

## Appeal Decision

Site visit made on 10 January 2017

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 3 February 2017**

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**Appeal Ref: APP/N4205/C/16/3152421 & 3152422**

### **4 Higher Landedmans, Westhoughton, Bolton BL5 2PY**

- 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 David and Mrs Catherine Holt against an enforcement notice issued by Bolton Metropolitan Borough Council.
  - The enforcement notice was issued on 11 May 2016.
  - The breach of planning control as alleged in the notice is the change of use of an outbuilding from an ancillary office to residential dwelling.
  - The requirements of the notice are i. Permanently cease to use the outbuilding as a dwelling for human habitation; and ii. Permanently remove from the outbuilding all manifestations of the residential use, to include fitted kitchen, bed and fitted bathroom.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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### **Decision**

1. The enforcement notice is varied by the deletion of 'all manifestations of residential use, to include fitted kitchen, bed and fitted bathroom' in section 5 and the substitution instead of 'either all shower room fittings or all kitchen fittings'. Subject to the variation the appeal is dismissed and the notice is upheld.

### **Reasons**

2. The single storey appeal building is alongside the west boundary of the appeal land whereas the dwelling on the land is close to the east boundary. The area between the two buildings is mainly hard landscaped and provides an external amenity area for the residents of the dwelling. The south end of the appeal building is an office/store and the remainder of the building comprises a bedroom, a nursery, a living room and a shower room. Access is directly into the living room which includes basic kitchen equipment and units.

The ground (b) appeal

3. The ground (b) appeal has been made because the Appellants claim that the main part of the appeal building is not in use as a residential dwelling and that, therefore, the alleged breach of planning control has not occurred. They claim that the building is used for purposes incidental to the enjoyment of his dwelling and that the use of the building, under the provisions of section 55(2)(d) of the Town and Country Planning Act 1990, is not therefore development. Whether this is indeed the case is a matter of fact and degree.

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4. The Appellants' son, his son's partner and their baby daughter reside in the building. Whilst the Appellants assist with childcare and provide other assistance to their son and his family, and notwithstanding the shared meals they enjoy in the Appellants' dwelling on at least three occasions per week, the accommodation in the appeal building provides all that is necessary for independent occupation. It may not be metred separately but this factor, taken together with all other factors including the fact that those who reside in the main dwelling do not derive any enjoyment from use of the residential part of the appeal building, leads to a conclusion that, as a matter of fact and degree, the appeal building is in use as a separate and self-contained dwelling.

5. The conclusion reached above is consistent with that reached by the Inspector who determined an appeal against refusal of permission for 'the change of use of an ancillary office to ancillary accommodation to the main dwelling'. The appeal building is in use as a residential dwelling, and not for a purpose incidental to the enjoyment of the dwellinghouse, and the ground (b) appeal thus fails.

The ground (c) appeal

6. The conclusion reached in the ground (b) appeal, that the appeal building is not in use for a purpose incidental to the enjoyment of the dwellinghouse, must lead to a conclusion that there has been a breach of planning control. The ground (c) appeal therefore fails.

The ground (f) appeal

7. The appeal building may be lawfully used as ancillary family accommodation to that provided in the main dwelling provided that there remains interdependency between the two buildings. In this regard it is acceptable for the Appellants' son and their son's partner and daughter to sleep in the appeal building, and to have direct access to the facilities of the shower room, but to be dependent on the accommodation provided in the main dwelling for cooking and eating. Similarly, it is acceptable for the appeal building to be used as ancillary living accommodation with basic kitchen facilities but without toilet and washing facilities. It is, furthermore, acceptable for the appeal building, irrespective of all other factors, to be used as sleeping accommodation ancillary to that provided in the main dwelling.

8. Taking the aforementioned factors into account the requirements of the notice are excessive. The requirement to remove beds is excessive irrespective of other considerations (these could be, in any event, stored in the building) and the requirement to remove both the 'fitted kitchen' and the 'fitted bathroom' (even though there is no bath) is also excessive. The removal of either the fitted kitchen or the fitted bathroom would result in the appeal building being incapable of supporting independent occupation and would result in the use of the building being for a purpose incidental to the enjoyment of the dwellinghouse. The ground (f) appeal thus succeeds and the second requirement of the enforcement notice has been varied accordingly.

The ground (g) appeal

9. The compliance period of three months, given the varied second requirement of the notice, is not unreasonable. The ground (g) appeal thus fails.

***John Braithwaite***

Inspector