

Appeal Decision

by K R Saward Solicitor

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

Decision date: 3 February 2017

Appeal Ref: APP/R5510/C/16/3155428

1 Harlington Close, Harlington, Hayes, Middlesex UB3 5BW

- 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 Dr Shamshad Syed Hussain against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 29 June 2016.
- The breach of planning control as alleged in the notice is the unauthorised material change of use of an outbuilding – the “Outbuilding” (*shown hatched in blue on the site plan attached to the notice*) to a separately occupied self-contained residential unit without the benefit of planning permission.
- The requirements of the notice are:-
 - (i) Cease the use of the Outbuilding as a separate self contained residential unit.
 - (ii) Remove the fixtures, fittings and appliances from the kitchen area in the Outbuilding worksurface(s), cooking appliances, kitchen style wall and floor cupboards and hot and cold water services and foul waste drainage pipes.
 - (iii) Remove the bed(s) and mattress(s) [sic] from the Outbuilding which enable the use as a separate residential unit not for an incidental or ancillary purpose.
 - (iv) Remove the bathroom suite to include all fixtures and fittings, shower(s), basin(s) WC(s), hot and cold water service pipes and foul waste drainage pipes from the Outbuilding.
 - (v) Remove all the internal wall(s) separating the bathroom from the main useable area in the Outbuilding.
 - (vi) Cut back the foul waste drainage pipe to the entry point to the Outbuilding, seal and backfill with concrete or similar material.
 - (vii) Remove the gas boiler supplying hot water and central heating and all associated pipework and radiators from the Outbuilding.
 - (viii) Remove from the land all debris, items, appliances, units, building materials, plant and machinery resulting from compliance with points (ii) to (vii) above.
- The period for compliance with the requirements is 3 calendar 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 is allowed and the notice is varied as corrected prior to being upheld.

Preliminary matters

1. As the appeal turns on matters of law and facts, a site visit was unnecessary.
 2. In requirement 5.(ii) of the notice the word “including” has been omitted after the word “Outbuilding”. From the description of items that follows, it is clear that the word was intended. As a mere typographical error, it can be corrected without injustice to either party.
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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.
4. The notice concerns the use of an outbuilding constructed in the rear garden of the appeal property as a separately occupied self-contained residential unit. The presence of the building is not in issue. The appellant states that the separate residential use has now ceased and other measures, including removal of the kitchen, have been undertaken in fulfilment of some of the requirements. However, the appellant considers it excessive for the notice to require removal of the bathroom, its internal partitioning, the drainage pipe and heating/hot water, as required by steps (iv)-(vii).
5. The appellant says that construction of the outbuilding was completed in 2012 as permitted development for use as a gym.
6. 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)). In this case, it is clear that the Council seeks to remedy the breach as it requires the use to cease and various works to be undertaken to prevent resumption of the use. The reasons for issuing the notice also include the restricted internal space being detrimental to living conditions for occupiers. This is consistent with remedying injury to amenity. Therefore, the notice is directed at both purposes.
7. Where, as in this instance, a notice concerns a material change of use it may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use so that the land is restored to its condition before the change of use took place. That is so even if the works on their own might not constitute development, or be permitted development or be immune from enforcement action.
8. The Council says the steps are necessary to prevent future use of the building as a separate residential unit, but that is the wrong test. The key issue is whether or not the bathroom and associated works were installed as integral to or part and parcel of the separate residential use or as an integral part of the use as a gym. If the facilities had been installed for a lawful use as a gym and could still be so used, it would not suffice that those facilities were also integral to and part and parcel of the unlawful residential use.
9. There are two drawings of the proposal dated 19 January 2010 which are titled 'outbuilding in the rear garden under PD rights'. The proposed ground floor plan is annotated as 'gym fitness room' and a shower room is shown with sufficient space for a shower cubicle, w.c. and wash basin. This supports the appellant's contention that the intended use was as a gym.
10. An email from the Council's Planning Enforcement Officer on 14 March 2012 refers to a site meeting on that date and gives the "informal opinion" that "the current outbuilding development falls within the spirit of your householder's permitted development rights". I take this as a reference to the outbuilding itself. No mention is made of a gym or any other use. If there had been any

sign of separate residential use at that time it would be anticipated that the officer would have said so.

11. A building regulations compliance certificate confirms that a gas boiler was installed on 13 September 2012. According to the appellant's reply to a planning contravention notice (PCN) issued on 20 October 2014, there was no separate residential use at that time. This is confirmed in the PCN reply of a Mr Sadeem Saadiq dated 8 December 2014 who identifies himself as the person "looking after" the premises on behalf of the appellant. This indicates that the boiler was installed many months before the separate residential use commenced and there is nothing to indicate it was installed for that purpose.
12. The appellant does not explicitly state that the outbuilding was ever used as a gym. The evidence of Mr Sadeem Saadiq suggests that it was not. Mr Sadiq says that he acquired use of the land at No 1 on 3 July 2009. He was therefore involved with the property when the outbuilding was built. In answer to the question in the PCN "why was it built?", Mr Saadiq replies "Dr Shamshad bought the house with the intention that his eldest son will occupy it when he comes to study medicine in the U.K. We also have a back room that we use for gym, entertainment, office. Seeing this and the usefulness of it every time he came to visit, he wanted the same!" Mr Saadiq goes on to say that the eldest son decided not to come to the U.K. and "since completion it hasn't been used even for these purposes and has been a big waste of money!" My reading of this is that there had been no use of the outbuilding.
13. On the limited evidence before me, I am satisfied that the outbuilding was built and the bathroom and heating installed for the purpose of a lawful use as a gym albeit there may not have been actual use as such. No evidence has been supplied to indicate that those facilities were installed as part of the process of converting the outbuilding into a self-contained residential unit. From Mr Saadiq's PCN reply, the conversion would have been much later. Indeed, no mention is made of a kitchen when he completed the form on 8 December 2014.
14. In the absence of evidence to the contrary, it seems to me that the bathroom and gas boiler were not installed solely to accommodate the separate residential use. Furthermore, in my judgement the requirements to cease the use and remove beds and all kitchen facilities will suffice to remedy the breach of planning control.

Conclusion

15. For the reasons given above, I conclude that the requirements in respect of removal of the bathroom and its internal walls, the drainage pipe and gas boiler, are excessive. I shall vary the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

16. It is directed that the enforcement notice be corrected by:
 - (a) inserting the word "including" after "Outbuilding" in requirement 5.(ii).and varied by:
 - (b) deleting the requirements in 5.(iv) to (vii), inclusive, in their entirety.

- (c) deleting the words “points (ii) to (vii)” from the requirement in 5.(viii) and replacing them with “point (ii)”.
- (d) thereafter, renumbering 5.(viii) as 5.(iv)

17. Subject to these variations the enforcement notice is upheld.

KR Seward

INSPECTOR