

Appeal Decision

Site visit¹ made on 26 January 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/F5540/C/16/3150487

36A Bridge Road, Isleworth TW3 1SG

- 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 Minoo Rustomjee Driver against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 29 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the use of an outbuilding as a self-contained residential unit.
 - The requirements of the notice are to:
 - (1) The cessation of the outbuilding's use as a non-incidental and self-contained residential unit.
 - (2) The removal of all internal and external works that enable such use (i.e. all kitchen and bathroom, 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).
 - (3) 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) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
-

Decision

1. It is directed that the enforcement notice be corrected as follows:
 - (2) The deletion of all text in section 3, the breach of planning control alleged, and the substitution therefor by the following text: *'Without planning permission, the material change of use of the outbuilding into a single dwellinghouse'*;
 - (3) The deletion of section 5 sub-paragraph (i), what you are required to do, and the substitution therefor by the following text: *'(i) Cease the use of the outbuilding as a single dwellinghouse'*;
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

¹ Both the appellant and Council agree this appeal can be determined by the written representation procedure.

3. All evidence points in the likelihood that the issued notice attacks use of the outbuilding as a single dwellinghouse. To accurately reflect section 55(1) of the Act, the allegation should describe the breach as a material change of use. The requirement should flow from this correction. For greater precision, the notice should be corrected to reflect the reality of the breach of planning control. I am satisfied no injustice arises to any party by this correction and I have therefore corrected it.

The site and background information

4. No. 36A comprises a mid-terrace dwelling in a mainly residential area. Access to the rear outbuilding is via a side road. It has its own main entrance and small portion of land that forms its curtilage. It comprises living space, bedroom, kitchen and bathroom.

Ground (d)²

5. In this appeal, the onus of proof is firmly upon the appellant. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous³.
6. In deciding when the four-year period will begin to run in the case of a material change of use to a single dwellinghouse it is necessary to look at the physical works – the date the premises were capable of providing viable facilities for day-to-day private domestic existence, rather than the date when all the works were completed – and when the use actually commenced. It is a matter of fact and degree as to when the change of use occurs. In this case, for the purposes of the legislative provisions, the evidence should show when the rear building became a single dwelling and when/how it was occupied or used⁴.
7. Effectively, Mr Minoo Rustomjee Driver's claim is a simple one, namely, that the material change in the use of the outbuilding to a single dwellinghouse is immune from enforcement action, due to the passage of time. For this appeal, the relevant date is 29 April 2012. Mr Driver says the property, including the rear outbuilding, was purchased on 12 February 2012, although in email dated 3 August 2016 he says the date was 20 February 2012. Nevertheless, he insists the outbuilding was already occupied as a dwelling house. He contends it had been occupied for a period of three years before his acquisition and he has continued to rent it out. In support of this claim, he submits tenancy agreements from 2008 to 2014, which he says show occupation and use of the outbuilding as a dwelling house. I shall return to this corroboratory evidence later.
8. There is a fundamental problem with the evidence presented. There is no cogent and relevant evidence as to the actual building work comprised in the conversion. There is very little detail as to who carried out the work and when, what came first and sequence of events. Nor is there any plausible explanation as to the nature and scale of works of conversion that led to the creation of a

² Section 174(2)(d) says that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

³ The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviews the relevant case law regarding the onus of proof upon an appellant in this type of case.

⁴ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 and subsequent line of legal authorities reviewed in *Welwyn Hatfield BC v SSCLG* [2011] UKSC 15.

single dwelling. I find that the totality of the available evidence as to whether or when the outbuilding became a dwellinghouse is incomplete and lacks precision. It does not sufficiently verify the facts. It does not support the claim that the outbuilding was capable of providing facilities for self-contained living on or before the relevant date.

9. Even if I am to give benefit of the doubt to Mr Driver and accept that the outbuilding was already a single dwelling in February 2012 when he acquired the whole property, the evidence presented does not substantiate continuous occupation and use as a single dwellinghouse. For example, the assured shorthold tenancy agreements from 3 March 2008 to 12 November 2011 fall before the relevant period. All of these refer to *studio situated and being at 36 Bridge Road (rear flat)* but the address is 36A Bridge Road and reference to *studio or rear flat* is imprecise as it could be a rear flat within the main building. Additionally, there is nothing from the tenants themselves to corroborate Mr Driver's assertion that these people actually resided in the outbuilding and used it as their own home during this period.
10. In a similar vein, agreements for the period 20 February 2012 to September 2014 are exhibited to show use of the outbuilding as a dwelling house. However, the information contained therein is incomplete. For instance, there is nothing for the period 3 September 2014 – 29 April 2016. Even if there were agreements covering that period, documents submitted contain deficiencies. The agreement states that the *landlord lets and the tenants takes all that (house and garden with outbuildings (if any)) (or flat) situated at and known as 36 Bridge Road rear flat*. It is unclear why the tenancy refers to the house and garden as there is no plausible explanation.
11. Similarly, there is internal inconsistency in the documents. For example, Mr Kamaldeep Singh and Mrs Paranjit Singh tenancy started on 20 February 2012, which is before the relevant period, but it is for one year (20 February 2013). The next tenancy, for three individuals, is for six months but it started on 15 February 2013 until 14 May 2013, which does not tally with the contracted period. Perhaps this is an error. But the next tenancy started on 13 November 2013 for six month period ending on 12 May 2014. Between May and November 2013 there is an explained gap. Furthermore, Mr Sainath Pandagula and Mrs Deepthi Wootla tenancy started on 4 March 2014 for six month until 3 September 2014, but the previous tenants were in occupation until 12 May 2014.
12. In addition to all of that, some tenancies do not divulge important data such as how much rent had been charged or if any deposit was taken. There is no evidence of rent actually being paid for the relevant period. Given the considerable degree of uncertainty as to the accuracy of these documents, I attach limited weight to them.
13. It is not that uncommon for evidence to be adduced to show continuous use of a dwelling for a certain period from documentary information. This could take the form of utilities' connection charges and bills, local taxation and Electoral Register records. No such evidence has been tendered for my examination.
14. The Council's unchallenged evidence is that on 23 November 2015 it received a complaint that the outbuilding was in residential use. The complainant advised that a family were residing in the outbuilding. In December 2015, officers visited the site but access was not gained. Having served a power of entry

notice, access was gained on 22 December 2015. Officers witnessed the outbuilding was in self-contained residential use. It was occupied by a couple and their two-year old daughter. The occupants were paying £850 per month and had been residing in the outbuilding for approximately one year. Mr Driver provides no evidence of his own to make less than credible this version of events.

Conclusions on ground (d)

15. Pulling all of the above points together, I find the evidence presented does not sufficiently substantiate, to my satisfaction, when the outbuilding became a dwellinghouse and from when and how it was occupied and used by people forming a single household. This is because the totality of the evidence lacks precision and is ambiguous.
16. On the available evidence and the balance of probabilities, I find that the material change of use of the outbuilding to a single dwellinghouse did not occur on or before 29 April 2012. Even if an alternative view prevails on the latter point, the submitted evidence does not show that the outbuilding was continuously used in the subsequent four-year period as a single dwellinghouse. In this appeal, I am afraid the onus has not been discharged. It therefore follows that the appeal on ground (d) must fail.

Overall conclusion

17. Having regard to all other matters, I conclude that the appeal should not succeed. I have corrected the enforcement notice and upheld it as set out in my Decision above.

A U Ghafoor

Inspector