

Appeal Decision

Inquiry and site visit held on 26 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: 15 December 2016

Appeal Ref: APP/T5150/C/16/3146188

21A and B District Road, Wembley HA0 2LE

- 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 Ratnasingam Sivakumar against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/14/0123, was issued on 2 February 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 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 fixtures and facilities installed to enable the use as a dwelling. This includes, but is not limited to, the kitchen, bathroom, utilities and internal walls.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- The Inquiry sat for one day.
- The evidence is on affirmation.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with corrections as set out in the formal decision below.

Application for costs

1. At the Inquiry, the Council against the appellant made an application for costs. This application is the subject of a separate decision.

The enforcement notice

2. It is apparent the notice should allege a *material change of use of the outbuilding situated in the rear garden to a single dwellinghouse*. Consistency follows by correcting the requirement to *cease the use of the outbuilding as a dwellinghouse*. I canvassed these possible corrections, which are very minor, at the Inquiry. The appeal parties agree no injustice would be caused if I am to correct the notice, which I shall do later.

Reasons

3. In this appeal, the onus of proof is firmly upon Mr Sivakumar. If the Council has no evidence of its own, or from others, to contradict or otherwise make his version of events less than probable, there is no good reason to dismiss the appeal, provided the evidence alone is, on the balance of probabilities, sufficiently precise and unambiguous.
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4. No. 21 District Road is a semi-detached property that has been subdivided into flat A and B¹. The subject outbuilding has a kitchen, living room, bedroom, toilet and a shower facility. It can be accessed from the side passageway. Effectively, the claim is that the material change of use of the outbuilding is immune from enforcement action because of the passage of time. The assertion is that change of use occurred well before the relevant date, which is 2 February 2012. The Council disagrees and argue it has occurred within the last four-years.
5. In deciding when the four-year period will begin to run in the case of a material change of use to a single dwellinghouse, it is necessary to look at the physical works – the date the premises were capable of providing viable facilities for day-to-day private domestic existence², and when the use commenced. It is a matter of fact and degree as to when the change of use occurs. In this case, for the purposes of the legislative provisions, the evidence should show when the outbuilding became a dwelling house and when/how it was occupied or used.

Whether or when a single dwellinghouse

6. Mr Sivakumar purchased the site in 1994 and a corrugated metal clad structure existed with an outside toilet facility in the garden. He repositioned it and put the toilet inside the outbuilding in about 1996. Subsequently, the outbuilding was renovated to form a *warm exercise room*. An electric shower and cooker installed for outdoor cooking purposes. The information presented appears to suggest that, during this period, the outbuilding was used for ancillary purposes incidental to the enjoyment of the main dwelling.
7. Mr Sivakumar claims that the outbuilding was ready for use as a single dwellinghouse in 2007. However, his evidence provides no cogent and relevant evidence as to the actual building work comprised in the conversion. There is very little detail as to who carried out the work and when, what came first and sequence of events. He could not provide an explanation of the nature and scale of the building operations with any clarity. He maintains building and household material had been purchased, yet there is no documentary information to corroborate when and how these items were actually acquired and subsequently installed in the outbuilding in order to facilitate its self-contained residential use. The lack of this type of precise evidence makes it difficult to make comparisons.
8. In a similar vein, the documentary evidence is deficient. For example, in bundle 3 page 2 an image of the electric shower unit installation manual is exhibited. The handwritten note suggests the purchase date is 22 May 2011. Page 3 exhibits an invoice from Elec-Mec (Wholesale) Ltd, but the invoice is dated 16 November 2011. A UK Power Network quotation for the supply of electricity, dated 12 October 2011, but the work did not take place. None of this evidence shows that the outbuilding actually contained the necessary facilities for private domestic existence on or before 2 February 2012.
9. Mr Sivakumar's contradictory reply to searching questions found in the planning contravention notice is of interest. For instance, on 28 February 2015, he describes the outbuilding as a *garden shed/garage had been there for 16*

¹ Pursuant to a lawful development certificate granted 23 August 2006.

² See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

years as outdoor cooking + gym area.... It's like a granny flat usage to entertain family and friends... Part of the building structure was there when the purchase was made insulation and internal work was carried out about 16 years ago. On 17 May 2016, he says the outbuilding is 1) used for storage, activity area for young and elderly relatives from 1995 – May 2007, 2) From June 2007 – February 2016 self-contained staff accommodation and rental purpose, and indicates that the toilet and bath had been installed in 1996 and 2000 respectively. There is no conclusive evidence to show when the outbuilding was actually converted into a single dwelling.

10. Mr Sritharan, R.K. Property Services Ltd, has carried out building worked on no. 21 District Road, but he did not convert the outbuilding into a dwellinghouse. Additionally, other witnesses of fact did not claim they had actually carried out any kind of building work. None of this evidence shows that the outbuilding was ready for use as a single dwellinghouse in 2007.
11. Given that the onus is squarely upon Mr Sivakumar to show when the change of use occurred, I find that the totality of the available evidence as to whether or when the outbuilding became a dwellinghouse is incomplete and lacks precision. It does not sufficiently verify the facts. It does not support the claim that the outbuilding was capable of providing facilities for self-contained living on or before the relevant date.
12. For completeness, I will next review the evidence about when and how the outbuilding was occupied as a single dwelling.

When and how occupied

13. It is not that uncommon for evidence to be adduced to show continuous use of a dwelling for a certain period from documentary information. This could take the form of utilities' connection charges and bills, local taxation and Electoral Register records; Mr Sivakumar did not submit this evidence. The absence of such information makes it difficult to make comparisons with the nature and scale of the residential use. Instead, he relies upon tenancy agreements, written and oral testimony of witnesses of fact. I will evaluate all of this by starting with the first occupier.
14. Mr Narasimhan: His written evidence is that he lived at *no. 21 garden flat/bedsit* from 7 June 2007 until 8 February 2008. However, in chief, he says his occupancy started in May 2007 and terminated seven to nine months later, because he had found new employment in Reading. The termination date of the tenancy is unclear. In addition, he could not explain with precision how his rent of £200 per calendar month had been paid. In cross-examination he could not explain the nature of his occupation and use of the outbuilding as his home from 2007.
15. Mr Guiga and family: He says that he lived in the outbuilding from 9 February 2008 until 2011. The tenancy agreement describes the rent as £600 per month, increase to £650 from 2009 to 2011. But he could not explain how the rent was actually paid. To prove his residency, he refers to a photograph of his nine-month-old daughter taken in the outbuilding. However, in cross-examination, he could not recall exactly when he captured the image. A television licence, dated 31 December 2009, refers to the property as no. 21 District Road and not the outbuilding. There is no evidence of any bills for utility charges during his occupation of the outbuilding.

16. Mr Udayan: His occupation covers 7 May 2011 to 6 May 2012. The rent is £650 per month, although Mr Sivakumar could not explain how it was paid. Nevertheless, the rented property is described as *21 District Road*. There is no mention of the outbuilding. The document says that the *property* had been lived in by the landlord as a main home and may be repossessed pursuant to ground 1 of the Housing Act 1988. Mr Sivakumar could not provide any cogent explanation as to why such a clause is required because he does not claim to have occupied the outbuilding as his main residence. In addition, the agreement refers to the need to pay for gas, yet the structure does not have a gas supply.
17. Mr Cartmill and Miss Kalvenaite: The tenancy for 19 May 2012 until 18 May 2013 refers to £600 and £100 for bills per calendar month as rent. The tenancy agreement is incomplete as it cites *no. 21* as the rented property. It is unclear whether this document actually relates to the main dwelling or outbuilding.
18. Mrs Perinpanathan: The written evidence includes a statement and tenancy agreement covering 17 January 2013 - January 2015. The latter refers to the *dwelling flat situated and being 21 District Road (rear flat)*. The rent is £300 per month in contrast to previous chargeable tenancies, though there is no explanation as to how it had been paid or collected. Nevertheless, the claim is a Mr Nishantha Devage occupied the flat. Post addressed to him at no. 21 District Road suggests some kind of link, but this does not show his actual occupation or self-contained residential use of the outbuilding.
19. Mr Rode: His written evidence is that he began occupancy in January 2015, but the tenancy agreement suggests the start date as 1 February 2015. The rent is £400 per month and the document refers to the rear unit at no. 21 District Road. However, it includes clauses that do not relate to the occupation of the outbuilding. For instance, it says that the proprietor shall allow the lodger to occupy the room for a one-year term and he shall be entitled to use facilities within the property such as a kitchen, bathroom and hallways. Yet the outbuilding includes a kitchen and bathroom so the document is inconsistent with the available facility.
20. The Council's evidence casts some doubt over Mr Rode's version of events. For example, on 2 February 2015 Mr Adrian Pegg, the Council's enforcement and investigating officer, carried out a site visit. His contemporaneous notes suggest that the outbuilding contained an empty room, kitchen and bathroom. But it was unoccupied at the time. Mr Sivakumar told him that tenants did not occupy the outbuilding. In cross-examination, Mr Sivakumar failed to provide any plausible explanation to make less than credible the Council's record of the discussion, which casts significant doubt over the claimed continuous use of the outbuilding as a dwellinghouse.
21. Unfortunately for Mr Sivakumar, Mr Udayan, Mr Cartmill, Miss Kalvenaite, Mrs Perinpanathan, Mr Devage nor Mr Rode were called to give oral evidence at the Inquiry that might have assisted in clarifying the nature and scale of their residential use. It is therefore difficult to verify Mr Sivakumar's assertion that these tenants actually occupied and used it as their home from 2011 onwards.
22. In cross-examination, Mr Sivakumar explained that standard tenancy documents have been used and there has been an oversight in checking typographical errors. Be that as it may, I find his explanation, frankly, less than

satisfactory. This is because the inconsistent and inaccurate nature of the evidence undermines its veracity. This affects the weight I attach to it.

23. Likewise, evidence from estate agents does not substantiate the claim about the outbuilding's independent residential use from 2007 onwards. Mr Murugan claims he advertised the rear flat for letting purposes on internet sites like Zoopla but provides no evidence of when and for how long. Likewise, Mr Rajarajeswaran, Response Property Services, asserts that he advertised and marketed the back garden flat for accommodation purposes from 2007 to 2011, but no firm detail is given. Mr Skanthatheva says he advertised no. 21 District Road and the back garden flat since 2008, yet provides no specific corroboratory information.
24. Mr Sivakumar says neighbours are aware of the self-contained use of the outbuilding. In support of this claim, he submits letters from Sathy Estate (Lettings) Ltd who manages no. 19A District Road and its occupier Mr Pawlowski. Likewise, the occupiers of nos. 18 and 23 District Road assert a separate residential use of the outbuilding for years. However, none of this information actually shows the nature of the residential use during the relevant period.

Conclusions on ground (d)

25. Pulling all of the above points together, I find the evidence presented does not sufficiently substantiate, to my satisfaction, when the outbuilding became a single dwellinghouse and from when and how it was used as a dwellinghouse. This is because the totality of the evidence lacks precision and is ambiguous.
26. On the available evidence and the balance of probabilities, I find that the material change of use of the outbuilding to a single dwellinghouse did not occur on or before 2 February 2012. The submitted evidence does not show that the outbuilding was continuously used in the subsequent four-year period as a single dwellinghouse. In this appeal, the onus has not been discharged. It therefore follows that the appeal on ground (d) must fail.

Overall conclusion

27. For the reasons given above and having regard to all other matters, my inescapable conclusion is that the appeal should not succeed. The notice will be upheld after correction.

Formal decision

28. It is directed that the enforcement notice be corrected by the deletion of all of the text in section 3, the breach of planning control alleged, and the substitution therefor by the following text:

Without planning permission, the material change of use of the outbuilding situated in the rear garden to a single dwellinghouse.

29. It is directed that the enforcement notice be corrected by the deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text:

Step (1)

Cease the use of the outbuilding situated in the rear garden as a dwellinghouse.

Step (2)

Remove all fixtures and facilities installed to enable the use as a dwellinghouse. This includes, but is not limited to, the kitchen, bathroom, utilities and internal walls.

30. Subject to the corrections above, the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Sivakumar	He acted as advocate and witness and gave evidence to the Inquiry
He called Mr Guiga	}
Mr Narasimhan	} On behalf of the appellant
Mr Murugan	Vel Estate agent
Mr Sritharan	RK Property Services Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Wicks MRTPI	Enforcement Services, instructed by the Council of the London Borough of Brent Planning and Regeneration services
He called Tim Rolt BA (Hons) MRTPI	Planning Enforcement Manager

DOCUMENTS HANDED IN AT THE INQUIRY

- 1 Rebuttal statement by Mr Sivakumar.
- 2 Statement by Mrs Perinpanathan, handed in by the Mr Sivakumar.
- 3 Statement by Mr Rode, handed in by the Mr Sivakumar.