
Appeal Decision

Site visit made on 11 October 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 7 November 2016

Appeal Ref: APP/A5270/C/16/3152734

17 Twyford Abbey Road, Park Royal, Ealing, London NW10 7HH

- 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 Mr Faisal Khan against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 20 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a self-contained dwelling to the rear of the premises.
 - The requirements of the notice are (a) Cease the use of the outbuilding as a self-contained dwelling, (b) Demolish the outbuilding in its entirety; and (c) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. The appeal form gives the address of the appeal site as 'Twyford Avenue' whereas the notice states 'Twyford Abbey Road'. Both refer to the same postcode. It would appear this is an oversight by the appellant as evidence submitted with his Final Comments refers to 'Twyford Abbey Road'. The Council's aerial photographs also show the appeal site as being at 'Twyford Abbey Road'. I have therefore determined this appeal on the basis that the address of the appeal site is '17 Twyford Abbey Road'.

The ground (b) appeal

3. Under a ground (b) appeal the onus of proof falls upon the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. In this case the Council allege the construction of a self-contained dwelling within the rear garden of an end of terrace house, which has vehicular access to the rear. The appellant does not deny that a new building has been constructed. He states though, that the building replaced a previous one removed by the former owners of the property. It was originally envisaged as a home office/laundry/gym/extra space for family/guests; hence the provision of a bathroom but it became somewhere to store the family belongings when the appellant was required to work overseas. It is his view that as there is no kitchen, only a bathroom and sink, that it is not a self-contained dwelling.
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4. I saw that the building has entrances from both the rear service road and the garden with a large window looking onto the rear road and a small bathroom window overlooking the garden. The crockery, food, kettle, toaster, microwave and fridge freezer shown in the photographs, taken by the Council on 18 November 2015, had been removed. The bathroom remained but the two sofa beds and bedding had also been removed.
5. Although, the appellant states that there is no kitchen, I find that there is a distinct kitchen area with a sink and drainer as well as kitchen cupboards and drawers and a plumbed in washing machine. These, together with the toilet, basin, shower and living/sleeping space, indicate that all the facilities are provided for a dwelling unit. There is no definition of 'dwelling house' within the 1990 Act but it has been held in case law¹ that the distinctive characteristic of a dwelling house is its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
6. The Council also refer to the case of *Moore*² where it was held that there was no requirement that a building must be occupied before it can be described as a dwelling house. From the appellant's two descriptions of the use of the building it would appear that the first use never happened. This is because the Council's aerial photographs show construction of the building was not complete in June 2015 and the appellant states that he completed the building whilst he was overseas. From the appellant's emails it also appears that there were tenants in his home from at least November 2015 which would support the second description of the use. However, it is unclear why a washing machine would be plumbed in for use if it was only being stored in the building and it does not explain why there were food items in the cupboards and used toiletries in the bathroom.
7. Furthermore, the appellant's submission that it is necessary to have a hob and oven as a prerequisite for a kitchen overlooks the fact that it is possible to use a microwave oven to prepare meals. I therefore do not agree that because there is now no 'cooker' that the building could not be used for private domestic existence. The appellant's evidence of hotel and meal receipts does not demonstrate otherwise, only that on certain occasions the appellant occupied a hotel room and paid for a meal.
8. For these reasons, I conclude that as the appellant has been unable to demonstrate, on the balance of probability that the alleged breach of planning control has not occurred as a matter of fact, the appeal on ground (b) therefore fails.

The ground (c) appeal

9. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. The appellant acknowledges he does not have an express grant of planning permission for the building but he says this was not needed as it was built in accordance with 'permitted development'.
10. The erection of the building comprises operational development within the meaning of section 55 of the 1990 Act for which s57 indicates planning permission is required. The development does not comprise permitted

¹ *Gravesham BC v SSE and O'Brien*, [1983] JPL 307

² *Moore v SSCLG* [2012] EWCA Civ 2101

development, for which planning permission is granted by way of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 as it does not comply with all of the provisions of Class E. This class only allows buildings which are 'required for a purpose incidental to the enjoyment of the dwelling house' and incidental uses and activities do not include uses for primary dwelling house purposes. In this case whilst it might be argued that a shower room might be part and parcel of an incidental use as a gym, the small kitchen area is a primary residential use rather than being required for any incidental purpose. As a matter of fact and degree therefore the whole of the building has not been shown as having been required for an incidental purpose and thus the building is not permitted by way of Class E. For these reasons the appeal on ground (c) therefore fails.

Conclusion

11. For the reasons given above I conclude that the appeal should not succeed.

D Fleming

INSPECTOR