



Appeal Decisions

Site visit made on 5 December 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 DECEMBER 2025

Appeal A Ref: APP/Q9495/C/25/3364352

Appeal B Ref: APP/Q9495/C/25/3364353

Land at 5 Rayrigg Rise, Bowness on Windermere, Cumbria, LA23 3DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Mark Morgan and Appeal B is made by Mrs Megan Morgan against an enforcement notice issued by Lake District National Park Authority.
 - The notice was issued on 16 April 2025.
 - 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 a single dwellinghouse to two dwellinghouses.
 - The requirement of the notice is discontinuing the use of the Land otherwise than as a single dwellinghouse.
 - The period for compliance with the requirements is one month after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended).
-

Decisions

1. The appeals are dismissed, and the enforcement notice is upheld. It is directed that the enforcement notice is varied by the deletion of the words *“discontinuing the use of the Land otherwise than as a single dwellinghouse”* in section 5 and the substitution of the words *“cease the use of the land as two dwellinghouses”*. Subject to the variation, the appeals are dismissed, and the enforcement notice is upheld.

The Notice

2. The requirements of a notice should match the allegation. In this case, the alleged breach of planning control is *“without planning permission, the making of a material change of use of the Land from a single dwellinghouse to two dwellinghouses”*. The requirement of the notice is *“discontinuing the use of the Land otherwise than as a single dwellinghouse”*. In the interests of precision, and without injustice being caused to the main parties, I shall vary the requirement of the notice so that it reads *“cease the use of the land as two dwellinghouses”*.

Preliminary Matters

3. Based on the appellants' evidence, Airbnb images from the Authority, and my own site visit observations, part of the lawful single dwellinghouse includes a separate space which has basic and self-contained facilities and amenities to enable day to day living. In other words, a self-contained area within the lawful dwellinghouse is in situ which includes a living/dining/kitchen room, bedroom and bathroom. This is separated from the remainder of the building by an internal door which includes a lock. The separate self-contained space has its own outside entrance door leading to a patio and then to the driveway serving the property.

4. A screen shot relating to the self-contained space, taken from Airbnb, and included in the Authorities' statement of case refers to it as a "*newly built luxurious self-catering ground floor flat*" and *'the property is adjoined to the owner's house with a private entrance, parking and outdoor space'*.
5. The appellants claim that the space has been used "*as a bedroom within our property*" by friends and "*when not in use by friends and family, we have chosen to let the space to holiday makers under the Government's rent a room scheme*". The appellants state that the space has no separate utilities and is "*serviced accommodation*".

Ground (b) appeals

6. An appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The onus is on the appellant to make a case on the legal grounds of appeal.
7. The claim made by the appellants is that when the notice was issued, the primary use of the appeal building was a single dwellinghouse. In other words, the claim being made is that the space which is the subject of this appeal was being used for a purpose that was incidental to the enjoyment of the dwellinghouse and hence did not involve an act of development by virtue of section 55(2) of the Act which states that the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not involve the development of land.
8. The appellants do not dispute the use of the space as serviced accommodation. In my judgement, the space has the distinctive characteristics of a dwellinghouse in so far that it can afford those who use it on this basis the facilities required for day-to-day private domestic existence. In this regard, and, having regard to case law¹, and, as a matter of fact and degree, I find that evidence indicates that when the notice was issued the building was in use as two separate dwellinghouses.
9. In effect, the appellants' evidence does not sufficiently and precisely counter the position of the Authority that the space has been used as a separate self-contained flat (i.e., a dwellinghouse) within its own separate planning unit and by paying members of the public. The absence of laundry facilities in the self-contained dwellinghouse, or cleaning the accommodation when guests leave, does not alter this finding.
10. It is noteworthy that the appellants have themselves described the space as a "*self-catering ground floor flat*" in Airbnb marketing particulars. This casts some doubt about any claim that when the notice was issued it was being used for a purpose which was incidental to the primary use of the building as a single dwellinghouse. Moreover, the appellant does not dispute the evidence from the Authority relating to Airbnb marketing information, or indeed that the space has been occupied by individuals unconnected with the appellants and used for residential purposes. In this regard, the evidence does not support use of the space as an associated extension of the primary use of the building as a single dwellinghouse.

¹ *Gravesham Borough Council v Secretary of State for the Environment and Michael O'Brien* (1982)

11. I acknowledge the appellants' claim that the space has also been used by family and friends since 23 December 2020. However, this assertion does not include details of any frequency, how the space was used in association with the lawful dwellinghouse (including whether the internal door was locked or unlocked), or any other objective or compelling evidence relating to use by named friends or family. In particular, the evidence is not sufficiently precise or detailed from the point of view of being able to confirm if such an alleged use for residential purposes is one that was integral to the residential use of the lawful dwellinghouse.
12. The onus is on the appellants in terms of the above matter and the evidence relating to it is no more than assertion. In other words, it lacks necessary precision. Therefore, I am unable to afford it any significant weight. The appellants do acknowledge, in any event, that part of the building has been used by paying guests who have no connection with them. Indeed, they state '*we had no intention of holiday letting the property initially, it was not listed until July 2021*'.
13. For the above reasons, and, on the available evidence that is before me, I conclude that when the notice was issued the breach of planning had occurred. Therefore, the ground (b) appeals fail.

Ground (c) appeals

14. An appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
15. The case made by the appellants in respect of the ground (c) appeals is essentially the same as that made in respect of the ground (b) appeals. For the reasons outlined above, I have concluded that when the notice was issued the appellants' evidence does not sufficiently demonstrate that the space was being used for an incidental purpose. Instead, the evidence indicates that it was being used as a self-contained and independent dwellinghouse by paying guests. Hence, the building was in use as two dwellinghouses falling within two separate planning units.
16. Section 55(3)(a) 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*'. In this regard, and, given my findings above, I conclude that the breach of planning control amounts to a material change of use and hence an act of development. There are no national permitted development rights in place relating to a material change use of a building from one dwellinghouse to two dwellinghouses.
17. For the above reasons, I conclude that the matters alleged constitute a breach of planning control. Consequently, the ground (c) appeals fail.

Ground (d) appeals

18. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement

notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

19. The appellants' case is that they moved back into the building, following refurbishment, on 23 December 2020. While the appellants do not dispute that the self-contained dwellinghouse has been used by holiday makers, and that it was advertised on Airbnb from at least July 2021, they say that it has also been used by friends and family. In respect of the latter, they claim that the space has been used on an integral basis to the residential use of the lawful dwellinghouse. I have already addressed this issue as part of the ground (b) and (c) appeals above. The evidence from the appellants lacks precision in terms of use by family and friends and is no more than assertion.
20. Even if the space had occasionally been used by family and friends, and it had been sufficiently demonstrated that such a use was integral to the residential use of the lawful dwellinghouse, the appellants do not dispute the evidence from the Authority that such space has been used by paying guests who do not have a functional relationship with the appellants. As detailed above, I have concluded that the space has functioned as a separate dwellinghouse in these instances.
21. It is necessary for the appellants to demonstrate that use of the building as two separate dwellinghouses has continued, without interruption, for four years. The appellants do not provide sufficiently precise and unambiguous evidence to demonstrate that the building has been used as two separate dwellinghouses falling with two separate planning units for a continuous period of four years. The onus is on the appellants to make such a case.
22. Even if I had concluded that the evidence sufficiently demonstrated that the space had been used by friends and family and integral to the residential use of the lawful dwellinghouse, this would have, in any event, restarted the four-year immunity period each time this happened and when the space was then used again as a self-contained dwellinghouse by paying guests.
23. It is not clear from the evidence when part of the building was first used by paying guests. Even if I were to take the view that the building was first used in this way in July 2021 (i.e., the date of the Airbnb marketing particulars), the notice was issued on 16 April 2025. Even if the space was used continuously for this purpose, and as a separate dwellinghouse, this would not amount to four years.
24. For the above reasons, and, on the evidence that is before me, I conclude on the balance of probability that on the date when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. Therefore, the ground (d) appeals fail.

Other Matters

25. The appellants make comments about the size of the unauthorised self-contained contained dwellinghouse, its suitability for local occupation, the need to modify it if it were used permanently given possible internal noise issues, and the fact that the lawful dwellinghouse does not include an occupancy condition. Such matters appear to relate to the planning merits of retaining the unauthorised additional dwellinghouse. There is no ground (a) appeal and deemed planning application before me. These are not therefore matters that are relevant to the consideration of the ground (b), (c) and (d) appeals.

26. I note that the appellants state that “*we have currently ceased taking any further holiday bookings*”. This is a matter that will need to be separately checked by the Authority. In any event, this is of no consequence in respect of this appeal which relates to the use of the building when the notice was issued.

Conclusion

27. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

D Hartley

INSPECTOR