

Appeal Decision

Site visit made on 9 November 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/J4525/C/23/3316190

22 Brackley, Sulgrave, Washington, NE37 3DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR JONATHAN BLACKETT against an enforcement notice issued by Sunderland City Council.
 - The notice was issued on 9 January 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from use purposes incidental to the enjoyment of the dwellinghouse to use as a self-contained dwelling, including use for short term lets and holiday lets.
 - The requirements of the notice are to: Stop using the land as a self-contained dwelling, including use for short term lets and holiday lets.
 - The period for compliance with the requirement is: One month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text 'One month.' from the compliance period paragraph, and its substitution with the text: 'Two months.'

Preliminary Matters

2. On 20 December 2023 the Government published a revised National Planning Policy Framework (NPPF), accompanied by a written ministerial statement. Having regard to the main issues within ground (a) of this appeal, I have given the parties the opportunity to comment on the revisions that have been made to the NPPF.

The appeal on ground (b)

3. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. In legal grounds of appeal, the onus lies on the appellant to make out their case to the standard of the balance of probabilities.
4. Previously, planning permission, ref: 22/01885/FUL, was sought for development described as: 'Conversion of existing outbuilding to a self-contained holiday let (Retrospective)'. In refusing the application, the Council found that the development amounted to a standalone residential unit within the curtilage of the existing dwelling at No 22.
5. There can be little doubt that the appeal site is used as holiday let accommodation. However, the appellant's case under ground (b) is firstly, that

the building does not function as a self-contained dwelling, and secondly, that it is not offered for short-term lets.

6. There is no definition of 'dwellinghouse' in the Act. I note the appellant's statement that, under English law, a dwelling is defined as a self-contained 'substantial' unit of accommodation. However, I am unfamiliar with this definition, and the appellant does not identify its source. As a result, I am not able to rely on this terminology for the purposes of my consideration.
7. In *Gravesham BC v SSE and O'Brien* [1983] JPL 307, it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons.
8. Consequently, a unit of holiday accommodation that meets the *Gravesham* test may be treated as a dwellinghouse for the purposes of applying planning policies, and not as a commercial leisure use. This is the case even in instances where occupation of the building in question is restricted by condition.
9. I have been provided with the Airbnb advertisement for the appeal site, which is known as 'The Ponderosa'. It is described as studio accommodation for two guests, comprising one bedroom and one bathroom. A cot is also available. The bedroom area contains a wardrobe, a set of drawers, and a wall mounted television. The bathroom includes a shower cubicle, a toilet, and a sink with a small cupboard underneath.
10. The photographs also show a kitchen area located just inside the main door. This area comprises counter space, a sink and a wall-mounted cupboard. It is equipped with a fridge/freezer, a microwave, a toaster, a kettle, various utensils, and a washing machine. The 'About this space' section of the Airbnb page also refers to an induction hob and pans. A small breakfast bar is set inside the main window, and a bar table and two stools are present just outside the building.
11. In addition, the premises is advertised as being 'well suited for working', with wifi available. It also states that the let offers a garden, and the photographs seem to suggest that the whole of the outdoor space behind No 22 is available to the visiting occupants.
12. On the evidence before me, I am satisfied that although the building is small, it is well equipped, and offers all the facilities needed for day-to-day occupation. It therefore falls within the definition of a dwellinghouse.
13. The information shows that the appellant joined Airbnb as a host in November 2018, which is just over five years ago at the time of writing. In that time, 216 reviews have accumulated. On that basis, the building has been let out, on average, at least 43 times per year over approximately five years.
14. As noted above, the appellant disputes that the building has been used for 'short term lets'. Neither party has indicated what they mean by a short term let, but in my experience, it tends to be up to six months. The figures above seem to indicate that the building is booked mainly for short holiday stays. However, the appellant does not provide any details of the actual bookings for the accommodation. Further, he states in an email of 1 November 2022 to the

Council that guests stay for holidays, work, and in the middle of purchasing a new home. This last purpose in particular would suggest stays of a couple of months at the very least. I note that no tenancy agreement is needed through Airbnb for such an arrangement. Nonetheless, stays of several months would, to my mind, fall within the territory of short term letting.

15. I therefore conclude that the evidence falls short of demonstrating, on the balance of probabilities, that the appeal site is not a dwellinghouse, and that it has not been used for short term lets.

16. The appeal on ground (b) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issues

17. The main issues are the effect of the development on:

- the living conditions of occupants of the building with particular regard to the provision of indoor space and privacy;
- the living conditions of neighbouring residents with particular regard to noise and disturbance, and odours;
- the provision of cycle and vehicle parking in the area; and
- the character and appearance of the surrounding area.

Reasons

Living conditions – occupants of the outbuilding

18. Policy BH1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 (CSDP) states that development should retain acceptable levels of privacy and ensure a good standard of amenity. It requires that, from 1 April 2021, residential development should meet national space standards as a minimum. The 'Technical housing standards – nationally described space standard' (NDSS, March 2015, Department for Communities and Local Government) deals with internal space within new dwellings and is suitable for application across all tenures.

19. As set out in Table 1 of the NDSS, the minimum gross internal floor area for a one bedroom, two person, single storey dwelling is 50sqm. A minimum of 1.5sqm of built in storage should also be provided. The internal floor space of the appeal site is around 22.17sqm, which is less than half of the NDSS requirement. The development thus conflicts with the requirements of CSDP Policy BH1.

20. It is well established that holiday makers will accept considerably smaller units of accommodation precisely because of the temporary nature of their stay. That being the case, there are instances where holiday accommodation need not reach the NDSS minimum standards in order to be found acceptable.

21. However, in this case, the conflict with the development plan must be considered in the context of the planning permission being sought. The appellant may well wish to continue the use of the building as a holiday let for the foreseeable future. However, under ground (a), planning permission is sought for the matters stated in the enforcement notice as constituting the

breach of planning control. In this case, the allegation is a material change of use to a 'self-contained dwelling, including use of short term lets and holiday lets'.

22. Therefore, if I were to allow the appeal and grant planning permission, it would be for a self-contained dwelling, because that is the wording of the allegation. Even if the internal space is currently acceptable for holiday makers or even short term residents, it is too limited when assessed against the NDSS requirements to be acceptable in a building used as a permanent addition to the housing stock.
23. Turning to privacy issues, the outbuilding has a single aspect which faces the rear plot of No 22. There is a garden area at the front of No 22, but it offers no privacy. Therefore, the well screened rear garden is the only private outdoor space available to the residents of the property. There is no screening between the outbuilding and the rear plot, and it is apparent from the Airbnb information that the back garden is made available to the occupants of the outbuilding. In effect, the area is not available to the residents of the house whilst the holiday let is in use.
24. The letting of the outbuilding and garden area is within the control of the householders, and so it is their choice to give up the space to holiday makers. There would be no pressure on future owners of No 22 to do the same thing. There are ground and first floor windows in the rear elevation of No 22 which overlook the rear plot at close quarters. This creates some harm to the privacy of holiday makers using the space, but as with the limited indoor space, visitors may be prepared to accept this situation on a temporary basis.
25. However, were I to grant planning permission for the residential use, there would be little to stop the unit being made available for rent on a longer-term basis. As it is, the outbuilding could be occupied for up to a year under Airbnb's terms without the need for a contract. Under such circumstances, the lack of separation between the two residences, and the overly limited outdoor space available to each dwelling, would be unacceptably harmful to the privacy of occupiers of the outbuilding.
26. Drawing these threads together, I therefore conclude that the living conditions of future occupants would fall unacceptably short of the standards sought by CSDP Policy BH1.

Living conditions – neighbouring residents

27. The Council object on the grounds of the adverse effect on nearby residents of increased noise and disturbance and odours from the development. The site lies in an established residential area, characterised by a fairly tight-knit pattern of housing with no through road. That being the case, activity associated with the appeal property, such as comings and goings by guests, is likely to be apparent to, and to affect, the occupiers of nearby dwellings.
28. I have taken into account comments from neighbours at 23 Brackley, which shares a common boundary with the appeal site. They refer to increased traffic from guests, who arrive at varying times through the day and night. They report additional takeaway deliveries to the premises, and have also experienced drivers knocking on the door in search of the appeal site.

Furthermore, problems arising from visitors' dogs, cooking smells and smoking are outlined.

29. The appellant states that it is quite common for holiday lets to restrict arrival and departure times, and to request that noise is kept to a minimum outside sociable hours. He does not consider that a small holiday let of this size causes any more noise or disturbance than other activities, such as barbeques and gatherings, associated with residential use. In his final comments, he reiterates his view that it is unlikely that there are any unacceptable impacts in respect of noise and neighbouring dwellings.
30. I acknowledge that ordinary households are capable of generating a good deal of activity. However, the pattern of comings and goings by visitors, in the evenings as well as the daytime, could well be very different from the lifestyles pursued by more permanent residents. Furthermore, such activity may well occur at times when most residents ought reasonably to be able to expect periods of relative peace and quiet.
31. By all accounts, the Airbnb has been operating for a number of years. That being the case, the appellant must be well aware of whether or not these issues are occurring. It is notable, therefore, that none of the above claims have been challenged by the appellant within his evidence. Although noise and disturbance can often be controlled satisfactorily by condition, it is of concern that the appellant offers little evidence of the measures he has implemented so far, which would be expected in a quiet residential location.
32. In my view, good neighbourliness is an important yardstick for assessing a use that includes holiday letting. Even though there is no evidence of a statutory nuisance, activity associated with people entering or leaving the accommodation, even if this amounted to no more than good natured conversation, together with vehicles stopping and starting, and the closing of car doors, could well be disturbing to the neighbours.
33. I have taken into account concerns over various odours, but there is little detailed or quantitative evidence relating to this matter. However, this matter is not determinative, in view of the other adverse effects I have identified.
34. The overall evidence indicates that the living conditions of neighbours have been adversely affected, and may well continue to be affected in the future. Accordingly, therefore, I find that the development is contrary to CSDP Policy HS1, which requires development to demonstrate that it does not result in unacceptable adverse impacts from, amongst other things, noise and disturbance, which cannot be addressed through appropriate mitigation.

Provision of vehicle and cycle parking

35. CSDP Policy BH1 requires the creation of safe, convenient and visually attractive areas for servicing and parking which do not dominate the development and its surroundings. Amongst other criteria, CSDP Policy ST3 requires development to include a level of vehicle parking and cycle storage for residential and non-residential development, in accordance with the Council's parking standards.
36. There is no evidence of provision of cycle parking at the appeal site. However, were the development to be found otherwise acceptable, it is likely that provision could be made within the property for cycles to park.

37. In terms of car parking provision, the Council confirm that a new four-bedroom house should have a minimum of two spaces, and a new one-bedroom property should have one space. The standards cannot be applied retrospectively to the main house, but as it stands, only one car parking space exists on the front drive of No 22 to serve the whole property, including the outbuilding.
38. Given the size of the outbuilding, it is likely that its occupants would use no more than one vehicle at a time. The appellant explains that guests bringing a car will park on the drive, and the permanent residents of No 22 will then park next to the house.
39. I accept that the appeal site is in an accessible location with regard to local services, including public transport links, cycle and footpaths. In the case of the appeal site accommodating permanent residents, these circumstances might lessen the need for those residents to have a car. For holiday makers, it seems much more likely that they would travel to the accommodation by car in the first instance, and then perhaps use other means of transport to get out and about in the area.
40. Although the section of road beside No 22 is a turning head for traffic in the area, there is no parking restriction in the form of yellow lines here, or elsewhere in the cul-de-sac. As a result, there is a reasonable degree of unrestricted parking provision close to the appeal site. I note from the planning officer's report for planning application 22/01885/FUL that the effect of the development on parking provision was not considered to be sufficiently harmful on its own to warrant refusal.
41. In the absence of any compelling evidence to the contrary, I agree with that conclusion, and so I find that the conflict with CSDP Policy BH1 falls within acceptable parameters.

Character and appearance

42. CSDP Policy H7 sets out principles for the development of residential new build within the curtilage of an existing dwelling. The Council argue that the guidelines are equally applicable to residential conversions. They object to the appeal scheme on the grounds that the outbuilding amounts to tandem development, disrupting the established form of development in the area as it does not have a clearly defined frontage facing the street.
43. The outbuilding is a small single storey brick building with a tiled roof. Although it is visible beyond the boundaries of No 22, it is fairly well screened and is not particularly intrusive in the street scene. It is designed much like the other outbuildings in the area, and as a result, does not appear out of place. The landscaping features around it are also well established, helping it to blend in with its surroundings.
44. However, in this case, planning permission is sought for a material change of use, and the alleged breach of planning control excludes any operational development. It is not clear how this change of use could be expected, for example, to respond to the local character of the area, amongst the other policy requirements. The change of use may have involved some alterations to the external appearance of the building. However, from my observations on my visit, there is nothing out of the ordinary about the outbuilding, nor any element of it that appears inappropriate in its context.

45. Indeed, if the structure had been provided with a separate access and a frontage addressing the street, it would likely appear more markedly out of place than the current configuration. The character and appearance of the local area is therefore maintained and not adversely affected by the material change of use of the land. Accordingly, I find no conflict with CSDP Policy H7.

Planning balance and conclusion on ground (a)

46. The NPPF holds that sustainable development encompasses economic, social and environmental objectives which are interdependent and need to be pursued in mutually supportive ways. With those objectives in mind, the appellant argues that the development has created employment for local builders and trades people which contributes to the local economy. Additionally, the development draws visitors to the area, who in turn will make and economic contribution.
47. The appeal site may provide some ongoing employment in terms of repairs and upgrading, but this would be limited due to the small scale of the building. Holiday makers can undoubtedly help to support the local economy, and well-designed holiday accommodation can certainly be part and parcel of a strong, vibrant and healthy community. However, there is little evidence of any pressing need for holiday accommodation in this location that would outweigh the harm I have found above.
48. Were the building to be occupied permanently, this would have the social benefit of adding a dwelling to the local housing stock and perhaps allowing for a greater degree of engagement with the local community. However, these benefits would not mitigate the harmful living conditions I have identified to any longer-term future residents of the outbuilding.
49. I have taken into account the appellant's suggestion that a condition could be imposed controlling the holiday use of the property. However, as I would be granting permission for a 'self-contained dwelling', as per the wording of the notice, such a condition would not be reasonable. A condition prohibiting the sale of the building as a separate unit of accommodation would not preclude its being let to permanent residents. I am therefore satisfied that the development cannot be made acceptable by way of condition.
50. Taking all the above factors into account, I conclude that the development is contrary to the development plan when read as a whole. Although some minor benefits have been identified, these are not of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
51. The appeal on ground (a) therefore fails, and the deemed planning application is refused.

The appeal on ground (g)

52. Ground (g) is that the time given to comply with the notice, in this case one month, is too short. The appellant suggests that an alternative period of at least three months would be appropriate.
53. I agree that no physical works would be required to comply with the notice, and that it would be a straightforward administrative exercise to cancel any bookings beyond the compliance period. The key question for ground (g) is

what is 'reasonable', and the task is essentially to balance the public interest in the notice being complied with against the private interests bound up in the development.

54. I am mindful that the appellant is entitled to assume success on ground (a). Any bookings will have been made in good faith by holiday makers, who will undoubtedly be disappointed by cancellation at short notice.

55. For those reasons, I conclude that an extension of the compliance period to two months would be reasonable, giving a little more leeway for bookings to be cancelled. In the absence of any detailed explanation from the appellant on the matter, I see no justification to allow three months or longer.

56. To that limited extent, the appeal on ground (g) succeeds.

Conclusion

57. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR

