



Appeal Decision

Site visit made on 3 March 2015

by **Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

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

Decision date: **27 March 2015**

Appeal Ref : APP/V2255/C14/2216008

Land at 16 Gayhurst Drive, Sittingbourne, Kent, ME10 1UD.

- 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 Tony Falanga against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 25 February 2014.
- The breach of planning control as alleged in the notice is breach of condition (2) of planning permission reference SW/10/0582 (the Permission). The Permission is for conversion of existing garage to residential use. Condition (2) of the Permission says 'The residential annex hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling at 16 Gayhurst Drive, Sittingbourne Kent ME10 1UD'. The notice alleges that the condition has not been complied with because the annex has been occupied by a person not associated with the occupiers of no. 16.
- The requirements of the notice are to cease the use of the annex as an independent residential dwelling.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction.

Preliminary Matters

1. In correspondence it has been brought to the Council's attention that the notice the subject of this appeal does not refer to the relevant time limit within which the breach is alleged to have taken place. Whilst there is no legal requirement to include this in an enforcement notice the Inspectorate notified the Council that it would be in the best interests of everyone involved for this to be clear. The parties were notified of my power on appeal to amend the notice and that the Inspectorate took the view that the relevant period in this case is four years. No objections were received from either party. There is no misunderstanding between the parties as to the relevant time period. I do not consider that injustice will be caused to either party by correcting the notice to insert the relevant time period. I amend the notice accordingly.
2. In correspondence the Appellant added a ground (d) appeal to the ground (a) appeal lodged on the appeal form and both parties have agreed to the written representation procedure. I determine this appeal accordingly.

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Ground (d) appeal

3. This ground of appeal is that, at the date when the notice was issued, it was too late to take enforcement action. Section 171B(2) of the 1990 Act (as amended) indicates that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The onus of proof rests with the Appellant.
4. The Appellant says that he bought the property in September 2006. He provides a copy of an assured shorthold tenancy agreement for 16 Gayhurst Drive dated 8 October 2006 between himself (as Landlord) and three named individuals. He says that the annex has its own postal address and has been banded for council tax purposes. He provides a copy of notification from the Valuation Officer addressed to Annexe at 16 Gayhurst Drive dated 12 March 2012. He also provides a copy of an email from the Council confirming that the Royal Mail have approved 16a Gayhurst Drive as the official postal address (dated 12 August 2013) and copies of council tax demand notice dated 4 March 2014 addressed to 16a Gayhurst Drive.
5. The notice refers to site inspections carried out by Council enforcement staff which established that no 16 had been let to private individuals and that occupation of the annex was by a person not associated with the occupiers of no 16. But there is no evidence before me of these inspections. The Council say that the tenancy agreement is directly contradicted by an application for planning permission submitted on the Appellant's behalf dated 30 April 2010 (application SW/05/1165) which describes the proposal as conversion of existing garage to residential annex and states that work had not started. They also provide photographs dated 19 May 2010 which they say directly contradict the Appellant's assertion that the annex has been used as a separate dwelling since 2006. They argue that the other information provided by the Appellant (namely information about street numbering and council tax) does not support the Appellant's case. In any event they argue that as the alleged breach concerns a breach of condition the four year period for immunity cannot pre-date the implementation of the Permission.
6. No enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The alleged breach concerns condition 2 of the Permission. The Permission was granted on 25 June 2010. Even assuming immediate implementation of the Permission in breach of condition 2 less than four years have expired from the first possible date of breach and the issue of the enforcement notice on 25 February 2014.
7. In any event, the Appellant's assertion that the annex has been used as a separate dwelling since 2006 is not supported by the evidence before me. The copy tenancy agreement produced by the Appellant is signed by the Appellant and two of the named individuals but not witnessed. It is not conclusive evidence of occupation by the named individuals and moreover it refers to 16 Gayhurst Drive and therefore could apply to the bungalow (no 16) rather than the annex attacked by the notice. The Appellant's assertion is directly contradicted by the application for planning permission in 2010 which expressly describes current use as a garage. Photographs produced by the Council show the annex in use for storage purposes in 2010. The evidence before me does

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not support the Appellant's assertion that the annex has been occupied as an independent dwelling for more than four years before service of the notice.

8. The onus of proof rest on the Appellant to show on a balance of probabilities that it is too late to take enforcement action. He has not on the evidence before me discharged that burden.
9. The appeal on ground (d) fails.

Ground (a) and deemed application

Main Issue

10. The Permission includes a condition (condition 2) preventing occupation of the annex other than for purposes ancillary to the residential use of no 16. Therefore the main issue in this appeal is the effect of the use of the annex without compliance with condition 2 on the character of the surrounding area.

Character

11. The appeal site is located in a residential area. The converted garage is located at the rear of a bungalow (no 16). It sits against the side boundary with no 14. No 16 and the converted garage share a driveway used for parking vehicles.
12. The development plan (including the Swale Borough Local Plan (the Local Plan)) seeks to ensure that development respects its surroundings. Policy E1 of the Local Plan lists general development criteria, including that development should respond positively by reflecting the positive characteristics and features of the site and locality and be well sited.
13. The surrounding area is characterised by a mix of bungalows and houses which face the highway. Some neighbouring properties have garages but independent dwellings set back behind the established building line are not prevalent and not characteristic of the area. I note the objection from a neighbour which comments that the use as a separate dwelling does not fit in with surrounding properties.
14. I saw from my site visit that the annex contains facilities for independent day to day living but its overall size is small and the level of facilities basic. Its facilities are consistent with a use ancillary to that of a main dwelling and it shares an access and parking area with no 16.
15. Whilst removal of the condition would not directly affect the exterior of the property its occupation as an independent dwelling is likely to affect the character of the area. It is likely to attract more comings and goings which will disrupt the existing quiet residential character of the area. It would not reflect the positive characteristics and features of the locality and its siting behind the established building line is out of keeping with the surrounding area. For these reasons, I conclude that the removal of the condition has the potential to cause undue harm to the character of the area and does not accord with the development plan, including policy E1 of the Local Plan.
16. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I have considered the conditions proposed by the Council but the provision of a garden area and landscaping together with the removal of permitted development rights will not address the identified harm to the character of the area.

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17. Compliance with the notice may deprive the occupier of their home. I have taken into account the Human Rights Act 1998. Interference with the way an individual uses property must be proportionate taking into account conflicting considerations of public and private interest. I have balanced the right for respect for family and private life and the home against the identified harm. I conclude that in this case the balance rests in favour of remedying the identified harm.
18. I have also balanced the demand for housing that meets the needs of the area. But in this case the identified harm outweighs any minimal contribution that this small unit of accommodation might have to the wider housing market.
19. For the reasons given I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Formal Decision

20. It is directed that the enforcement notice be corrected by the addition of the words 'It appears that the above breach of planning control has occurred within the last four years' in paragraph 4 of the notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S.Prair

Inspector