The Planning Inspectorate

Appeal Decisions

Site visit made on 21 March 2017

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 March 2017

Appeal Refs:APP/L3815/C/16/3158037 (Appeal A) & 3161113 (Appeal B) 3 Pound Farm Road, Chichester, West Sussex, PO19 7PX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs D Clarke against an enforcement notice issued by Chichester District Council.
- The enforcement notice, numbered CC/132, was issued on 1 August 2016.
- The breach of planning control as alleged in the notice is "Without planning permission, the change of use of a building to a single dwellinghouse".
- The requirements of the notice are:
  (i) Discontinue the use of the building as a dwellinghouse,
  (ii) Remove the shower and dismantle the wet room and remove all resultant debris from the building, and
  (iii) Remove the kitchen sink, fridge and built in microwave from the building.
- The period for compliance with the requirements is three months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended and Appeal B on grounds (b) and (f) of the same.

Background and procedural matters

1. The notice relates to an outbuilding located at the end of the back garden of the appeal property, a two storey detached dwelling on the south side of Pound Farm Road. Planning permission was granted on 2 September 2009 for the replacement of an existing timber building with a new brick clad games room. A condition was attached to this permission stating: "*The development hereby permitted shall be used solely for purposes incidental to the enjoyment of the dwellinghouse as such and for no other purposes whatsoever*".

2. There is agreement between the parties that the building that has actually been constructed is materially different in terms of its size, internal layout, materials and use. The suggestion for the appellants is that the building as constructed evolved from what was permitted. It seems to me that rather than evolving what has been built is fundamentally different and cannot reasonably be argued as constituting the implementation of the scheme that was permitted with some modifications. I therefore find that it does not benefit from this earlier planning permission.

3. The Council have however made it clear in their statement that because the building is likely to have been constructed and completed over 4 years before the notice was issued[1] it is considered to be immune from enforcement action

[1] The appellants' agent asserts it was built over 7 years before the notice was issued

as operational development having regard to the terms of s171B(1) of the 1990 Act. From what is before me I take this to be the case. The issue is therefore whether the use of the building has resulted in the creation of a separate dwellinghouse which is not incidental or ancillary to the residential use of 3 Pound Farm Road.

Ground (b)

4. The basis of this ground of appeal is that the breach of planning control alleged in the notice has not taken place as a matter of fact. In support of this claim the appellants and their agent have provided details of the occupation which I will come to below. Essentially the argument is that friends, family and guests staying in the building as bed and breakfast accommodation have occupied and used it and that it has therefore always been used in association with or ancillary to the main house and not as an independent dwelling as alleged in the notice. The Council refute this arguing that the building has been provided with all the necessary facilities and amenities for independent day-to-day living and that this has resulted in the creation of a self-contained dwellinghouse functioning as a separate planning unit.

5. On my site inspection I noted that the layout is consistent with the "existing" floor plan submitted with the agent's letter dated 8 December 2016. The principal room is laid out as a furnished lounge. The galley kitchen is equipped with a sink, hob, microwave and fridge and has work surfaces and cupboards. The bathroom contains a shower, washbasin and toilet. There is no separate bedroom but a loft deck, accessed via a portable ladder, has been incorporated over the kitchen and bathroom which I understand has been used for sleeping purposes. It did not appear to be in use for these purposes at present being instead used to store domestic items, including a number of suitcases.

6. From these findings I accept that the building does possess all the essential facilities for separate day-to-day living. However, this in itself is not conclusive as it is necessary to examine the information on how this living accommodation has actually been used and occupied. In this respect if a member of the family had been living there, such as an elderly relative, who was part of the main household at the appeal property then this would not necessarily constitute the creation of a separate dwelling. Rather it may be viewed as an ancillary annexe for family members.

7. The details of occupation provided by the appellants are found within a letter dated 16 February 2016 sent to the Council and a Planning Contravention Notice (PCN) response of the same date. It is said that a family friend (Samantha Richards) occupied the building between 2013 and 2015 and she lived in the main house from time to time as well with her registered address for the electoral roll and car registration purposes being 3 Pound Farm Road. After that another family friend (Lucy Mayer) is said to have occupied the building from December 2015 to the date of the PCN and she acted as a house-sitter when the Clarkes were away. Additionally friends and family have occasionally stayed in the building when visiting. The Council have also referred to a posting on a Bed and Breakfast website dated June 2016 which describes the building as the Garden Room – a fully functional studio apartment with *"everything you need for a comfortable self-contained stay"*.

8. The legal test in this case is whether as a matter of fact and degree a single residential use – namely 3 Pound Farm Road – has become two separate residential uses and two planning units. The leading case, to which the parties have referred is *Burdle v SSE [1972] 1 WLR 1207*. From this judgment a number of accepted tests have evolved. In this case there is no suggestion that a use other than Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) is involved. The point at issue is whether there are now two dwellinghouses rather than one. It is evident from *Burdle* that a key consideration in reaching a finding in law on matters of this nature is whether physically and functionally separate areas have been created which amount to two separate planning units. I will now examine the facts applying this consideration.

9. Dealing firstly with the physical relationship of the appeal building, it sits within the garden of the host property and this has not been subdivided by a fence or boundary feature to create a separate or independent amenity space. In terms of access there is a pedestrian gate at the side of the house which allows entry to the rear garden from the forecourt which I understand has been used by occupiers to access the building without having to go through the house. However, this again has not been fenced off to provide a separate link but simply leads into the back garden. There is another pedestrian gate in the eastern boundary fence adjacent to the building which leads out to a service road which runs along the back of the properties on this side of Pound Farm Road. I observed that this is locked from the inside with a bolt and there was no evidence on the outside of a separate house name, number or a bell. Taking these factors into account, and allowing for the nature of the facilities within the building, it still appears to have a clear physical relationship with the host property.

10. Turning to the way in which the building functions, there is no evidence to demonstrate that it has been used or occupied by persons who have no relationship with the appellants other than the use for bed and breakfast accommodation. In that respect the agent has referred to two other appeal decisions where it was found that occupation of a room or rooms for bed and breakfast accommodation did not amount to a material change of use if it remained proportionate to the principal occupation as a Class C3 dwelling. The appeal property is a substantial detached house which has been extended and contains a number of bedrooms. In this context I do not consider that the use of the modest appeal building (about 16 sq.m. in footprint) as guest accommodation would trigger a material change of use.

11. As to the other known occupiers they have all been friends or family who appear to have occupied the building on a casual or informal basis. In this respect there is no evidence of any formal lease or letting agreement being entered into or rent being paid and nothing to indicate that a tenancy has been created at any time. Additionally it is not suggested that the occupiers have been given a separate address entry on the electoral roll or for Council Tax purposes and it is said that all bills for services and utilities are addressed and sent to the appellants at the host property and not to the occupiers of the appeal building. Bringing these points together I find that the circumstances surrounding the use of the building demonstrates that it remains functionally related to the host property and its use as a dwelling and in essence constitutes a residential annexe.

12. One final matter to address on this ground concerns the Council's reliance on the argument that what exists is sufficient to enable a person or persons to live a normal day-to-day residential existence independently of the main dwelling and for that reason a separate planning unit has been created. In this respect the agent draws my attention to the findings of the judge in *Uttlesford DC v SSE & White [1992] JPL 171*. Whilst this case concerned a residential annexe used by an elderly relative a determining finding was that just because the annexe contained the normal facilities for day-to-day living (in that case a bedroom, kitchen and bathroom) did not mean as a consequence a separate dwelling and planning unit had been created. This authority reinforces my finding that in the particular circumstances pertaining to this appeal the residential use remains ancillary to the host property.

13. Bringing all these points together I conclude that a physically and functionally separate dwellinghouse has not been created. Consequently the claimed breach of planning control, namely the change of use of the building to a single dwellinghouse, has not occurred as a matter of fact.

Conclusion

14. For the reasons given above I conclude that the appeals should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal on the other grounds pursued and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended in respect of Appeal A do not need to be considered.

Formal Decisions:

Appeals A and B

15. The appeals are allowed and the enforcement notice is quashed.

N P Freeman

INSPECTOR