
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: 30 December 2016

Appeal Ref: APP/A5270/C/16/3150314
60 Medway Drive, Perivale, Ealing UB6 8LW

- The appeal is made by Pararajasingham Balaruban under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: EN160157ODOB(1)) issued by the Council of the London Borough of Ealing on 12 April 2016.
 - The breach of planning control alleged in the notice is "the erection of a separate self-contained dwelling at the rear of the property".
 - The requirements of the notice are as follows: -
 - "a) Cease the use of the separate self-contained rear dwelling
 - b) Remove the kitchen, including all white goods, cupboards, work surfaces and all water and drainage connections
 - c) Remove all internal partitions apart from those enclosing the bathroom
 - d) Remove all resulting debris from the site"
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(c).
-

Decision

1. It is directed that the enforcement notice be corrected by replacing paragraph 3 by the following paragraph: -

"On 2 February 2015 planning permission reference PP/2014/5793 was granted for the erection of a single-storey detached outbuilding at the rear of the premises, subject to conditions. Condition 5 is as follows: -

'The development permitted shall only be used for domestic purposes incidental to the dwelling house at this site and not for any separate residential use (including any ancillary residential use) or for any industrial, commercial or business use.'

Condition 5 has not been complied with since the outbuilding has been used for a separate residential use."

2. It is directed that the enforcement notice be varied by replacing sub-paragraph a) of paragraph 5 by the following sub-paragraph: -

"a) Cease the use of the single-storey detached outbuilding for a separate residential use"
 3. It is directed that paragraph 5 of the enforcement notice be varied by replacing
-

"You are required to complete these actions by 20 August 2016 (i.e. 3 months from the date this notice becomes effective)"

by

"Time for compliance: three months after this notice takes effect".

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

Reasons for the decision

5. The appellant maintains that the building has planning permission, granted by the Council on 2 February 2015 (reference PP/2014/5793). The Council take the view that the building that has planning permission was never erected and that a self-contained dwelling was built instead.
6. The breach of planning control alleged in the notice and the requirements of the notice, as issued, are set out at the second and third bullet points above. The Council state: "... the requirements of the enforcement notice do not require the demolition of the dwelling, rather they simply require the cessation in the use of the dwelling, the removal of the kitchen and internal partitions apart from that enclosing the bathroom. The requirements of the enforcement notice are intended to remedy the breach but the council is content to under enforce to this extent ...".
7. The approach the Council have taken could, however, cause uncertainty, because it could result in planning permission being granted for a dwelling, by virtue of section 173(11), and because permission PP/2014/5793 could still be implemented.
8. The Council would not have taken this approach if they had correctly identified the breach of planning control. The building that has been erected is the one that has planning permission. Its siting, dimensions and external appearance are as shown on the approved plans. The bathroom was put in as shown on these plans. The kitchen facilities and the additional internal partitions were added after the building had been erected.
9. The building was then used as separate residential accommodation. This was a breach of Condition 5 of the planning permission and that is what the notice should have alleged. I have therefore corrected the allegation. The appellant has not disputed that this breach has occurred and the appeal on ground (c) has therefore failed.
10. I have varied the requirement to "Cease the use of the separate self-contained rear dwelling". It was not well drafted in the first place, but it now needs changing to bring it into line with the corrected allegation. I have upheld the inclusion of the requirements to remove the kitchen facilities and the additional partitions, because they are integral to and part and parcel of the breach. In doing so, I have taken into account the appellant's assertion that the household needs to use the building as a shrine room and as a separate kitchen unit for prasad food preparation. The notice will not prevent household uses taking place, as long as they are kept within the limitations imposed by Condition 5. I have also varied the wording of the compliance period to prevent uncertainty arising about the time allowed for carrying out the requirements.

11. I am satisfied that I can correct and vary the notice as indicated above without causing injustice to the parties.

D.A.Hainsworth

INSPECTOR