

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/A5270/C/16/3153565
49 Burns Avenue, Southall, Ealing UB1 2LR

- 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 Mohan Pankhania against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of an existing outbuilding in the rear garden to use as an independent self-contained residential dwelling.
- The requirements of the notice are:-
 - a) Cease the use of the outbuilding as an independent self-contained residential dwelling.
 - b) Do not use the outbuilding at the Land for any purposes other than a use incidental to the main dwelling.
 - c) Remove the kitchen and drainage connections which facilitate the separate residential use.
 - d) Remove the bathroom and drainage connections which facilitate the separate residential use.
 - e) Remove all internal partitions which facilitate the separate residential use.
 - f) Remove the fence line and access gate which separates the outbuilding from the garden of the main property
 - g) Remove 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out in the Formal Decision.

Preliminary Matters

1. As the appeal turns on matters of law and facts, a site visit was unnecessary.
2. There is no need for the notice to stipulate the precise date on which the three month compliance period ends. The date of 1 October 2016 given in the notice became inaccurate once the appeal was made. The notice was then suspended pending the outcome or withdrawal of the appeal. Therefore, the date should be deleted. This can be done without injustice to either party.

Reasons

3. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach. The notice concerns a single
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storey outbuilding in the rearmost part of the garden of the appeal property, an end of terrace house.

4. The appeal is brought on the basis that the appellant intends to apply for planning permission to retain the outbuilding. However, the presence of the outbuilding is not in issue. The notice does not seek its demolition. Rather, it is the use of the outbuilding as an independent self-contained residential unit which is the breach of planning control attacked by the notice. It is this use that the notice requires to cease and removal of those items which facilitate the use. The appellant has not contested cessation of the use nor has he advanced any arguments as to why any of the facilities should remain.
5. Compliance with the notice does not prevent a lawful use of the outbuilding for purposes incidental to the enjoyment of the main dwelling in the same way that other outbuildings in the vicinity may be so used.
6. However, a notice can go no further than requiring remedy of the breach as provided by section 173(4)(a) and to remedy the injury to amenity from the living conditions (section 173(4)(b)). These purposes are achieved by requiring the use as a separate residential unit to cease and removal of various associated facilities. Prohibition of any other use which is not incidental to the use of the dwelling exceeds what it is necessary to remedy the breach. For that reason paragraph 5.b) should be deleted.
7. To this limited extent the ground (f) appeal succeeds and I shall vary the notice before upholding it.

Formal Decision

8. It is directed that the enforcement notice:-
 - (a) be corrected by deleting the last sentence of paragraph 5. and replacing it with "You are required to complete these actions within 3 months from the date this notice takes effect."; and
 - (b) be varied by deleting the requirement in 5.b) in its entirety and thereafter renumbering the remaining requirements in paragraph 5.
9. Subject to this correction and variation the enforcement notice is upheld.

KR Seward

INSPECTOR