

Appeal Decisions

Site visit made on 4 April 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 11 April 2017

Appeals A and B Refs: APP/R5510/C/16/3165393 & 3165394 Land at 94 Laburnum Road, Hayes, Middlesex UB3 4JZ

- 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 Sukhdev Kibbe (Appeal A) and Mrs Jasmit Kibbe (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 17 November 2016.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of an outbuilding – the “Outbuilding” – to a self-contained residential unit without the benefit of planning permission.
 - The requirements of the notice are:
 - (i) Cease the use of the Outbuilding as a separate self contained residential unit.
 - (ii) Remove the fixtures, fittings and appliances from the kitchen area in the Outbuilding to include the sink(s), worksurface(s), cooker –oven(s)/hob(s), fume extractor unit(s), kitchen style wall and floor cupboards and hot and cold water services and foul waste drainage pipes.
 - (iii) Remove the bed(s) and mattress(s) from the Outbuilding which enable the use as a separate residential unit not for a purpose incidental or ancillary to the dwellinghouse.
 - (iv) Remove the bathroom suite to include all fixtures and fittings, shower(s), Basin(s), WC(s), hot and cold water service pipes and foul waste drainage pipes from the Outbuilding.
 - (v) Remove all the internal wall(s) separating the bathroom, the living/kitchen and the sleeping area in the Outbuilding.
 - (vi) Cut back the foul waste drainage pipe to the entry point to the Outbuilding, seal and backfill with concrete or similar materials.
 - (vii) Remove the gas boiler supplying the hot water and central heating and all associated pipework and radiators from the Outbuilding
 - (viii) Remove from the land all debris, items, appliances, units, building materials, plant and machinery resulting from compliance with points (ii) to (vii) above.
 - The period for compliance with the requirements is three (3) calendar months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations

Procedural Matters

1. An accompanied site visit was originally scheduled for 4 April 2017. However, the appellant advised that access to the outbuilding subject to the notice would not be possible due to an ongoing dispute with the current tenant. I carried
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out an unaccompanied site visit on 4 April 2017 but, from the public highway, I was only able to see the roof of the outbuilding. Nevertheless, having carried out that site visit and with the benefit of photographs of the inside of the outbuilding provided by the appellant, I am satisfied that I have sufficient information to determine the appeal.

2. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer simply to the change of use of an outbuilding – the “Outbuilding” – to a self-contained residential unit ‘without planning permission’ or ‘without the benefit of planning permission’ rather than ‘unauthorised’ as stated in the notice. No injustice would arise from correcting the notice in that respect. I shall therefore correct the notice accordingly.
3. The steps required to comply with the notice are set out in paragraph 5, steps (i) to (vii). However, the numeral (iv) is repeated, such that the steps should properly be numbered (i) to (viii), as set out in the banner above. No injustice would be caused by correcting the notice in that respect. I shall therefore correct the notice accordingly.
4. The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. However, should I consider it appropriate, the appellant also invites me to consider an appeal on ground (d) – namely, that on the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. I have considered the points made by the appellant in relation to the appeals on grounds (f) and (g) but do not consider that these points stray into matters that would constitute an appeal on ground (d). Accordingly, I have not considered an appeal on ground (d) further.

The appeal on ground (f)

5. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are, in part, to cease the use of the outbuilding as a separate self-contained residential unit. The purpose of the notice must therefore be to remedy the breach.
6. The background to the breach of planning control alleged in the notice is that the outbuilding was constructed circa 2008. One of the appellants, Mr Sukhdev Singh Kibbe, has provided a sworn declaration to the effect that, when originally constructed, the outbuilding featured internal partitioning to create two rooms, plus a shower room with toilet facilities. No kitchen was installed at that time but, without Mr Kibbe’s knowledge or consent, a kitchen was later installed by a sub-tenant. Beds and other furniture were also installed by the sub-tenant, and until recently the outbuilding was used by the sub-tenant as a separate self-contained residential unit. The Council has not challenged or disputed Mr Kibbe’s version of events.

7. The essence of the appellants' case on this ground is that the separate rooms and the shower/toilet were in situ before the breach of planning control commenced and did not facilitate the use of the outbuilding as a separate self-contained residential unit. The appellants consider that it was the subsequent installation of the kitchen, together with the importation of beds and other furniture into the outbuilding, that facilitated the change of use subject to the notice. The appellants therefore argue that the requirements of the notice are excessive and should be restricted to the kitchen and some associated fixtures, and should not include the fixtures and fittings incorporated in the outbuilding when originally constructed.
8. In support of that argument, the appellants have referred me to the judgments in *Bowring v SSCLG & Waltham Forest BC* [2013] EWHC 1115 (Admin) and *Kestrel Hydro v SSCLG and Spelthorne Borough Council* [2016] EWCA Civ 784. In particular, the appellants refer me to the comment of Lord Justice Lindblom in *Kestrel Hydro* that the steps required by an enforcement notice "....cannot act against works pre-dating the breach, which are therefore no part of it".
9. Applying the principles enshrined in these judgements to the facts of this case, there is no dispute that the partitioning of the outbuilding and the installation of the shower/toilet took place before the use of the outbuilding as a separate self-contained residential unit commenced. Consequently, these works neither formed part of nor facilitated the breach of planning control subject to the enforcement notice. The same also applies to the foul waste drainage pipe, as well as the gas boiler and pipework associated with the hot water and central heating systems. I therefore concur with the appellants that the requirements of the notice should not include these works, fixtures and fittings. Accordingly, I shall vary the notice to omit steps (iii) to (vi) inclusive as set out in the notice as issued (steps (iii) to (vii) as corrected in the banner above).
10. The situation is somewhat more complicated in relation to the kitchen. The appellants accept that cooker (oven and hob), kitchen sink, work surface and fume extractor all facilitate the use of the outbuilding as a separate self-contained residential unit and should be removed. Indeed, I understand that the cooker may already have been removed. However, the appellant question whether the cupboards, hot and cold water, and foul waste drainage pipes should also be removed from the kitchen area.
11. In my view, they should. All these fixtures and fittings, together with the cooker and other kitchen equipment listed above, collectively facilitated the use of the outbuilding as a separate self-contained residential unit. They therefore formed part of the breach of planning control. It follows that, in order to remedy the breach of planning control and achieve the purpose of the notice, these fixtures and fittings must be removed.
12. Accordingly, the appeal on ground (f) succeeds to the extent set out above.

The appeal on ground (g)

13. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three (3) calendar months. A period of nine months is sought.

14. The essence of the appellants' case on this ground of appeal is that compliance with the notice cannot commence until such time as control of the outbuilding is regained from the sub-tenant. The appellants explain that legal proceedings to secure possession of the property have been started but that the matter is not scheduled to be heard by the Court until 28 July 2017.
15. I can accept that the appellants cannot begin work to achieve compliance with the notice until such time as they have regained possession of the property, although it would not be appropriate to leave that date open-ended. I must therefore assume that possession will be secured when the matter is first heard by the Court. I therefore consider that the period of compliance should be extended to allow for the legal proceedings to be heard by the Court on the date advised to me, and effectively to commence once the possession of the property is secured. However, I am not persuaded that a period of nine months is required.
16. It is no part of the appellants' case that the physical works required to comply with the notice cannot be achieved in the period of three months specified in the notice. I am also mindful that the steps required will now be reduced as a result of my findings in relation to the appeal on ground (f) and that some of the steps required, including the cessation of the use and the removal of the cooker and the beds, have already occurred. It therefore appears to me that the original period of three months stated in the notice would be sufficient to achieve the reduced steps now required once possession of the property is secured.
17. I shall therefore add this period of three months to the three months or so remaining before the legal proceedings to secure possession of the property are heard by the Court on 28 July 2017. In the interest of clarity and certainty, it would be prudent to express this in terms of a specified date and I shall therefore vary the notice to require compliance on or before 31 October 2017.
18. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

19. For the reasons given above, I conclude that the appeals should not succeed, other than to the extent set out above. I shall dismiss the appeal and uphold the enforcement notice as corrected.

Formal Decisions

20. It is directed that the enforcement notice be corrected by deleting the word "unauthorised" in paragraph (3)(i) of the notice and by re-numbering the steps required to comply with the notice at paragraph 5 as (i) to (viii) inclusive. It is further directed that the enforcement notice be varied by deleting steps (iv) to (vii) inclusive in paragraph 5 of the notice, as corrected, and to require compliance on or before 31 October 2017.
21. Subject to those corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR