The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 22 December 2016

Appeal Ref: APP/F5540/C/16/3148829
88 Byron Avenue, Cranford TW4 6LY

- The appeal is made by Tarlock Singh Ahuja under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: OUTR/2015/00383) issued by the Council of the London Borough of Hounslow on 24 March 2016.
- The breach of planning control alleged in the notice is "the use of an outbuilding as a self contained residential unit".
- The requirements of the notice are as follows: -
  "i. The cessation of the outbuilding's use as a non-incidental and self-contained residential unit
  ii. The removal of all internal and external works that enable such use (i.e. all kitchen and bathroom, facilities to include the following items;- kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood, kitchen wall tiles, bathroom cupboards, shower/bathing facilities, W/C, wash basin and pedestal, and bathroom tiles. In addition to the above items, all water and gas supply piping and all waste connections)
  iii. The removal of all resultant debris from the land"
- The period for compliance with these requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(f).

Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Correction of the enforcement notice

2. The notice refers throughout to the use of the outbuilding as a "non-incidental" unit, except in paragraph 3 where this description appears to have been omitted because of a drafting error. The notice should also make clear that the requirement to remove water and gas supply piping and waste connections only relates to services within the outbuilding that relate to the items listed.

3. I am satisfied that I can correct the notice without causing injustice to the parties and I have done so in paragraph 4 below.

Appeal decision

4. It is directed that paragraph 3 of the enforcement notice be corrected by inserting "non-incidental and" between "a" and "self contained" and that

paragraph 5(ii) of the enforcement notice be corrected by adding "within the unit which relate to these items" after "connections" in the last line.

5. Subject to these directions, the appeal is dismissed and the enforcement notice is upheld as corrected.

Reasons for the appeal decision

6. The purpose of the appeal on ground (f) is to maintain that the requirements of the notice exceed what is necessary to remedy the breach of planning control and any injury to amenity caused by it. The appellant has not questioned the first requirement (that the use of the outbuilding as a non-incidental and self-contained residential unit should cease) or the third requirement, and the first requirement appeared to have been complied with at the time of my visit. He maintains, however, that the whole of the second requirement is excessive.

7. Where, as in this case, an enforcement notice is issued because of an alleged unauthorised change of use and it requires works to be removed, those works have to be integral to or part and parcel of the making of the change of use. If they are, but they have been undertaken earlier for a different and lawful use, a requirement to remove them is excessive if they can still be lawfully utilized for that use when the present unauthorised use ceases.

8. When the Council inspected the outbuilding in July 2015 they found that two adults and two children were living in it as a self-contained residence, which was separate from the house and not incidental to the use of the house. The occupants paid £650 per month and believed they were the first tenants. This was an unauthorised use and the works referred to in the second requirement were clearly integral to and part and parcel of this use. The issue that arises in the appeal is therefore whether any of these works were undertaken earlier for a different and lawful use and could still be lawfully utilized for that use when the unauthorised use ceases.

9. In his response dated 1 September 2015 to the planning contravention notice, the appellant stated that the current use of the outbuilding was a garage, that the outbuilding was already there when he bought the house in 2010, that the use may have been continuous since then and that it was only occupied in July 2015 for ten days. He agreed that the facilities present included a boiler, kitchen sink, kitchen cupboard, cooker, toilet and shower/bath; and he stated that the occupants of the outbuilding were from the same household as the occupants of the main house and that their relationship was cousins.

10. In the grounds of appeal dated 13 April 2016, the appellant stated that until October 2013 the house was occupied by him and his family and that the outbuilding was used as a study/bedroom by a member of his family. He stated that all the items listed in the second requirement were in place at the time he acquired the property in November 2007.

11. In his comments on the Council's case, which were received on 8 August 2016, the appellant stated that he purchased the property under the Buy to Let Scheme, that the outbuilding was already occupied at the time of the purchase and that it had always been so. He added that it was therefore evident that the outbuilding had been used as a separate dwelling since 2007.

12. The Council Tax records for the property (i.e. the house, including the outbuilding) list the appellant as being the party liable to pay the tax during the following periods of time - 16 November 2007 to 6 December 2007, 8 March 2010 to 14 March 2010, 20 September 2011 to 4 April 2012 and 31 October 2014 to 4 November 2014. Other persons are listed as the liable parties for periods between these dates.

13. The Council Tax records are consistent with the appellant's statement that he bought the property (house, including outbuilding) under the Buy to Let Scheme in 2007. They appear to show, as could be expected, that he let the property (house, including outbuilding) as a whole to tenants for lengthy periods, punctuated by short periods when it was unlet, when he became the liable party once more. There is no Council Tax record of the outbuilding having been occupied separately from the house at any time, and therefore being subject to a separate assessment for Council Tax.

14. The information provided by the appellant is inconsistent and most of it is in my view unreliable. None of it is supported by documentary or other evidence, except to the limited extent described in paragraphs 12 and 13 above. It does not demonstrate that any of the works listed in the second requirement were undertaken for a different and lawful use of the outbuilding than the one enforced against.

15. I have therefore concluded, on the balance of probabilities, that all the works were undertaken as works integral to and part and parcel of the unauthorised use of the outbuilding as a non-incidental and self-contained residential unit. The requirement to remove them is not excessive in these circumstances and the appeal has been dismissed.

D.A.Hainsworth

INSPECTOR