
Appeal Decision

Site visit made on 13 December 2016

by Nigel Burrows BA MRTPI

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

Decision date: 9 January 2017

Appeal Ref: APP/N5090/C/16/3151741

Land at 189 Friern Barnet Lane, London, N20 0NN

- 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 Ms Mehrnush Pishroyan against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, ref: ENF/01487/15, was issued on 4 May 2016.
- The breach of planning control as alleged in the notice is the use of the outbuilding to the rear of the property as a separate dwelling.
- The requirements of the notice are:-
 1. Cease the use of the outbuilding as a self-contained residence
 2. Permanently remove all kitchen units, sinks, cookers and food preparation areas from the outbuilding
 3. Permanently remove the toilet and shower from the outbuilding
- The period for compliance with the requirements is 3 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Background

1. The enforcement notice is directed at a large outbuilding in the rear garden of a property situated upon the east side of Friern Barnet Lane, opposite North Middlesex Golf Course.
2. As indicated above, the breach of planning control alleged in this case is the use of the outbuilding as a separate dwelling. Significantly, the appellant (who is professionally represented) has not lodged the appeal on grounds (b) or (c). The appellant does not seek to argue that the breach of control has not occurred as a matter of fact, or that the use of the building as a separate dwelling does not involve a breach of planning control.
3. The appeal is proceeding solely on ground (d) as indicated in the heading above. Consequently, the planning merits of the development are not before me in this appeal.
4. The Council has not submitted a statement of case. However, I have taken into account the appellant's submissions and the representations received from neighbouring residents.

The appeal on ground (d)

5. The onus is on the appellant under ground (d) to make out the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at a material change of use of the building to a separate dwelling. As such, the appellant needs to show that the matters alleged in the notice occurred at least 4 years before it was issued (which was on 4 May 2016).
 6. According to the submissions for the appellant, the outbuilding was erected in accordance
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with drawings that accompanied a successful application for a Lawful Development Certificate (LDC) in 2011, albeit a different toilet layout was provided and also an additional shower. The appellant's stance is that whilst the building was to be a workshop, it has also been used as a self-contained residential unit for the last 4 years.

7. The submissions include a sworn affidavit from the appellant. The appellant states:

*"I started using the building as a self-contained residential unit as well as an Art Studio well before May 2012. I received many visitors from my native country, Iran, throughout the years and I accommodate my family members and friends in the outbuilding. My daughter also used the outbuilding as her accommodation where she arranged gatherings with her friends from time to time."*¹

8. The appellant indicates that the building has its own electricity connection. Electricity bills are provided, albeit the appellant says that it took a year to obtain a new supply for the outbuilding. The appellant indicates that due to marital difficulties it was convenient for her to work in the outbuilding and to sleep and live there for a period. However, her sisters have stayed in the outbuilding for long periods since 2014. Her daughter has also used the outbuilding during breaks from university. The appellant's daughter completed her studies in July 2016 and now lives with her mother - she arranges meetings with her friends in the outbuilding and also holds birthday parties for her friends.
9. In effect, the appellant claims that the use of the outbuilding as a separate dwelling is immune from enforcement action through the passage of time. In weighing the evidence before me, I have borne in mind that the appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. The electricity bills are addressed to the appellant at the 'Artist Studio'. Whilst these are of interest they fall well short of demonstrating that, for planning purposes, the lawful use of the outbuilding is as a separate dwelling. In any event, a troubling aspect of this case is that the appellant's claim is firmly contradicted by the submissions from local residents.
10. One neighbour disputes that the building was occupied within the '4-year cut off suggested'. According to this resident, the building was not even finished in July 2012. Another neighbour states that in late 2015 and early 2016 'kitchen and bathroom units' were installed 'when the 5 bedroom house was put up for rent' - the 'studio' appears to have been lived in since then. Moreover, another neighbour lists the activities that took place upon the site between September 2015 and February 2016 - including the subdivision of the garden and the refurbishment of the outbuilding. This resident believes the outbuilding has been occupied for approximately eight months since its refurbishment.
11. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, on the evidence before me, I find that burden has not been satisfactorily discharged in this particular case. On the balance of probability, I conclude that at the time the notice was issued it was not too late to take enforcement action against the alleged breach of planning control. The ground (d) appeal fails.

Conclusions

12. For the reasons given above, I conclude that the enforcement notice should be upheld. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld.

Nigel Burrows

INSPECTOR

¹ Paragraph 7 of the appellant's affidavit