The Planning Inspectorate

Appeal Decision

Site visit made on 17 January 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 3 February 2017

Appeal Ref: APP/J3720/C/16/3156795
Land at The Coach House, Haven Pastures, Liveridge Hill, Henley in Arden, Warwickshire B95 5QS

- 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 Mrs Keeley Melhuish against an enforcement notice issued by Stratford on Avon District Council.
- The enforcement notice was issued on 20 July 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of an office building (edged in red on the plan attached to the notice) to a self-contained dwelling (now known as The Coach House).
- The requirements of the notice are to cease the use of the building edged in red on the plan attached to the notice as a self-contained dwelling.
- The period for compliance with the requirements is 6 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 Decision: The appeal is allowed, and the enforcement notice is quashed

The appeal on ground (d)

1. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of four years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.

2. The Council is satisfied that The Coach House was occupied as a self-contained dwelling from August 2010 until December 2011, and again from August 2012 until the date on which the enforcement notice was issued. The matter in dispute is therefore whether the period of some seven and a half months between December 2011 and August 2012 constitutes a break in the occupation of The Coach House as a self-contained dwelling, and whether or not the Council could have taken enforcement action against that use during that period[1].

3. Between August 2010 and December 2011, The Coach House was occupied by Ms Peaches Melhuish. On 17 December 2011, Ms Melhuish vacated the property due to problems with the gas boiler. I have been provided with a copy of the work sheet completed by the gas engineer that attended the

[1] *Swale BC v FSS & Lee* [2005] EWCA Viv 1568, [2006] JPL 886

property the following day, which confirms that the boiler could not be ignited and that new parts were required. The engineer also confirmed that the gas supply was isolated until a return visit could be made.

4. The gas engineer made the return visit on 20 February 2012 and fitted the replacement part. However, the work sheet for that date indicates that the engineer was unable to check the boiler because there was no gas supply. A delivery of gas was made on 21 March 2012. The gas engineer made a further visit was made on 4 April 2012 but, although the gas supply had been re-established, the engineer found that another replacement part was required. That part was fitted on 20 April 2012, but a gas leak prompted a further visit by the gas engineer on 23 April 2012. On that occasion, the work sheet indicates that the source of the leak was located and that the boiler was working normally.

5. I accept that the work to repair the boiler appears to have taken place over lengthy period of time, albeit part of that was a delay caused by the need to replenish the gas supply. Nevertheless, it is clear from the detailed notes on the work sheets completed by the gas engineer following each visit that the work involved the fitting of several new parts and safety testing of the gas boiler. I am therefore satisfied that the property could not reasonably have been occupied as a dwelling during the period when this work was taking place.

6. In the interim, the property was marketed from January 2012 in anticipation, as the appellant explains, that the problem with the gas boiler would be quickly resolved. A letter from the estate agent dated 18 September 2012 indicates that most of the furniture had been removed at that time and that the property was unfurnished. I have been provided with no evidence of viewings taking place whilst the repairs to the boiler were in progress but the property was viewed on 26 April 2012 by a Mrs Humphries, shortly after the gas boiler had been declared to be working normally. I understand that Mrs Humphries intended to move in to the property on 20 May 2012 but, in the event, decided not to take the tenancy. The furniture provided at the request of Mrs Humphries was then removed.

7. Further viewings took place on 7, 20 and 21 July 2012, one of which led to Mr & Mrs Cox taking the tenancy from 4 August that year. I understand that Mr & Mrs Cox remained in occupation until at least the date on which the enforcement notice was issued and possibly until 31 October 2015, although the property was vacant at the time of my site inspection.

8. The Council indicate that Council Tax for the property was initially paid from 23 August 2010. On 22 March 2012, the Council wrote to Ms Melhuish to confirm that the Council Tax liability would be reviewed following her vacation of the property due to the failure of the gas boiler. This was followed by a letter from the Council dated 19 April 2012 to confirm that the property qualified for an exemption from standard Council tax on the basis that it was both unoccupied and unfurnished. However, on 20 June 2012, the Council wrote to Mrs Melhuish, pointing out that a routine void visit on 23 May 2012 had found the property to be furnished and indicated that the discount previously applied was to be amended.

9. This decision was contested by Mrs Melhuish, with the result that the property was re-visited by a Council Tax Inspector on 4 July 2012. The furniture recorded by the Council Tax Inspector on that visit included a table and two

stools in the kitchen, a settee, chair and coffee table in the lounge and small tables or wardrobes in the bedroom. The Council Tax Inspector specifically noted that there were no beds in any of three bedrooms.

10. The Council Tax records are broadly consistent with the version of events set out above. The routine void visit on 23 May 2012, which found the property to be furnished, corresponds with the furnishing of the property in preparation of Mrs Humphries' intended occupation. Similarly, the visit by the Council Tax Inspector on 4 July 2012, which again found the property to be furnished, is consistent with the comment made by Mrs Melhuish in her statutory declaration that The Coach House was never fully without furniture. Indeed, the list of items listed by Mrs Melhuish in her statutory declaration corresponds closely with that noted by the Council Tax Inspector.

11. I acknowledge that there is a possible anomaly in relation to the comments made by Mrs Melhuish in her statutory declaration and the information submitted by Ms Melhuish to the Council in relation to Council tax liability in March 2012, which indicated that the property was both unoccupied and unfurnished. There is also an anomaly with the indication that the furniture provided at the request of Mrs Humphries was removed when the tenancy was not taken up, and the letter dated 18 September 2012 from the estate agent that the property was unfurnished when a prospective tenant viewed the property in July 2012. Nevertheless, taken in the round, the evidence points to the property being at least partly furnished from May 2012 onwards.

12. Having regard to the above, I am satisfied that the period during which the property was not occupied between December 2011 and the end of April 2012 can be explained by the fact that the gas boiler was either not working at all or could not be operated safely due to suspected gas leaks. I accept that the period of time taken to fix the gas boiler might appear to be excessive, but can be satisfactorily explained by the need to obtain and install replacement parts, as well as replenishing the gas supply.

13. Once the gas boiler had been declared safe to operate on 23 April 2012, the property was viewed by a prospective tenant with three days. The property was then prepared for an intended occupation date of 20 May 2012, and it is no fault of the appellant's that the tenancy then fell through. The property was then re-marketed and a new tenant found in what I consider to be a reasonable period of time. I note also that active occupation of the property resumed promptly once a new tenant had been found. On that basis, I find that the gaps in occupation as a result of the attempts to find new tenants may be regarded as being *de minimis*.

14. The foregoing are all circumstances in which the property was either not available for occupation or in which the gaps in occupation may be regarded as being *de minimis*. I am therefore satisfied that, despite not being actively occupied for a period of some seven and a half months, as a matter of fact and degree the Council could have taken enforcement against the use as a self-contained dwelling at any point during that period. Taking into account the undisputed occupation of the property before and after the period in dispute, I am satisfied that, on the balance of probability, the use of The Coach House as a self-contained dwelling has been continuous and without significant interruption for a period in excess of four years beginning with the date of the breach.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly the enforcement notice will be quashed. In these circumstances the appeal on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

16. The appeal is allowed, and the enforcement notice is quashed.

Paul Freer

INSPECTOR