



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: 9 January 2017

Appeal Ref: APP/A5270/C/16/3151300
217 Petts Hill, Northolt, Ealing, UB5 4NS

- 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 Mr Krzysztof Pogwizd against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice, ref: EN160233ODOB(1), was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is:- Without planning permission: The erection 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 at the rear of the premises; and
 3. Remove from the land all fixtures and fittings, debris and general detritus resulting from the works.
 - 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 grounds set out in s174(2)(b) and (f) 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.

Preliminary matter

2. It had been intended that the site visit would be undertaken on an accompanied basis. However, the appellant did not attend. I undertook an inspection of the site and surroundings unaccompanied. Whilst I was not able to gain access to the building I was able to see it from the street. The Council's photographs show its interior as it was in April 2016. When taking into account the grounds of appeal, and the evidence that has been submitted, I am satisfied that I have sufficient information to decide the appeal and that no party's interests will be prejudiced by the appellant's absence.

Matter concerning the enforcement notice

3. 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.
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4. 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.
5. 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 (b)

6. On ground (b)² it is argued that the matter alleged, the erection of a dwellinghouse, has not occurred as a matter of fact. The burden of proof is upon the appellant.
7. I am told that the appellant purchased the property at 217 Petts Hill in November 2015. There was an existing building, having the appearance of a garage, on the land in the position now occupied by the subject building.³ The appellant says this existing building was demolished due to its poor condition.
8. The evidence indicates that works for the erection of the replacement building probably took place during late 2015.⁴ It was reported to the Council in February and March 2016 that two individuals were occupying the property. The Council inspected the property in April 2016 and found that it contained a shower room and W/C, a fitted kitchen and living space containing a lounge area and with sufficient space to accommodate a double bed. Photographs taken at its visit are appended to the Council’s statement.
9. According to the appellant, the kitchen and shower room were installed into the building for temporary use whilst building and renovation works were ongoing at the main property. The appellant claimed to be sleeping within the main house. I note that planning permission had been granted in February 2016 for a two storey extension and that a Lawful Development Certificate had been granted in January 2016 for a roof extension and alterations. It is quite possible, therefore, that substantial building works were for a time ongoing at the main property. The Council could not verify at the time of its visit that the subject building was occupied.
10. However, for a number of reasons I am not persuaded that the kitchen and shower room were simply installed for the purpose of temporary use. As is seen from the photographs the kitchen is fully fitted with floor and wall units, worktops, an integrated oven and hob with extractor unit over, inset sink and washer. Its appearance is more indicative of independent self-contained living than a facility intended only for a temporary period during refurbishment works of the main property.

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.

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

³ The Council has produced a Google Street View photograph said to be taken in 2014 which shows a garage on the land in the position now occupied by the subject building.

⁴ In February 2016 it was reported to the Council that the building, constructed during late 2015, was occupied by two individuals.

11. Externally the building has lighting to the side of the door and a satellite dish has been installed to its side elevation. The building can be accessed directly from the street by a gate. These features are indicative of independent domestic living.
12. Following the reports of occupation received by the Council in February and March 2016, interested parties to this appeal have again commented in August 2016 that the building is in use as a dwelling, that they see the same people going in and out and that the lights are on late into the evening. These observations call into question the appellant's version of events. However, no further explanation has been given by the appellant even though there is a burden upon him to prove that use of the building as a dwelling has not occurred.
13. I conclude on the balance of the evidence that a building has been erected; and that the building when erected contained all the facilities necessary for day to day living and that it has been so used. The matter alleged, on balance of probability, has occurred as a matter of fact. The appeal on ground (b) fails.

The appeal on ground (f)

14. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach⁵. The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
15. Unlike an appeal on ground (a), where the full planning merits of a development can be considered, an appeal on ground (f) is constrained by the Council's purpose in issuing the notice. In this case, because the notice requires demolition of the building, its purpose is to "remedy the breach". This is not a case where the Council has under enforced by seeking lesser steps to "remedy any injury to amenity" that has been caused by the breach. The appeal on ground (f) is limited to the consideration of the steps necessary to achieve the purpose of remedying the breach.
16. As the erection 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.
17. It is also possible to remedy a breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted⁶. Within the curtilage of a dwellinghouse there are permitted development rights (in effect planning permission⁷) 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

⁵ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

⁶ 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.

⁷ S59(1) of the Act provides for the granting of planning permission by a "development order". Article 3(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides for the granting of planning permission for the classes of development described as permitted development in Schedule 2. Class E to Part 1 of Schedule 2 provides for (amongst other things) the erection of a building within the curtilage of a dwellinghouse as permitted development subject to limitations and conditions.

be remedial rather than punitive. Where an appellant is proposing to bring the development in line with that which could be erected by way of permitted development rights the question to be considered is whether complete removal would ultimately serve any purpose⁸.

18. There is, however, 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 appellant's proposal, such as it is, is that the kitchen and bathroom can be removed. However, I cannot be sure that the building would then be suitable for use for purposes incidental to the enjoyment of the dwellinghouse or that this is all that would be necessary to enable use for incidental purposes as there is no information about the appellant's intentions for its future use.
19. From the measurements taken by the Council I have no reason to question that the building is within the height limitation for permitted development. However, there is no comparison against the other permitted development parameters.
20. Overall, I am not reassured that there is a valid fall back position and that what the appellant has in mind for the building would result in a building such as could be erected under permitted development rights. Neither is there sufficient information before me to enable me to frame any lesser steps to the necessary level of precision.
21. I have considered, in the round, whether there is any obvious alternative to complete demolition. Whilst not precluding further dialogue between the appellant and the Council, within the ambit of this appeal there is none that I can identify. The appeal on ground (f) fails.

Other matters

22. Whilst no appeal has been made expressly on ground (c)⁹ it has been suggested that the building was erected under permitted development rights and, therefore, did not amount to a breach of planning control. This is a further matter which I shall consider.
23. The fact that there was a building on the site previously has no bearing upon the legality of the new building. The demolition of a building and its replacement with another building is an act of development.
24. On the matter of whether these works were permitted development, I know of no permitted development rights that would allow the erection of a dwelling (i.e. the matter alleged). Neither has either party drawn attention to any such rights.
25. The permitted development rights which provide for the erection of a building within the curtilage of a dwellinghouse apply only if the building is required for a purpose "incidental to the enjoyment of the dwellinghouse". Incidental uses within the curtilage of a dwellinghouse are those which arise as an incidence of the dwellinghouse but which are not, in themselves, part and parcel of the

⁸ Tapeccrown Ltd v FSS & Vale of White Horse DC [2006] EWCA Civ 1744

⁹ An appeal on ground (c) of s174(2) is that the matter alleged does not constitute a breach of planning control.

existing dwellinghouse use¹⁰. However, there is no indication that the building was erected for such an incidental purpose.

26. Even if I was to accept that the building was for use associated with the main dwelling (as opposed to use as a separate self-contained dwelling) it would still have been a building providing primary living accommodation including a kitchen, bathroom and living space. A building erected for such a purpose could not have been an incidental building and could not, therefore, have benefitted from permitted development rights.

Conclusion

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

Susan Wraith

Inspector

¹⁰ Incidental uses are those which arise from the enjoyment of a dwellinghouse by an occupier, for example uses associated with a hobby, which are of a scale and nature which can reasonably be described as "incidental". The interpretation given at Class E to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) states that "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.