
Appeal Decision

Site visit made on 15 February 2017

by Simon N Hand MA

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

Decision date: 24 February 2017

Appeal Ref: APP/A5270/C/16/3160573
13 Highfield Road, Acton, London, W3 0AJ

- 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 Hiroyuki Arazeki against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered EN160769ODOB(1), was issued on 6 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding containing two self-contained residential units at the rear of the premises.
 - The requirements of the notice are (a) cease the use of outbuilding as two self-contained residential units; (b) demolish the outbuilding; (c) remove from the land all fixtures and fittings, debris and general detritus resulting from the works.
 - The period for compliance with the requirements is 11 January 2017.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) 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 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. The appeal is allowed on ground (g), and the enforcement notice is varied: by the deletion of 11 January 2017 and the substitution of 3 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

The Appeal on Ground (b)

2. Although ground (b) was not raised, the Council argue that the appellant is essentially making a ground (b) appeal, as he says the structure was not built as two self-contained residential units but as a gym and was later converted into two residential units, hence the allegation is incorrect.
3. It is up to the appellant to show on the balance of probability that this is the case, but has provided no evidence to support his assertion. What evidence I do have suggests very strongly the Council's allegation is correct. Work seems to have begun on the structure in September 2015 when a building control application was lodged. Later, on 5 January 2016 a second application was made for the electrical work which suggests the work was nearing completion. On 7 March 2016 a complaint was made by the neighbour that the structure was being used as a dwelling.

4. I was not able to access the building on my site visit but I could see through one of the front French windows and one of the rear bathroom windows. The building clearly still houses two reasonably well appointed self-contained dwellings. It also has a front door, hidden around the back, and two sets of French windows at the front. It seems highly unlikely the building, which was presumably not actually complete on the 5th January could have been finished, a gym established and used, then the gym use ceased and further works undertaken to convert it into two self-contained residential units and those units let out all by 7th March, especially as the appellant states in his ground (g) appeal it is not easy to procure builders at short notice. Consequently, I have no doubt the allegation is correct and the appeal on ground (b) fails.

The Appeal on Ground (f)

5. As there is no ground (a) appeal, the planning merits of the structure are not before me. The sole question is whether the requirements are excessive given the nature of the allegation. The appellant argues he should only be made to convert the building into a gym, but I have been given no plans or explanation as to how the building could be converted into a gym. The allegation is correct that a pair of self-contained residential units has been constructed and the requirement to demolish them is squarely aimed at the breach identified. I do not therefore think the requirements are excessive and the appeal on ground (f) fails.

The Appeal on Ground (g)

6. The appellant is correct that the date of 11 January 2017 is incorrect as a period of time should be given rather than a specific date. That date has already been exceeded. Had the time for compliance been dated correctly it would, I assume, have said three months, as that is the period between 11 January 2017 and 11 October 2016 when the notice took effect.
7. I agree that the existing tenants need to move out and this might take up to 2 months, but there is no reason why a builder could not be found during that period to demolish the building and remove the debris, which should only take a few days. In my view 3 months is a reasonable period. If unforeseen delays occur, such as a tenant fighting his eviction in the court, then the Council have the power to extend the period accordingly. The appeal on ground (g) fails, nevertheless I shall correct the notice to ensure it says 3 months.

Simon Hand

Inspector