



Appeal Decision

Site visit made on 23 January 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 20 March 2024

Appeal Ref: APP/P1615/C/23/3328609

Harts Farm, Chapel Lane, Redmarley, Gloucester GL19 3JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jacob De Wit against an enforcement notice issued by Forest of Dean District Council.
 - The notice was issued on 28 July 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the annex [sic] as a separate residential dwelling.
 - The requirements of the notice are to: 1. Permanently cease the use of the annex [sic] as a separate residential unit. 2. Permanently remove the kitchen within the annex [sic], within the red lined area of the Enforcement Notice plan, attached in Appendix 1, and seen within the photo attached in Appendix 2. 3. Permanently remove from the Land all resultant materials generated through compliance with steps 1 & 2 above, within the blue line of the Enforcement Notice plan attached in Appendix 1.
 - The period for compliance with the requirements is: 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.
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Decision

1. It is directed that the notice be corrected by deleting the following requirements at paragraph 5:

“2. Permanently remove the kitchen within the annex [sic], within the red lined area of the Enforcement Notice plan, attached in Appendix 1, and seen within the photo attached in Appendix 2. and 3. Permanently remove from the Land all resultant materials generated through compliance with steps 1 & 2 above, within the blue line of the Enforcement Notice plan attached in Appendix 1.”
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. There are claims relating to expediency and investigation of the enforcement case. These are procedural matters and do not form part of the appeal under the grounds which have been appealed. They are matters for the Council and hence will not form part of my decision.
4. The appellant refers to errors in the notice, some considered typographical and others constituting errors that cumulatively they consider result in a notice which is invalid. While I note there are errors within the notice, such as reference to “Operational Development” when the notice is for a material

change of use, the enforcement notice description is not a legal requirement and it is clear from the notice read as a whole that it concerns a material change of use, and the recipient would not be in any real doubt about that.

5. It is also raised that the creation of a separate fully “independent” dwellinghouse would constitute a material change of use and that the allegation should refer to a material change of use from one dwelling to two dwellings rather than referring to the use of the annexe as a separate residential dwelling.
6. Section 55(3) of the Act states that for the avoidance of doubt it is hereby declared that for the purposes of this section— (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building *and of each part of it which is so used* (my emphasis). Therefore, I find that both the allegation as in the notice and the appellant’s considered opinion for the wording of the allegation could be considered to correctly identify the breach of planning control. In this respect the alleged breach of planning control is correctly identified in the notice.
7. The appellant refers to the enforcement notice plan which they consider to incorrectly identify the space that forms the annexe and shown on the plan as being included within the red line. The red line is said to extend beyond the annexe accommodation, incorporating space within the utility/boot room which forms part of the main dwellinghouse and is described as space shared by the appellant and their family and those occupying the annexe. The annexe is an entity that has benefitted from a grant of planning permission, the terms of which include approved plans, so there can be no real doubt or ambiguity as to the extent of the building which is the subject of the notice. Nevertheless, whether this space is included within the red line or not, I consider that the enforcement notice plan is accurate enough for its purpose and even without a plan, the site can precisely be described in words alone.
8. While the appellant also states that the reasons for issuing the notice refer to ‘prospective works’, I consider that the reasons have been appropriately articulated having regard to the provisions of the development plan as required by s172(1)(b), and the appellant fully understands what has been alleged and what is required to comply with the notice. Accordingly, there is no need for correction and no basis upon which the notice might be quashed.
9. The appellant raised concerns that the nature of service of the notice fell below the required standards, citing that the notice, which was marked with the word “warning” rather than “important” was left in a box off-site, and not discovered until 31st July 2023. A ground (e) appeal has not been made but even if it had been, the appellant has submitted their appeal against the notice within the timeframe and has had an opportunity to argue their case fully during the appeal proceedings. Furthermore, with regard to the marking of the envelope, where the name and address of a party is known, there is no requirement under s329(2)(b) of the Act to mark the envelope in any prescribed way. It cannot, therefore, be said that the appellant has suffered any substantial prejudice.

Background

10. The appeal relates to an extension (the annexe) which was added to Harts Farm under planning permission ref: P1009/10/FUL and listed building consent ref: P1008/10/LBC approved by notice dated 19 July 2010. The permission was for alterations and an extension to the dwelling to provide annexed accommodation. Condition 03 states that the extension/annexe shall be solely used for purposes ancillary to the occupation and enjoyment of the existing property as a dwelling and shall not be occupied as an independent planning unit of residential accommodation. The accommodation provides two bedrooms, a sitting room, kitchen and bathroom and hence is capable of independent use. The main thrust of the appellant's case is that there has not been a material change of use of the appeal site and that the annexe is not a separate planning unit but rather its use has remained incidental to the residential use of the dwellinghouse, the purpose for which it was built.
11. Initial investigations commenced in July 2017 regarding the annexe being let out to non-family members since July 2016. This prompted the submission of application P1514/18/FUL for a change of use of the permitted annexe to a residential dwelling with associated curtilage. The planning application was refused by notice dated 29 November 2018 and an appeal was dismissed on 13 June 2019.
12. A further application ref: P1867/19/FUL for the change of use of the permitted annexe to a residential dwelling with associated curtilage (amended resubmission) was refused by notice dated 11 March 2020. An appeal was dismissed on 29 January 2021.
13. An initial enforcement notice was issued on 30 July 2019 alleging 'without planning permission, the material change of use of the annexe as a separate residential dwelling'. The notice was quashed on appeal¹. This was because it was considered that the notice did not specify, with sufficient clarity, the land which was the subject of the notice, as it excluded the kitchen and shower room that formed part of the annexe.
14. The current notice, issued on 28 July 2023 was served under s171B(4)(b) (the second bite provision). This states that the time limits do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

The appeal on ground (b) and ground (c)

15. There is some overlap in the arguments on grounds (b) and (c). Consequently, it seems that the sensible way to approach these grounds is to tackle them together. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under grounds (b) and (c). I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
16. It is not necessary for an enforcement notice expressly to identify the former land use, and here there is no dispute between the parties that the land is in a

¹ APP/P1615/C/3236223 dated 7 February 2020

residential use. Nevertheless, the reasons for issuing the notice inform the reader that the former function of the annexe space was to provide extended accommodation used in a manner incidental to the residential use of Harts Farm, the main dwellinghouse.

17. Under an appeal on ground (b) the appellant must demonstrate with sufficiently precise and unambiguous evidence that the material change of use of the annexe to a separate dwelling, as alleged, has not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time the notice was issued.
18. The appeal on ground (c) is a claim that those matters, if they did occur, do not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant to show that if the matters alleged did occur, they did not constitute a breach of planning control. The test of the evidence for both grounds of appeal is on the balance of probabilities.

Evidence

19. The appellant's mother-in-law and father-in-law moved into the annexe in December 2010. They were said to live fairly independently although no further information is provided to support this. When the appellant's father-in-law passed away in September 2014, the appellant's mother-in-law remained in the annexe. From January 2015, a lodger moved into the annexe and shared the space with the appellant's mother-in-law until January 2016 when she moved to a residential home. The lodger stayed at the annexe until June 2016.
20. In July 2016 a new lodger moved into the annexe and remained there until January 2017. The annexe was then occupied by two lodgers from February 2017 until August 2020, and then by a single lodger until October 2022. At the time of the appeal, the annexe had been occupied by a single lodger since November 2022.
21. The lodgers are not members of the appellant's family. They occupy the annexe, which is set up to provide independent living accommodation, separately from the main house, but have shared use of the utility/boot room with the appellant and his family. The lodgers have access to the annexe via their own external door which leads directly from the garden into their kitchen. They can also access the annexe via the front door to the main house which leads into the utility/boot room. Two inter-connecting lockable doors, possibly to aid with sound proofing, lead from this area into the annexe.
22. It is provided that the lodgers have use of storage areas in the outbuildings, use of the swimming pool, stables and the grounds. Some lodgers are said to have an informal agreement with the appellant aiding with chores at the stables and dog sitting/babysitting. The occupants have a 'lodger's agreement' rather than an assured shorthold tenancy agreement and are said to live independently, occasionally sharing meals on special occasions with the appellant and his family. Monthly rent is paid as well as an agreed amount for utilities which are shared with the main house, and electricity, which is calculated from a sub meter.
23. The appellant states that the main dwellinghouse and the annexe retain a functional connection, as they share services and facilities (water and electricity

supply, drainage, vehicular access and parking). Heating is provided for the main dwellinghouse and the annexe by a single biomass boiler, which is controlled from within the house. There is said to be no physical separation between the main house and the annexe. The grounds surround the buildings with the formal garden to the side and rear of the main dwelling and the annexe. Access to Harts Farm and its outbuildings is via a single driveway which also serves a neighbour. There is no apparent delineation of parking or outdoor amenity space.

24. Although it may be that there is an element of shared internal and external space and that services are shared, that alone does not indicate that the way in which the annexe is occupied is incidental to the dwellinghouse. Furthermore, there is a financial arrangement for paying rent and for a proportion of those services. While separately rated for Council tax purposes, the annexe is said to not have a separate postal address. Although there is no evidence to dispute this, there is a mailbox on the wall by the external door with a house name inscribed, and there is a doorbell. The external door enables access to be gained completely independently of the main house and the mailbox and doorbell further suggest a functional separation from the main dwelling and independence for the occupants.
25. While the appellant claims that the lodgers provide an element of 'helping out' to the main household, there is little evidence to suggest that there is any day-to-day interaction between occupants other than an occasional shared meal and assistance that is said to be occasionally provided by the lodger(s). Consequently, I am not persuaded that this demonstrates that the non-family member lodger has a strong functional connection with the main dwelling.
26. Overall, I find that the evidence provided demonstrates that the annexe and main dwellinghouse are occupied as two separate households. While there may be an element of assistance with 'chores' at Harts Farm, since January 2016 the occupants of the annexe, who are not family members, have occupied the space, paid a monthly rent plus 'bills' to the appellant and have had sole use of the annexe accommodation. I note that the utility/boot room offers communal space, but that is not dissimilar to a communal entrance hallway in a flatted property where each flat is a separate planning unit.
27. Furthermore, the use of a lodger's agreement in these circumstances in place of a shorthold tenancy agreement is probably a more appropriate form of rental agreement where there is a resident landlord, albeit not sharing the same space. Consequently, I accord little weight to the use of the lodger's agreement to persuade me that there is one primary residential use and that the annexe is used in a manner that is incidental to the main dwellinghouse.
28. From the evidence provided, I consider that, on the balance of probabilities, the annexe has become a separate single dwellinghouse. Two distinct areas are occupied by two separate households enabling each to live quite separate lives and thus the use of the annexe, as documented, has created a new planning unit. Any separate residential occupation of a building within an existing single residential planning unit is development by virtue of s55(3)(a) of the Act. Therefore, as a matter of fact and degree, the matter alleged has occurred and constitutes development for which planning permission is required. Consequently, the appeal on ground (b) and ground (c) fails.

The appeal on ground (d)

29. In an appeal on ground (d), the onus is on the appellant to demonstrate that, on the balance of probabilities, at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. In other words, to show that what is alleged in the notice is immune from enforcement action having subsisted for the four-year period laid down by s171B(2) of the Act.
30. The Council issued the first notice for the same breach of planning control on 30 July 2019. This notice was quashed on appeal dated 7 February 2020. The Council then issued a second amended notice, which is the subject of this appeal, on 28 July 2023 under the 'second bite' provisions. Although the appellant has cited differences between the notices, I am satisfied that the second notice reflects the breach of planning control in the first notice. Therefore, it is the date that the original notice was issued that sets the timeframe for establishing the relevant period for the ground (d) appeal. The immunity period is 4 years, and no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. To succeed on this ground of appeal, the appellant must show that the alleged use had occurred no later than 30 July 2015 and had subsisted without significant interruption for four years.
31. From the evidence, I have ascertained that a material change of use of the annexe has occurred, and it seems to me that this use commenced once the appellant's mother-in-law moved out of the annexe in January 2016. At this point the annexe was occupied solely by a lodger who had previously shared the accommodation with a member of the appellant's family. Up until the appellant's mother-in-law vacated the space, the annexe was used as extended accommodation for the purpose for which it was built. Once this use had ceased, the evidence indicates that the use of the annexe as an extension of the appellant's accommodation ceased and the ancillary link to the main dwellinghouse had been severed. This is some three and a half years prior to the date of the first notice. Therefore, the use was not lawful on the date of the first notice and was not immune from enforcement action through the passage of time.

The appeal on ground (f)

32. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case the requirements of the notice indicate that its primary purpose is to remedy the breach by discontinuing the use of the annexe as a separate dwelling. For the appeal on ground (f) to succeed, the appellant would need to propose alternative steps which would remedy the breach.
33. The appellant cites the requirement to remove the kitchen from within the annexe to be onerous and to go beyond what is appropriate and necessary to comply with the notice. Planning permission was granted in 2010 for alterations and an extension at Harts Farm to provide annexed accommodation. The approved plans show the accommodation provides a kitchen. To this extent I concur with the appellant. Accordingly, requirement 2 and consequently

requirement 3 at section 5 of the notice 'Steps required to rectify the breach' should be deleted from the notice.

34. The appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

35. This ground of appeal is that the period specified in the notice falls short of what should be reasonably allowed. In making an appeal on ground (g), the onus is on the appellant to suggest a different compliance period.

36. The need for an extension of the period for compliance needs to be balanced against the harm set out in the notice, which in this case is primarily the harm to the setting and significance of the principal listed building, the impact on living conditions of the occupants of both the house and the annexe, and the conflict with the Development Plan. I acknowledge that finding suitable accommodation is challenging and that this is particularly so in rural areas. The appellant has suggested that the compliance period be extended to 12 months, stating seasonal term implications of nearby Hartpury College creating high demand in the area for accommodation and the impact of an absence of affordable accommodation on the current occupant's employment. However, nothing has been put forward to demonstrate that there are no other suitable options available in the surrounding area.

37. I recognise that compliance with the enforcement notice would interfere with the occupant's rights as set out in article 8 of the Human Rights Act and dismissal of the appeal on ground (g) would have an impact on the timing and therefore impact of that interference. However, this must be weighed against the wider public interest. Overall, on the evidence before me, and with nothing to persuade me otherwise, I conclude that six months should be sufficient time to look for alternative accommodation and is reasonable considering the reasons for issuing the notice. I am satisfied that any interference with the occupant's human rights is proportionate, having regard to the public interest in seeking compliance with planning law and policy.

38. The appeal on ground (g) therefore fails.

S A Hanson

INSPECTOR