
Appeal Decision

by K R Saward Solicitor

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

Decision date: 2 February 2017

Appeal Ref: APP/F5540/C/16/3154922

28 Myrtle Avenue, Feltham, Middlesex TW14 9QU

- 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 Mr S Thomas against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 23 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of an outbuilding and its use as a self contained residential unit.
 - The requirements of the notice are:-
 - 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,¹ 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 demolition of the unauthorised outbuilding
 - iv. The removal of all resultant debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Procedural Matters

2. As the appeal turns on matters of law and facts, a site visit was unnecessary.
3. Since no appeal has been brought on ground (a) with payment of the prescribed fee, there is no deemed planning application to consider. It follows that arguments on the planning merits are not relevant in this appeal. That includes arguments over whether harm arises in the manner identified in the reasons for issue of the notice and the presence of other outbuildings in the vicinity. The appeal proceeds on ground (f) only.
4. The appellant's submission of a retrospective planning application and the Council's decision to decline to determine that application has no bearing in this appeal.

¹ The comma between "bathroom" and "facilities" is a typographical error

Reasons

5. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach.
6. The appeal concerns the construction of a single storey outbuilding in the rearmost part of the garden of No 28 for use as a separate residential unit of accommodation. Even if the appellant was misled by his builder and was unaware of the law, the fact remains that there has been a breach of planning control which is uncontested.
7. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
8. The Council has not identified specifically which of those two purposes it seeks to achieve, but its reasons include harm arising from the overbearing impact of the building on neighbouring occupiers and from its impact on the character and appearance of the appeal site. These reasons are consistent with the purpose of remedying injury to amenity. As the steps required in the notice seek removal of the unauthorised built development it is clear that the purpose is also to remedy the breach of planning control. Therefore, the notice is directed at both purposes.
9. The appellant states that internal partitions and units have been removed already from the outbuilding in compliance with the notice. He proposes that the building be used for the enjoyment of the main house as a playroom, gym and for storage to accommodate the needs of his growing family. A block plan has been submitted to show how this alternative use could be achieved by removal of the kitchenette area. Such approach does not address the injury to amenity arising from the presence of the building itself. It also overlooks the fact that the self-contained residential unit has been built in breach of planning control. It cannot retrospectively be altered to be permitted development.
10. Remedy of the breach can only be achieved by the demolition of the outbuilding. No lesser steps would satisfy the requirements of the notice. Therefore, they do not exceed what is necessary and the appeal on ground (f) must fail.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed.

KR Seward

INSPECTOR