
Appeal Decision

by **D H Brier BA MA MRTPI**

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

Decision date: 14 December 2016

Appeal Ref: APP/T5150/C/16/3149146-47
Avondale, Doyle Gardens, London NW10 3SY

- 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 R Foster & Mrs Y Foster against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 19 March 2016.
- The breach of planning control as alleged in the notice is the material change of use of the former garage to a dwelling.
- The requirements of the notice are:
 1. Cease the use of the garage as a dwelling and remove the kitchen, bathroom, all internal partition walls and the staircase to the first floor from the premises.
 2. Remove all associated debris arising from compliance with (1) including all equipment and materials associated with the unauthorised use of the premises.
 3. Carry out works, including the installation of a garage door to ensure that the premises are converted back to a garage.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f).

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.

Procedural Matters

1. The appellants' case includes concern about the conduct of a named Council Officer. It is not in my remit to pass judgement on this matter and I shall therefore refrain from commenting on it. My decision will focus on the merits of the case.
2. My attention has also been drawn to what appears to be a minor typographical error in the allegation in that instead of 'appropriate', it should be 'approximate'. In the interests of getting the notice right regardless of the outcome of the appeal, I am satisfied that this is an instance where I can exercise my power to correct the notice accordingly without giving rise to injustice.

Background

3. The appeal concerns a detached outbuilding sited alongside 'Avondale'. The building was the subject of a planning permission granted on 27 July 2006 ref. 06/1451 for "*the erection of two rear dormer windows, single storey side extension to dwellinghouse and alterations to single storey detached outbuilding*". On the 'as existing' plans, the main body of the outbuilding is annotated "*garage*" and 2 garage doors are shown on its front elevation. The
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legend on the 'proposed' plan refers to a "detached garden room" and the building is annotated "*Music/Play room*". The elevation drawings show 2 windows in the place of the garage doors, together with a smaller circular window near the apex of the roof. This is how the front wall of the building looks now, albeit the 2 main windows differ somewhat from those shown on the approved drawing.

4. I saw that internally the building is arranged at ground floor level so that there is a sitting room, a kitchen area equipped with units, a sink, a refrigerator and a dishwasher, but no oven or hob, and a separate bathroom. An internal staircase leads up to a mezzanine floor upon which was a mattress.

Appeal on Grounds (b) and (c)

5. As these 2 grounds of appeal appear to be closely inter-related in this instance, I deal with them jointly. In order for the ground (b) appeal to succeed, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact. In the case of ground (c) it has to be shown that the matters alleged do not constitute a breach of planning control. Grounds (b) and (c) are legal grounds of appeal. As such, they are distinct from any planning merits and the Courts have held that the onus on proving them lies with the appellant(s).
6. In essence, the premise underpinning the appeal on ground (b) is that the outbuilding or former garage has never been used as an independent self-contained dwelling. In this respect, I have read that the appellants' intention was to give the family some additional space and to accommodate relatives who come to stay "*now and then*". It is also noted that the "*appellant's daughter, relatives and friends and visitors reside in the outbuilding on occasion*"¹ and that the building is used as a home office. It is acknowledged though that the building has been let out for short-term lets through AirBnB. It is also stated that, in the absence of fixed cooking facilities, guests either eat with the family, or order in take-away food. Cooked breakfasts are provided in the main family kitchen for those guests who want one.
7. The main thrust of the ground (c) appeal is that the outbuilding is not used as a separate dwelling; it is used as ancillary living accommodation to the main dwelling to which it is subservient. Citing *Uttlesford DC v Secretary of State for the Environment and White [1992] JPL 171*, it is contended that there has been no material change of use; the use of the outbuilding does not involve the creation of a new planning unit.
8. A second plank of the appellants' argument under ground (c) is that, referring to section 55(2)(a)(i) of the 1990 Act, the internal alterations to the building do not constitute development. This point is not disputed, but as the internal works to the building do not form part of the allegation, which refers solely to a material change of use, this matter has no bearing on the ground (c) appeal in this instance. It is, however, relevant to the ground (f) appeal which is addressed below.
9. The use of the building by family members, relatives and friends as is described seems to me to indicate a close functional relationship with the main dwellinghouse. In this respect, the additional accommodation that the building provides effectively augments the living accommodation in the main house.

¹ Grounds of appeal, paragraph 5.9.

Indeed, my view is that when it is used in this manner, rather than being incidental to the use of 'Avondale', it forms part and parcel of the main residential use of 'Avondale'.

10. In the light of this, on the face of it, *Uttlesford* appears to add support to the appellants' stance. However, while there are some similarities, it seems to me that the particular circumstances involved in this case are somewhat different.
11. The comment in the Council's statement² that the appellants "*confirmed that it [the building] was used for short term rentals*" has not been called into question. And, mindful that the AirBnB particulars concerning the accommodation contain 51 testimonials, this strongly suggests to me that, in all probability, the letting of the building has been rather more than just a casual or occasional occurrence. Moreover, as well as the toaster referred to by the appellants, the photographs in the AirBnB particulars show a microwave oven on the kitchen worktop. It seems to me therefore that, despite the apparent absence of a conventional oven or hob, there was a facility whereby occupiers could prepare basic meals if they so wished. Indeed, the particulars note that the accommodation has "*everything you need for basic cooking*".
12. In *Gravesham v Secretary of State for the Environment and O'Brien [1983] JPL 306* it was held that the distinctive quality of a dwellinghouse was its ability to afford to those who used it the facilities for day-to-day private domestic existence. It may be that the building in question has no separate postal address or curtilage, services are derived from 'Avondale', as is indicated, and amenity and parking space is shared with it too. Nevertheless, as a matter of fact and degree, I find the nature of the accommodation and the facilities contained therein are such that the building meets this 'test'. Indeed, the appellants' final comments on ground (b) appear to accept that this is the case.
13. Although the submissions regarding the provision of cooked breakfasts and meals have not been challenged, no evidence that shows this was part and parcel of the letting arrangements, or how frequent this was, has been put forward. The letting particulars are also silent on this point. As a result, I am not satisfied that this is sufficient to demonstrate that there was a close functional link between the occupancy of the building and that of 'Avondale'. It may well be that the appellants have acted as hospitable hosts and have adhered to the AirBnB ethos, as is described, but this too falls short of showing that guests staying in the short-term let facility used the accommodation in conjunction with the main house.
14. The letting information indicates that "*we are here if you need us*", but it is also stated that guests have private access to the 'studio' through a gate and that "*we won't ever disturb you unnecessarily or without warning*". Even though the particulars note that guests are free to use the house's garden, my view is that none of this points to a clear link between the manner in which the letting accommodation has been used and the use of 'Avondale'. As a matter of fact and degree, the independence of occupancy of the building has been such that it has changed the character of its use of to the extent that it amounted to a material change of use. It is therefore reasonable to regard the building in question as having been used as a separate dwelling. All this leads me to conclude that the matters alleged in the notice have occurred as a matter of

² Council's appeal statement paragraph 2.6.

fact and, in the apparent absence of any relevant planning permission, there has been a breach of planning control.

15. In the light of the foregoing, the appeal on grounds (b) and (c) fails.

Appeal on Ground (f)

16. As the appellants point out, the interior alterations to the building do not constitute development as defined by section 55 of the 1990 Act. Be that as it may, in *Somak Travel v Secretary of State for the Environment* [1987] JPL 630 it was held that it was appropriate in certain circumstances to require the removal of works even if they do not constitute development in their own right. In this case it seems to me that the kitchen is an element that facilitates, and is a constituent part of, the use in question, in which case requiring its removal is not excessive. I appreciate that the same could be said for the other items listed in step 1, but as their presence is also compatible with the use of the building as an adjunct to the accommodation in the main house, requiring their removal in this case would be excessive. Step 1 will be amended accordingly; doing so will also necessitate a consequent variation of step 2.
17. The 2006 planning permission provided for something other than a garage and no garage doors are shown on the approved elevation drawing. In these circumstances requiring the reinstatement of the garage doors and the reversion of the use of the building as a garage is somewhat unreasonable. It exceeds what is reasonably necessary in order to remedy the breach. Step 3 will be deleted. This measure will also overcome a potential problem arising from what I regard as a lack of precision in this requirement. The phrase “*carry out works*” without setting out just what is required in this respect other than the installation of a garage door, is too imprecise. It does not tell the recipient of the notice what he or she needs to do in order to comply with it sufficiently clearly.
18. The appeal on ground (f) succeeds in part as described above.

Formal Decision

19. I direct that the notice be:

A: Corrected in schedule 2 by the deletion of “appropriate” and its substitution by “approximate”.

B: Varied in schedule 4 by:

- (i) The deletion of “...bathroom, all internal partition walls and the staircase to the first floor...” from Step 1;
- (ii) The deletion of the text of Step 2 and its substitution by “Remove all associated debris and material arising from the removal of the kitchen, including all associated materials and equipment from the premises.”;
- (iii) The deletion of Step 3.

20. Subject to the above correction and variations, I uphold the notice and dismiss the appeal.

D H Brier Inspector