



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/R5510/C/16/3153224

Land at 55 Carlynon Road, Hayes, Middlesex UB4 0NR

- 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 Act’].
 - The appeal is made by Mr G Sahota against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 1 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of an outbuilding at the rear of the dwellinghouse to a self-contained residential unit.
 - The requirements of the notice are to:
 - (1) Cease the use of the outbuilding as a self-contained residential unit.
 - (2) Dismantle and remove from the outbuilding the fitted kitchen comprising floor cupboard units, wall cupboard units, integrated oven, oven housing, cooker hob, sink and sink unit and associated plumbing and the toilet pan and toilet cistern.
 - (3) Dismantle and remove from the outbuilding all internal studwork walls delineating and separating the kitchen/living space from the bedroom and the internal studwork walls delineating and separating the shower/toilet room from the bedroom.
 - (4) Remove from the land all debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from compliance with parts (1), (2) and (3) 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) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the initial 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.
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Decision

1. It is directed that the enforcement notice be corrected and varied as follows:
 - (2) The deletion of the words ‘*residential unit*’ in section 3, the breach of planning control alleged, and the substitution therefor by the following text: ‘*single dwellinghouse*’;
 - (3) The deletion of the words ‘*residential unit*’ in section 5 sub-paragraph (i), what you are required to do, and the substitution therefor by the following text: ‘*single dwellinghouse*’;
 - (4) Replacement of the word and digit ‘*three (3)*’ in section 6, time for compliance, by the following text: ‘*six months*’.

¹ The appeal parties agree this appeal is determined by written representations. An unaccompanied site visit was carried out by me, because the Council’s representatives failed to turn up at the event.

2. Subject to the above correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

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

The site and background information

4. No. 55 is an extended end of terraced property converted into self-contained flats situated in a mainly residential area opposite a school. There is a side passageway that leads to a spacious rear garden. The latter has been physically subdivided by close-boarded fence to form a self-contained curtilage to the subject dwellinghouse, which is accessed separately. It comprises an entrance hall in use as living space, two bedrooms, 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. *Whether or when a dwellinghouse*: Effectively, the claim is 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 1 June 2012.
8. Mr Sahota acquired the property in February 1989. On 12 January 2004, planning permission was granted to carry out extensions and alterations. He constructed the subject outbuilding and exhibits a completion certificate issued on 11 January 2005 by the Council's Building Control service⁵. The description of the building work, given at section 1 of the form, state the following: *Erection of detached snooker room/storage shed to rear of property (non-sleeping accommodation)*. It confirms compliance with regulations.

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 *Gravesend 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.

⁵ Council ref: 4235/BN/2004/796.

9. In July and August 2007, Mr Sahota converted no. 55 into three self-contained flats, which he says were numbered 55, 55A and 55B. A retrospective planning application was for this change of use was refused on 27 November 2008, and subsequently dismissed on appeal⁶. Mr Sahota claims that he converted the outbuilding into habitable accommodation, with a kitchen and bathroom, at the same time. A fence was erected to physically subdivide the outbuilding from the main building, and the latter was accessible separately from the side passageway. At section 2 sub-section (f) of the statement, it is said that '*...the appellant numbered the outbuilding 55C Carlyon Avenue*', but I think that is an error because the street is identified as Carlyon Road. In any event, there is no dispute that the subject outbuilding constitutes a physically and functionally separate planning unit.
10. I pause here. The outbuilding is a fairly large structure with a pitched roof and neatly constructed external walls. It has plastic double-glazed window casements and doors, and rainwater goods. The roof coverings appear to be in reasonable condition. The interior is subdivided by partition walls and has been completed to a reasonably high standard, and it contains modern fittings. Yet, Mr Sohata provides 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. For example, Mr Nadeem Nazar declares that he carried out handy-work in the outbuilding, such as changing taps, repairing boiler and decorating, yet there is no explanation as to the actual nature and extent of the works of conversion. Apart from general assertions that it had been converted in July and August 2007, there is no precise explanation as to what happened and how. I note that the electrical certificates refer to '*Design & construction by Sahota Construction*', but no detail as to who actually carried out the conversion work.
11. It is not uncommon to see other documentary evidence submitted in support of an assertion that the change of use into a single dwelling occurred on or before the relevant date. For example, invoices or bills for the purchase of building materials or white goods. Occasionally, invoices from trades' people are presented that purport to show when the physical conversion work had been carried out. Mr Sahota refers to four separate gas and electric supplies but does not provide evidence as to when a meter for each self-contained flat had actually been installed and by whom. The absence of detailed and sufficiently clear evidence makes comparisons between the nature of the conversion and timings and sequence of the building work difficult to make.
12. In a similar vein, the documentary evidence is deficient. I have reviewed the gas safety and electrical certificates normally issued by competent individuals to landlords. The gas certificates are dated 6 May 2011, 12 December 2012, 4 January 2014, and 26 January 2015. The appliance details show existence of an Ariston 24 HE boiler and a gas hob in the kitchen. The electrical installation and modification forms show no. 55C had been checked on 13 December 2007.
13. My observation is that none of this information clearly shows when and how the outbuilding was actually capable of providing viable facilities for independent cooking, washing or sleeping. Although circuit description in the electrical certificate for no. 55C refers to RCD socket in kitchen and living/bed; it also refers to gym plus play room, and that undermines the accuracy of the document. There is no corroboratory evidence from the testing engineers which might have assisted in

⁶ Council ref: 42035/APP/2007/2804 appeal ref: APP/R5510/A/08/2066722 dismissed on 16 June 2008.

clarifying when these inspections were actually made and what had been witnessed. I attach all of this information limited weight because it lacks clarity.

14. Given that the onus is squarely upon Mr Sahota to show when the change of use occurred, 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. My finding of fact on the material presented to me is fatal to Mr Sahota's immunity claim. However, for completeness, I will next review the evidence about when and how the outbuilding was occupied as a single dwellinghouse.
15. *When and how occupied*: The claim is that the outbuilding has continuously been occupied and used as a single dwelling before the relevant date. Mr Sohata relies on shorthold tenancy agreements [I refer to as 'AST'], statutory declarations and other bills. My general observation is that the AST for 2009/11, 2013 and 2015 is 2008 edition 10 for letting furnished dwelling-house. They refer to part 1 of the Housing Act 1988 but there is no inventory so it is unclear what furnishings were actually included. The agreement signed and dated on 13 November 2012 is an AST for letting furnished or unfurnished residential accommodation pursuant to the Housing Act as amended by part III of the Housing Act 1996. Again, it is unclear whether the outbuilding was let out as a furnished or unfurnished property, because there is no specific detail. This type of evidence might have shown the layout and configuration of the converted dwelling at the time.
16. In the statement at section 2, sub-paragraph (h), it says the following: '*On 16 September 2007, the outbuilding was rented to Mr Daljit Singh.*' It is said that he initially occupied a room in the main building but opted to move into the outbuilding with two other friends. I reckon the date given in section 2 is erroneous because his shorthold tenancy started in 2009. Nevertheless, his tenancy renewed on 12 September 2010 and on 5 September 2011 for 12 month periods. It is said that he vacated the outbuilding on 12 November 2012. Statutory declarations by a neighbour as well as tenants of 55A and 55B declare that he was seen living in the outbuilding from 2009 and until 2012.
17. It is said that Mr Daljit Singh rented the outbuilding for a monthly charge of £360 between 2009 and 2011, increasing to £420 on 5 September 2011. However, there is no information as to whether or not any deposit was actually paid. Nonetheless, Mr Sahota admits the charge was significantly below the going market rate. Later occupants were charged a much higher fee for example, Mr Harjinder Singh and Mrs Kamaljit Kaur's rent of £1100 per month and deposit for the same amount. The explanation for this discrepancy is that Mr Daljit Singh had already rented a single room since 2004 and was given favourable terms, but seems implausible given the outbuilding was occupied by Mr Daljit Singh as well as his friends. Furthermore, the Council question whether rent had actually been paid. Mr Sahota concedes that only cash payments were received and he cannot now show payments were made by tenants because there is no record; that is a shortcoming on his part.
18. 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. I have reviewed submitted documentary evidence but there are shortcomings. For example, there is no documentary evidence to corroborate the assertion that Council tax had been paid for the dwellinghouse between 2009 and 12 November 2012. Yet

the tenancy agreement, which is a legal document, required Mr Daljit Singh to pay local taxation.

19. The Council tax records indicate no. 55C was rated as a 'band B' property effectively from 13 November 2012. The submitted bills relate to 2013/2014, 2014/2015 and 2015/2016 for Mr Harjinder Singh and Mrs Kamaljit Kaur, which is broadly consistent with their tenancy agreement. Apparently, they informed Council officers that they moved into the outbuilding in November 2012, after the relevant date.
20. Gas bills for 11 March 2010 until 9 January 2013 have been submitted, but Mr Sahota says that the account was in his name during Mr Daljit Singh's occupancy. There is no plausible explanation as to why his account could not be opened. Electricity bills from 2008 until 13 November 2013 are also tendered. However, apart from the fact that these are addressed to Mr Sahota at 55C, there are no bills showing detail of account holders from 2013 onwards. In fact, no detail of charges for water has been presented and it is unclear whether television licence had been acquired. The paperwork presented fails to support Mr Sahota's claim that the outbuilding was occupied and used as a single dwelling on or before the relevant date. This is because this information is imprecise and incomplete.

Conclusion on ground (d)

21. On the balance of probabilities, I find the evidence does not sufficiently substantiate, to my satisfaction, when the outbuilding became a dwellinghouse. In totality it lacks precision and is ambiguous. The material change of use of the outbuilding to a dwellinghouse did not occur on or before 1 June 2012. Even if an alternative view prevails on the latter point, it does not show the outbuilding was continuously occupied and used by people forming a single household in the subsequent four-year period. In this appeal, I am afraid the onus has not been discharged. It therefore follows that the appeal on ground (d) must fail.

Ground (g)

22. It is necessary to consider whether the specified compliance period, 3 months, falls short of what should reasonably be allowed. I consider 12 months as a period of compliance would be excessive, because of the nature of the requirements. Nevertheless current occupiers would need to make alternative arrangements and find suitable accommodation. In addition, work would need to be arranged. A slightly extended period would assist without causing significant disruption to occupiers. The nature of work required by the notice indicates an extended period of six months is reasonable and appropriate in the circumstances. Having regard to individuals involved in this case, this is a just and proportionate response to the particular circumstances presented, and strikes a fair balance between the competing interests of the wider public and individuals involved in this case. Therefore, ground (g) succeeds.

Overall conclusion

23. Having regard to all other matters, I conclude that the appeal should not succeed on ground (d). However a reasonable period of compliance is six months and ground (g) succeeds. I have corrected and varied the enforcement notice as set out in my decision above.

A U Ghafoor

Inspector