preliminary Matter

2. As only a ground (c) appeal has been lodged, I am unable to consider planning policy, human rights or indeed any other planning harms, benefits or matters that are considered to arise from the development the subject of the notice.

The ground (c) appeal

3. 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. My assessment is therefore fact sensitive, based upon the evidence before me.
4. The building the subject of the notice was formerly a detached double garage. In 2017 planning permission was granted to convert the building to a studio/workshop/hobby room as well as for various external alterations. Two

- non-material amendments then followed to use the building for ancillary living accommodation as well as a further external alteration.
5. The result was however that the building remained in ancillary use to the main dwelling, albeit containing residential accommodation. The notice now alleges a material change of use of the building to separate non-ancillary residential accommodation.
 6. The evidence before me is that the main dwelling is owned by the appellant but rented and therefore tenanted by other occupiers for use as a family home. The building the subject of the notice had then been made available to rent on a website as a private apartment known as 'The Cwtch' with a private kitchen, garden, terrace and private parking. It is available for up to 30 nights per stay for 2 guests, albeit the appellant's experience is that 2 nights has been the maximum stay.
 7. I could then see during my site visit that the building is fully equipped with all the fixtures, fittings and furniture necessary to support private day-to-day existence. It contains a kitchen, living space, bedroom and bathroom. It is therefore a reasonably substantial building.
 8. The appellant contends that planning permission is not required to occasionally offer a bedroom to guests via a website. However, the building and what was offered on the website does not relate to merely a bedroom, but rather a private apartment with garden which supports private day-to-day existence.
 9. The appellant states that the building is not being used solely for guests, and they will also be invited into the main dwelling for breakfast and be fully integrated. However, there is very little evidence this has been the case, and this is not reflected in the website evidence before me.
 10. The appellant also asserts that fencing in the garden was a partial screen and temporary, which was subsequently removed. Whatever purpose/s the fencing may or may not have served, this does not undermine the website evidence of a garden area having been available.
 11. It is also stated that the building is only used occasionally and still used by occupants of the main dwelling. However, given there is no sworn declaration before me, I can only afford the evidence of the appellant very limited weight. There is also no sworn declaration from the occupiers of the main dwelling.
 12. I appreciate there might be limitations associated with how a listing/ accommodation can be described on a website. However, I find the website evidence to be compelling and can see very little in that evidence to support the appellants contention that there has not been a breach of planning control.
 13. I also appreciate there might be other examples of converted garages in the area. However, the full details of these and any use that might be subsisting are not before me. Similarly, the appellant has brought an appeal decision to my attention, but each case is fact sensitive, and that case is evidently based on different circumstances as it related to a modest building for bed and breakfast guests. The appellant has also not demonstrated on the balance of probabilities that the use before me is proportionate to the principal occupation of the main dwelling.

14. Accordingly, there is very limited evidence to demonstrate on the balance of probabilities a physical and functional link between the building and the main dwelling. Whilst a water and electricity supply might be shared, this has little bearing on the use of the building that actually subsists. My findings are then entirely consistent with the relevant case law that has been brought to my attention¹.
15. The appellant has therefore failed to demonstrate that there has not been a material change of use. It therefore constitutes development for the purposes of s55 of the Act.
16. There is then little evidence before me to demonstrate that the separate non-ancillary residential accommodation is either permitted development, as Class E rights² relate to the provision of buildings incidental to the enjoyment of a dwellinghouse, or that the use has the benefit of planning permission. Accordingly, as a matter of fact and degree, the appellant has not demonstrated on the balance of probabilities that there has not been a breach of planning control.
17. The appeal on ground (c) therefore fails.

Overall Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice.

Formal Decision

19. The appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207; *Uttlesford DC v SSE & White* [1992] JPL 171; *Moore v SSCLG* [2012] EWCA Civ 1202

² Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015