
Appeal Decision

Site visit made on 14 February 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 22 February 2017

Appeal Ref: APP/A5270/C/16/3156135

153 Windmill Lane, Greenford, Ealing UB6 9DP

- 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 Akhtar Ali Shah against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered EN160379CUOB(1), 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 the outbuilding to the rear of the premises to use as an independent, self-contained residential dwelling.
- The requirements of the notice are to:
 - (a) Cease the use of the outbuilding as a self-contained residential dwelling;
 - (b) Do not use the outbuilding for any purposes other than a use incidental to the main dwelling;
 - (c) Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;
 - (d) Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling; and,
 - (e) Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice, as varied, is upheld.

Background and Planning History

1. The appeal property is a detached outbuilding situated to the rear of, and within the residential curtilage of, the appellant's dwelling, No 153 Windmill Lane. No 153 is a two-storey end-of-terrace house in a row of three on the western side of the road.
2. The outbuilding at which the notice is aimed is a roughly square hipped-roof structure measuring about 6m by 6m, located about 5m from the rear elevation of the house. A single-storey extension, with a Perspex roof, has been added to its eastern elevation. The outbuilding was the subject of a Certificate of Proposed Lawful Development (LDC) granted on 7 January 2005¹,

¹ LPA Ref: P/2004/5110. I note that both the appellant and the Council refer to this as a "planning permission", but the copy of the decision notice supplied by the appellant, although apparently incomplete, states clearly that a Certificate of Proposed Lawful Development has been granted for a "single storey out building in rear garden".

although the relevant plans do not show the extension, rather they show an area of covered decking. The Council, however, concede that the extension was built more than four years prior to the date of the notice and is, therefore, immune from enforcement action. I note that the plan shows the outbuilding as an "exercise room". Another large outbuilding is located at the western end of the rear garden of No 153. It is shown as a garage on the 2005 plans, but it is currently used for domestic storage and has no doors that would facilitate use for the parking of vehicles.

3. At my inspection I saw that access to the appeal outbuilding is gained through the extension, which contains a range of kitchen cupboards, including an integral sink, along the internal wall. There is also a washing machine under the worktop and a gas boiler affixed to the wall above. Other cupboards and a small fridge are within this part of the property, but a hob, shown in the Council's plans and photographs, has been removed.
4. The main part of the outbuilding largely comprises a single room, with a small shower room in the north-eastern corner. The dimensions of that shower room are about 1.5m by 1.5m and it contains a wash hand basin, toilet and shower cubicle. The main room is floored with wood laminate and contained a few items of furniture, including the base of a double bed, a settee and a wardrobe, at the time of my visit. The room has two radiators, served by the gas boiler, and a pair of windows in the western wall, with a further small window in the shower room. Externally, a satellite dish has been fixed to the western elevation of the building.
5. Access to the rear garden of the main dwelling, and to the two outbuildings, is obtained through use of a rear service road beyond the western boundary of Nos 149 and 151 Windmill Lane.

THE APPEAL ON GROUND (b)

6. The appeal on ground (b) is based upon the contention that there has been no breach of planning control as the use of the outbuilding has been consistent with that of a gym, with bathroom and storage room. Its usage has been ancillary to that of the main dwelling. In support of this, the appellant has submitted a "statement of truth" in which he says, amongst other things, that the building has been used for personal exercise, additional storage, children's play and, on occasions, as overnight accommodation for family members. Letters from two of the appellant's daughters have also been submitted. One states that she uses the outbuilding to store her possessions when she stays overnight in the main house, and also that her children play in it when their grandparents babysit. The other daughter states that she has stayed with her parents to look after them on many occasions since 2015, when her father, the appellant, "broke his leg". She says that she stays in the first floor bedrooms, with her children, whilst her parents reside in the outbuilding as this avoids the need to climb stairs. Other documentation is also submitted in confirmation of the appellant's injury in December 2015 – an ankle fracture, rather than a broken leg.
7. The Council, however, consider that the evidence produced is insufficient to prove, on the balance of probabilities, that the breach has not occurred. The claim that the building has been continually used as a gym/storage room is difficult to reconcile with numerous Council inspections that have found the outbuilding occupied as a self-contained dwelling. In particular a visit in 2014

found that it had been occupied for nine months by a couple, and two visits in 2016 found it occupied by a lady said to be either the appellant's daughter or niece. The Council also consider that the appellant's statement and the letters from his daughters show inconsistencies, especially as the appellant makes no mention in his statement of the use of the building for sleeping purposes. The visits made by the Council in May and June 2016, including photographs taken at the former, and complaints from neighbours, suggest separate residential use and no substantial evidence has been produced to counter this claim. The appeal on ground (b) should, therefore, fail.

8. In consideration of the above matters I am mindful that, in an appeal on legal grounds such as grounds (b) and (c), the burden of proof lies with the appellant². He has to show, on the balance of probabilities³, that, in respect of ground (b), the matters alleged in the notice have not occurred as a matter of fact. It is also pertinent that it has been found, in relevant case law⁴, that the evidence of an appellant should not be rejected simply because it is not corroborated, and if there is no evidence to contradict or make the appellant's version of events less than probable, and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
9. In this case, however, there is conflicting evidence on a number of matters. Firstly, there is no explanation given by the appellant of the Council's findings, following a visit made on 8 October 2014. The relevant officer's notes⁵ state that the property *"does have an outhouse which has been occupied by a couple for last 9 months. Outhouse (sic) is fully self contained"*. Secondly, the appellant makes no reference in his "statement of truth" to any use of the outbuilding for sleeping other than that he says, in point 4, that *"when the home is busy with all the family around it has served to provide shelter overnight for one or two my nine grandkids on (sic) but its primary use is not as accommodation but as a gym and it has served as a gym for over 10 years"*. I find it surprising that he makes no mention of the fact that one of his daughters refers to the appellant and his wife residing "in the back room situated in their back garden" so that they do not need to climb stairs. Occasional and infrequent use of the outbuilding for overnight accommodation by family members may not, in itself, trigger a material change of use of the building, as this could be considered to be incidental to the enjoyment of the main dwellinghouse, but the lack of consistency between statements creates an element of doubt as to factual accuracy.
10. On a third matter, it is apparent from the Council's notes of visits that the outbuilding has been fitted with all of the facilities to support independent and self-contained residential accommodation. There is a shower/toilet, a kitchen, which at one time included cooking equipment that appears to have been removed following the advice given to the appellant in a note dated 3 November 2016, and the Council's photographs show a bed and a cot in the main part of the building at their visit on 16 May 2016, albeit that the officer was told that the appellant's daughter was occupying the structure whilst her property was being renovated. This, again, may be indicative of use incidental to the enjoyment of the main dwellinghouse, but it is another matter on which

² *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

³ *Thrasivoulou v Secretary of State for the Environment* No 1 [1984] JPL a732.

⁴ *Gabbittas v Secretary of State for the Environment & Newham BC* [1985] JPL 630.

⁵ Council document ALN2.

the appellant's evidence is silent and the lack of detail of how long and in what manner it was so used does not assist the appeal on this ground.

11. I can only conclude that the appellant has not met the necessary burden of proof for an appeal on this ground. His evidence is insufficiently precise and unambiguous to show, on the balance of probabilities, that the outbuilding has not been used as an independent self-contained residential dwelling, as alleged in the notice. The appeal on ground (b) therefore fails.

THE APPEAL ON GROUND (c)

12. On ground (c), the appellant claims that permission for the outhouse gym and bathroom was granted in 2005 and has been so used since that date, with no change of use to a residential dwelling. However, this shows a fundamental misunderstanding of this ground of appeal, which is that planning permission is not required for the material change of use alleged to have taken place.
13. I have already referred to the fact that planning permission was not, as a matter of fact, granted in 2005, rather the Council issued an LDC in respect of a proposed outbuilding, but the relevant plans were entitled "new exercise room" and did not concern a proposal for a self-contained residential unit. Indeed the appellant is not saying that planning permission is not required for a material change of use of the outbuilding to that of a dwelling, rather he is claiming that such use has not occurred. I have already found, in relation to the appeal on ground (b) that such a claim cannot be supported and any change of use of the outbuilding to that of a self-contained dwelling would require a specific grant of planning permission. As such permission has not been granted, the appeal on ground (c) fails.

THE APPEAL ON GROUND (f)

14. On ground (f), the appellant contends that the requirements of the notice are unreasonable as he already has planning permission for the bathroom attached to the gym, and there are no kitchen facilities within the outhouse. Moreover he claims that it is a breach of his rights under the Human Rights Act 1998 to require him to remove the entire building after planning permission has been given.
15. The Council correctly point out that the notice does not require the removal of the entire building, thus there is no infringement of human rights as alleged by the appellant. However, they are wrong in saying that the plans approved in 2005 do not show a toilet/shower room, as they clearly do, albeit of slightly different dimensions. In such circumstances it would be unreasonable for the shower room/toilet to be removed, and I shall vary the notice accordingly.
16. Additionally, however, it is clear from my above deliberations that I am satisfied that a kitchen, or fixtures and fittings normally found in a kitchen, have been installed in the building, including within the extension. Such fixtures and fittings facilitated the material change of use that has taken place and it is not unreasonable therefore for the Council to seek their removal.
17. I am mindful, however, of the way in which requirements (c) and (d) have been worded. They require the removal of the kitchen and bathroom, and their respective drainage connections *which facilitate the use of the outbuilding as a self-contained residential dwelling (my emphasis)*. This implies that any fixtures or fittings of this nature that do not facilitate use of the outbuilding as

a separate dwelling may be retained, and that it would be a matter of judgement on this point for the Council to make in enforcing, as necessary, the requirements of the notice. In this respect, it is quite normal, in my experience, for outbuildings used for recreational purposes incidental to the enjoyment of the dwellinghouse to contain basic washing and kitchen facilities, such as a sink and a fridge or freezer for keeping food which may, for example, be cooked on an outdoor barbecue. The appellant appears to have already removed a hob which is shown in the Council's evidence, and it may be that this is sufficient to ensure that use as a self-contained dwelling could not resume. In any event, such resumption would directly breach steps (a) and (b) which are not challenged by the appellant.

18. In all of these circumstances the appeal on ground (f) succeeds to the limited extent that requirement (d) will be deleted in the light of the fact that a shower room/toilet is shown on plans approved in 2005. I shall, therefore, vary the notice accordingly.

Other Matters

19. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

FORMAL DECISION

21. The enforcement notice is varied by:
- (a) The deletion of paragraph 5(d) in its entirety; and,
 - (b) The renumbering of paragraph 5(e) as 5(d).
22. Subject to these variations the appeal is dismissed.

Martin Joyce

INSPECTOR