
Appeal Decision

Site visit made on 6 December 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 06 January 2017

Appeal Ref: APP/A5270/C/16/3150995

20 Oakfield Gardens, Greenford, Ealing, UB6 8SD

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Aminah Newton against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is:- Without planning permission: the construction of a self-contained dwelling at the rear of the premises.
 - The requirements of the notice are:
 1. Cease the use of the self-contained dwelling at the rear of the premises;
 2. Demolish the self-contained dwelling; and
 3. Remove from the premises all debris associated with the demolition of the outbuilding.
 - The period for compliance with the requirements is: by 30 August 2016 (i.e. 3 months from the date this notice takes effect).
 - The appeal is proceeding on the ground set out in s174(2)(c) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected, in paragraph 5, by deletion of "by 30 August 2016 (i.e. 3 months from the date this notice takes effect)" and substitution of "within 3 months from the date this notice takes effect". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Matter concerning the enforcement notice

2. At paragraph 5 of the notice a date of 30 August 2016 is specified for compliance. This is qualified as meaning three months from the date of effect of the notice.
3. Under s173(9) of the Act a "period", rather than a date, should be specified within which the steps required by the notice are to be taken. Where an appeal is brought the notice is of no effect pending the final determination of the appeal¹. The compliance period does not run during the time of the appeal. Thus, in this case, whilst the period for compliance remains as three months the specified date is incorrect.

¹ S175(4) of the Act states that where an appeal is brought the notice shall be of no effect pending the determination or the withdrawal of the appeal.

4. I am satisfied, nevertheless, that a recipient of the notice would have understood what is required. The notice is capable of correction without causing injustice to either party. I shall, therefore, correct the notice under the available powers of s176(1)(a) by deleting reference to a compliance date.

The appeal on ground (c)

5. An appeal on ground (c)² is that the matter alleged does not amount to a breach of planning control. The burden of proof is upon the appellant.
6. There is no evidence brought as to why the construction of a self-contained dwellinghouse (i.e. the matter alleged) would not have required permission. Neither am I aware of any reasons why permission would not have been needed. On what is before me I conclude that the matter alleged amounted to a breach of planning control. The appeal on ground (c) fails.

Other matters

7. Whilst no appeal has been made expressly on ground (b)³ I have considered whether the matter alleged has occurred as a matter of fact. Reference has been made to an earlier application for a Lawful Development Certificate [hereafter "the LDC application"] and the original intention to use the building as a gym.
8. The evidence indicates that works for the construction of the building probably commenced around the early part of 2014⁴. According to the appellant, due to her brother's illness, it was not possible to bring the building into use as a gym. The builder had informed her that a kitchen and bathroom could be installed. It was reported to the Council in March 2015, by an interested party, that the building had been occupied for some 9 months. These pieces of evidence, taken together, indicate that the building had been constructed to contain all the facilities necessary for day to day living and that it had been used for such a purpose. There is no contrary evidence.
9. Therefore, on balance of probability, I conclude that the matter alleged has occurred as a matter of fact.
10. I have also considered whether the steps of the notice are excessive although no appeal has been expressly made on ground (f)⁵. The Council's purpose in issuing the notice is to "remedy the breach"⁶. Thus, the steps required should go no further than to achieve that purpose.
11. As the construction of a dwelling is alleged a requirement for its demolition is not excessive. That is simply what is necessary to put matters back to how they were before i.e. to remedy the breach.
12. It is also possible to remedy a breach by making any development comply with the terms (including conditions and limitations) of any planning permission

² An appeal on ground (c) of s174(2) is that the matter alleged does not constitute a breach of planning control.

³ An appeal on ground (b) of s174(2) is that the matter alleged has not occurred as a matter of fact.

⁴ A Council officer had visited the site in February 2014 and seen work in progress.

⁵ An appeal on ground (f) of s174(2) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The words "as the case may be" indicate that the purpose of the notice must fall within one or the other category. Thus an appeal on ground (f) is limited to the consideration of the steps necessary to achieve the purpose of the notice.

⁶ This is not a notice served for the purpose of remedying any injury to amenity that had been caused by the breach.

which has been granted⁷. Within the curtilage of a dwellinghouse there are permitted development rights (in effect planning permission⁸) for the erection of buildings required for a purpose incidental to the enjoyment of the dwellinghouse. I am also mindful that the enforcement regime is intended to be remedial rather than punitive and that where there is a valid fall back position, by way of permitted development rights for example, the question to be considered is whether complete removal would ultimately serve any purpose⁹.

13. On the other hand, there is a burden upon the appellant to make a coherent case supported by evidence and with a degree of precision. It is not for me to search for solutions. The evidence, such as it is, is that the kitchen has been removed and that the appellant is also willing to remove the bathroom. According to the appellant the building is now used as a children's playroom.
14. The building, in this case, is adjacent to the rear boundary, spans the width of the plot and has a dual pitched roof. I have been given no details of its height and other dimensions. Neither is there any comparison of the building to permitted development criteria. I cannot be sure (even when taking away its use as a dwellinghouse) that it would accord with the size and height limitations for permitted development.
15. It is unclear whether the LDC application received a favourable decision from the Council. No decision notice has been supplied. The Council's evidence¹⁰ indicates that the application may have been refused. Neither is it clear whether the building has been constructed in accordance with the LDC application details or whether the main property is in use as a single dwellinghouse such that it could benefit from permitted development rights.
16. Overall, the evidence is insufficient for me to be able to conclude that there is a valid fall back position or that there are any lesser steps that could be introduced into the notice with the necessary degree of precision.
17. I have considered, in the round, whether there is any obvious alternative to complete demolition. However, there is none that I can identify.

Conclusion

18. For all the reasons given above I conclude that the appeal should not succeed.

Susan Wraith

Inspector

⁷ S173(4)(a) of the Act states that an enforcement notice shall specify steps for (amongst other things) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.

⁸ S59(1) of the Act provides for the granting of planning permission by a "development order". At the time the development was carried out the Town and Country Planning (General Permitted Development) Order 1995 (as amended) was in force. Under Article 3(1) of that Order planning permission was granted for the classes of development described as permitted development in Schedule 2. Class E to Part 1 of Schedule 2 provided for (amongst other things) the erection of a building within the curtilage of a dwellinghouse as permitted development subject to limitations and conditions.

⁹ *Tapecrown Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744

¹⁰ Paragraph 3.1 of the Council's Appeal Statement.