
Appeal Decision

Site visit made on 28 March 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 30 March 2017

Appeal Ref: APP/F5540/C/16/3162017

1 Granville Avenue, Hounslow, TW3 3TF

- 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 1990 Act").
- The appeal is made by Zafar Iqbal ("the Appellant") against an Enforcement Notice issued by the Council of the London Borough of Hounslow ("the Council").
- The Enforcement Notice, numbered OUTR/2015/00359, was issued on 29 September 2016.
- The breach of planning control as alleged in the Enforcement Notice is without permission use of an outbuilding as a non-incidental and separate self-contained residential unit and construction of unauthorised front wall and gates.
- The requirements of the Enforcement Notice are: i. Demolish the front boundary wall and remove the front boundary gates. ii. Cease the outbuilding's use as a non-incidental and self-contained residential unit. iii. Remove all internal and external works that have been carried out to enable such use (i.e. all kitchen and bathroom, facilities to include the following items;- kitchen wall units and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood, bathroom cupboards, shower/bathing facilities, W/C, wash basin and pedestal. In addition to the above items, all water and gas supply piping and all waste connections). iv. Remove all resultant debris from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in Section 174(2)(d) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld with corrections as set out in the Formal Decision below.

Procedural Matters

1. The onus of proving the Ground of Appeal relied on by the Appellant rests with him. He has to prove this ground on the balance of probabilities.
2. In my Appeal Decision I will refer to:
 - a) The outbuilding referred to in the Enforcement Notice which has been used as an independent dwelling as "the Outbuilding".
 - b) The unauthorised front wall and gates referred to in the Enforcement Notice as "the Wall".
3. In paragraph 5iii there:
 - a) Is a typographical error in that a comma has been inserted after the word "bathroom" – this comma should be deleted.
 - b) Is reference to removing the gas supply piping. The Outbuilding does not benefit from a gas supply. Therefore the words "and gas" should be deleted.

Both of the corrections referred to above can be carried out without causing injustice to either party.

Reasons - Ground (d) that at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated

The Wall

4. In relation to the Wall the Appellant has to show that the Wall was substantially completed on or before 29 September 2012.
5. The Appellant has provided no evidence as to when the Wall was substantially completed.
6. The Council's evidence is that:
 - a) An Officer inspected the Outbuilding during September 2015 and at that time he noted that the Wall was being constructed but had not been substantially completed.
 - b) An image from Google Streetview dated September 2014 shows that the construction of the Wall had not commenced.
7. I therefore conclude that the Ground (d) appeal in respect of the Wall must fail.
8. I note the reasons why the Appellant erected the Wall and the other similar walls within the Borough but there is no Ground (a) appeal for me to consider whether the Wall complies with the Development Plan for the area or if there are other material considerations which weigh in favour of its retention.

The Residential Use of the Outbuilding

9. In relation to the residential use of the Outbuilding the Appellant has to show that the residential use of the Outbuilding as an independent dwelling commenced on or before 29 September 2012 and that the independent residential use continued throughout the relevant four year period.
10. The Appellant has provided copies of Tenancy Agreements, the first of which suggests that the Outbuilding was occupied by a tenant on 1 April 2012 i.e. before the relevant date of 29 September 2012.
11. The Council produced aerial photographs of the area including where the Outbuilding has been built. An aerial photograph taken on 19 July 2013 shows that the Outbuilding had not been built as at that date. Another aerial photograph dated the 20 April 2015 shows that the Outbuilding had been erected by that date.
12. The Appellant has:
 - a) Not sought to challenge the Council's evidence regarding the dates between which the Outbuilding must have been first erected.
 - b) Not provided any evidence from any of the tenants he claims to have occupied the Outbuilding confirming that they were in actual occupation of the Outbuilding.
13. I conclude that the Outbuilding could not have been occupied as an independent dwelling on or before the relevant date of 29 September 2012

because it did not exist at that date. Accordingly, the Ground (d) appeal in respect of the residential use of the Outbuilding must fail.

Conclusion

14. For the reasons given above I consider that the appeal should not succeed. I shall uphold the Enforcement Notice with the corrections explained above.

Formal Decision

15. It is directed that the Enforcement Notice be corrected by:

- a) The deletion of the "comma" after the word "bathroom" in paragraph 5iii.
- b) The deletion of the words "and gas" in paragraph 5iii.

Subject to these corrections the appeal is dismissed and the Enforcement Notice is upheld.

Tim Belcher

Inspector