



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 12/10/2023

Appeal reference: CAS-01811-J9B8H6

Site address: Land at garage to the rear of 1 John Street, Mumbles, Swansea SA3 4LH

- 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 Anthony M Morris against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered ENF2020/0308, was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of an outbuilding to provide an independent unit of residential accommodation.
 - The requirements of the notice are to:
 - i. Cease the use of the building identified as Ty Glas 16 William Street to the rear of No.1 John Street as an independent unit of residential accommodation.
 - ii. Remove the fence subdividing the plot forming the rear garden and the plot on which the garage is located (see Appendix A).
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
 - A site visit was made on date 4 July 2023.
-

Decision

1. It is directed that the enforcement notice is corrected by the deletion of requirement 5(ii) of the notice and Appendix A attached to the notice. I shall allow the ground (b) in part, in so far as it relates to the requirement to remove the fence.
2. Subject to this correction, I shall dismiss the remainder of the ground (b) appeal, in so far as it relates to the outbuilding. The enforcement notice is upheld.

Procedural Matters

3. Initially grounds (c) and (d) were pleaded, these were withdrawn. A new ground (b) was pleaded, and the appeal is considered on this ground alone. The procedure for this appeal changed from inquiry to written representation and the parties were informed of this decision. An accompanied site visit took place on 4 July 2023.

The site and background

4. The appeal site incorporates No. 1 John Street and the rear outbuilding. The rear outbuilding is accessed off an access track from William Street. The outbuilding was granted planning permission in 2000 under reference A00/1590. This permission was for a first-floor rear extension and erection of a detached garage. The Council and the appellant concur that the outbuilding, its outer walls, were being built in 2009, having been instigated by the laying of foundations in around 2005. During the construction the Council issued an enforcement notice (EN) alleging the erection of a domestic outbuilding and required it to be demolished or altered so that it is built in accordance with the planning permission. An appeal against the EN reference APP/B6855/C/09/2109223 was dismissed on grounds (a) and (f) in 2009. Following a subsequent investigation in 2010 the Council were satisfied that the building had been built in accordance with the approved plans of planning permission A00/1590.
5. The Council indicates that the outbuilding was built and completed as an ancillary use to that of the host dwelling No. 1 John Street. The file note in 2010 indicated that the investigation was closed and that no further action was needed as the development was in accordance with the approved plans and that no restrictions on use was in place as long as the outbuilding remained ancillary to the main dwelling house.
6. A further investigation took place in 2018 when it was concluded that the owner had been using the 'garage' for family accommodation. During the current investigation into the alleged breach of planning control the appellant submitted a Certificate of Lawful Use or Development (CLUED) under reference 2021/1977/ELD. The CLUED was for the use of the building as holiday accommodation. This was refused on 24 September 2021. No appeal was lodged against it.
7. This appeal is against the EN issued on 17 February 2022.

The ground (b) appeal

8. The appellant's case is that he has always used the outbuilding for accommodation by members of his family since it was constructed. This was used in conjunction and as part and parcel of the main dwelling No. 1 John Street. There has been no separation of the buildings and that the site had an established gate in the fence in the back garden of No. 1 John Street. As from June 2021 to the present day the outbuilding has been used for short-term letting which provided the appellant with a main source of income. The appellant had phoned the Council in June 2021 prior to letting the building as holiday accommodation.
9. The appellant asserts that he was advised that he could use the property as an 'Airbnb' as long it was for only C3 (Dwellinghouses) use class of the Town and Country Planning Use Classes Order 1987 (UCO) as amended and not for multiple occupation.
10. The appellant claims that nothing has changed only that it is used by different people. The appellant considers that the use is the same as before, that there has not been a material change of use, it is still a C3 use class. This is the basis of the ground (b) appeal, in that the matters stated in the notice has not occurred.
11. In relation to the fence which is a requirement of the notice to be removed, the appellant asserts that the fence and gate were there when the outbuilding was constructed in 2008. This is also contested under the ground (b) appeal.
12. The appellant has stated in evidence that the use of the outbuilding has been for short-term holiday let since June 2021. The answers to the Planning Contravention Notice (PCN) corroborates the submissions made by the appellant. There is no dispute

concerning the facts of the case in relation to the chronology of the use rather it is the interpretation of the law as to what has taken place. The Council say that this use now functions as a separate dwelling, whilst the appellant contends that the use remains the same as before when it was used as ancillary accommodation in connection with the main house No.1 John Street by visiting members of the appellant's family.

13. In the UCO as amended a Class C3 dwellinghouse is a use by a single person or by people to be regarded as forming a single household. A single household is construed as that within section 258 of the Housing Act 2004. A single household are members of the same family, they are married or civil partners of each other or live together as if they were a married couple or civil partners, one is a relative of the other or a relative of one member of a couple. Relative means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or cousin, and include stepchildren and half-blood relationships. Other circumstances where a group of persons are to be regarded as forming a single household where each member of the group has a 'prescribed relationship' to one or more of the others and 'prescribed relationship' means any relationship of a description specified as set out above.
14. The other categories of a Class C3 UCO dwellinghouse is not more than six residents living together as a single household where care is provided and not more than six residents living together as a single household where no care is provided to residents.
15. The onus of proof in a ground (b) appeal is on the appellant and the burden of proof is the balance of probability. The appellant would need to show that what has been alleged has not occurred at all, and in this case as a matter of fact and degree the occupants of the short-term let formed a single household with the occupants of No. 1 John Street the main dwelling house in the same planning unit.
16. The PCN response indicates that the outbuilding had been rented out as a holiday let between 1 April 2021 and 31 August 2021, twenty-two times for 60 days. A further response on the PCN notes that it was used as an 'Airbnb' on 29 June 2021. The PCN response notes that the appellant contends that this was not a breach of planning control as it was used for use class C3 of the UCO as part of his family's home for over 12 years.
17. However, it has not been shown that the occupants of the outbuilding during these occurrences of letting out were relatives of the single household of No. 1 John Street. The online adverts and reviews in appendix U of the Council's evidence indicate that these persons were not related to the appellant and were paying guests of the 'Airbnb'.
18. As the onus is on the appellant to show that the alleged breach has not occurred at all, this onus has not been discharged and the alleged breach of planning control in all probability has taken place for the occurrences that it was let-out as an 'Airbnb'. The frequency and turnover of guests and the checking-in and out of the outbuilding together with the transient pattern of occupation and movement from the outbuilding would in my view, be more intensive than when it was occupied as part and parcel and in conjunction with the main dwelling house No. 1 John Street. As a matter of fact, and degree, the functional relationship of the outbuilding in conjunction with No. 1 John Street has formed a separate single household to No. 1 John Street which is as alleged in the EN.
19. The outbuilding has all the facilities for day-to-day private domestic existence. It has its own doorway entrance into the outbuilding and vehicular access. It is separated from the main dwelling by a yard, and a fence has a gate installed within it. This fence and gate are built on a retaining wall and there is a drop in level to the rear yard of the outbuilding. A step ladder temporarily is placed against the wall to provide access to the gate. A latch on the rear garden side of No. 1 John Street controls access from the outbuilding to No. 1 John Street.

20. In physical terms the outbuilding is separate from the main dwelling, and as a matter of fact and degree an independent unit of residential accommodation in the outbuilding has been established. I consider that the breach of planning control has described has occurred and the ground (b) appeal therefore fails.
21. In relation to the fence, the appellant asserts that the fence has been there from 2008. The Council indicates that the fence facilitates the change of use and requires it to be removed. However, should it be considered that the fence and access gate is established by the passage of time the Council would agree to delete the requirement of the fence from the EN. The appellant has pointed out the existence of the fence in a photograph when the outbuilding was being constructed. The appellant also refers to the street view image in 2012 (Council's appendix Dii) which shows a fence in alignment with the appeal outbuilding. I therefore consider that the fence was in place when the outbuilding was used as authorised in conjunction with the main dwelling No. 1 John Street at that time, and before the material change of use occurred when it was let out in June 2021.
22. I therefore consider that the fence has not facilitated the breach of planning control since it was there before it. I shall delete the requirement to remove the fence in the EN. To this limited extent the ground (b) succeeds.
23. The ground (b) fails in relation to the outbuilding use and the appeal is dismissed in relation to this breach of planning control.

Iwan Lloyd

INSPECTOR