

Appeal Decision

Site visit made on 25 October 2016

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/T5150/C/16/3147915

3 Norwood Avenue, Wembley HA0 1LX

- 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 B Pereira against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/15/0748, was issued on 3 March 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the building in the rear garden to a self-contained dwelling.
- The requirements of the notice are to:
 - (1) Cease the use of the building in the rear garden as a dwelling, and
 - (2) Remove all kitchens, bathrooms and partition walls, and remove all items and materials associated with the unauthorised use from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the initial appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds on ground (f), and the enforcement notice is varied but otherwise the appeal is dismissed and the enforcement notice upheld.

Background information

1. No. 3 is an end terraced dwelling located within a mainly residential area. The outbuilding is situated to its rear and it was originally built pursuant to a certificate of lawfulness of development granted in 1995. It has a flat roof with garage doors on the front elevation behind which there is an outer wall containing a main entrance. The internal layout comprises a single bathroom and open plan area which contains domestic paraphernalia, an office desk and chair. At the date of the notice it comprised a kitchen and was in use as a dwelling.

Ground (f)

2. It is necessary to consider whether the steps exceed what is necessary to remedy the breach of planning control (s174(2)(f) of the Act). The appellant does not put forward any positive case regarding requirement in schedule 4 step (1) to the notice. Clearly, cessation of the unauthorised dwelling use being fundamental to the purpose of the notice – remedy the breach of planning control.
 3. Mr Pereira's statutory declaration reads that he acquired the appeal property in June 2003. He says the outbuilding was in use as a garage and included a
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bathroom. In 2007, building work was carried out to improve the outbuilding and then it was used for an ancillary purpose. In 2015 a kitchen was installed and the internal layout changed to create self-contained living accommodation. The outbuilding was then occupied by a Mr R Patel and family. The appellant's claim is that the outbuilding could be utilised again for a lawful purpose and to require the bathroom's removal is excessive.

4. Mr Alex Belov, who purports to have carried out the alternations in 2007 and 2015, supports the appellant's narrative. His evidence is that the outbuilding contained a bathroom when he first visited the site in 2007. Additionally Mrs Margarita Griestina, who is a resident at 1 Norwood Avenue, also confirms that the outbuilding had a bathroom because the waste pipework is connected to the main sewer that is located on her land. There is nothing before me to make less than credible the precise nature of the appellant's evidence which, incidentally, is corroborated.
5. The Council does not challenge the appellant's assertion that the outbuilding could be used for purposes ancillary to the main dwelling. It argues that there is no building regulation application confirming the installation of a separate bathroom; the latter had not been identified in the certificate of lawful development application.
6. The evidence presented, however, clearly shows that a bathroom existed before the material change of use occurred. It appears to me that the kitchen and bathroom sustained the subsequent use of the outbuilding as self-contained dwelling, but the change of use was actually facilitated by the installation of a kitchen and internal walls. I therefore find that the notice cannot require the removal of the bathroom as it had been installed in connection with the outbuilding's ancillary use, before the breach of planning control. In all probability, the bathroom could be used in connection with the outbuilding's incidental use.
7. The requirement to cease the use of the building in the rear garden as a dwelling is plainly necessary to remedy the breach. For greater clarity and to reflect the evidence, step (2) should simply require the removal of kitchen and partition walls. As I am varying the requirements of the notice, ground (f) succeeds.

Ground (g)

8. There is no evidence of the outbuilding's occupation and use as a single dwelling. I saw that the kitchen has been removed. Given the nature of work required by the notice, I consider the specified period of compliance is reasonable. Ground (g) therefore fails.

Formal decision

9. It is directed that the enforcement notice be varied by the deletion of all of the text in section 4, what you are required to do, step (2) and the substitution therefor by the following text: *Remove the kitchen and partition walls, and remove all items and materials associated with the unauthorised use from the premises*. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector