

Appeal Decisions

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: 21 April 2017

Appeal A: APP/F5540/C/16/3154457

1 The Alders, Feltham, TW13 6NU

- 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 BH Property Management Ltd against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 16 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a non-incidental outbuilding.
 - The requirements of the notice are demolish the outbuilding and remove all of the resultant debris from the site.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (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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Appeal B: APP/F5540/X/17/3167839

1 The Alders, Feltham, TW13 6NU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by BH Property Management Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00021/1/LAW1, dated 23 November 2016, was refused by notice dated 23 December 2016.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is construction of detached outbuilding to rear garden. Used as gym and games room. (ancillary to main dwelling house).
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Decisions

Appeal A - 3154457

1. The appeal is allowed on ground (g), and the enforcement notice is varied: by the deletion of 1 month and the substitution of 3 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal B - 3167839

2. The appeal is dismissed.

Appeal A – the Enforcement Appeal

The Appeal on Ground (e)

3. This ground is that the notice has not been properly served. The appellants argue that it is incumbent on the Council to demonstrate on the balance of probability that they have properly issued the notice and have the correct delegated powers to do so. This is not strictly true. The appellants have provided no evidence to suggest the notice has not been properly served and refer to no persons who should have had a copy but didn't. They do mention a previous occasion when a notice was not properly served, but provide no evidence about that occasion or why that should lead me to question the service in this case.
4. I am also aware of s176(5) of the Act which states that "*Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.*" Again, I have no reason to suspect that anyone has been prejudiced by any alleged failure of service. In any event the Council have provided documents which show the notice was served on all the occupiers of the dwelling and on 3 companies listed on the land registry documents as having an interest in the land, including the appellants. They also provide a copy of the correct delegated powers to the Marilyn Smith who signed the notice. The appeal on ground (e) fails.

The Appeal on Ground (f)

5. The appeal on this ground is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The appellant argues the building could be modified to fit in with the permitted development dimensions and retained. As I saw on my site visit, some internal works had already taken place to remove various walls and parts of any bathrooms or kitchens and the space contained gym equipment.
6. There is no ground (a) appeal so the merits of a large gym or whether such a structure would genuinely be incidental to the occupation of the dwelling by homeless people living together in an HMO cannot be debated. Furthermore I have been given no plans or suggestions as to how the shed could be made to fit with the permitted development requirements. The allegation is the construction of non-incidental building which has not been disputed. It is not unreasonable therefore to require the unlawful building to be demolished. This is a sensible and proportionate way of dealing with the alleged breach.
7. The appellants mention the Mansi¹ principle, that they cannot be prevented from doing something they are entitled to do without planning permission. However, the appellants are not being prevented from doing something that is lawful. They can at any time construct a building that fulfils the criteria of Class E of the General Permitted Development (England) Order 2015. In this

¹ Mansi v Elstree RDC [1964] 16 P&CR 153

case however they have not done so, they have built an unlawful structure and so to require it to be removed is not excessive. In the recent Mohamed² case the courts held that the Mansi principle did not extend to buildings that had been unlawfully constructed. The appeal on ground (f) fails.

The Appeal on Ground (g)

8. This ground is that the period for compliance is too short. In this case it is 1 month. The appellants argue that 6 months is needed to find a contractor and to ensure suitable weather. They also argue it is a possible infringement of the human rights of the occupants of the building. As I saw on my site visit there were no longer any occupiers and I do not consider that the rights of the occupiers of the HMO for access to a gym weigh very heavily in this case. However, I agree that 1 month is short time to identify and employ a suitable contractor to demolish and remove the building. I shall extend the compliance period to 3 months which will also extend the period into early summer when suitable weather should be available to carry out the work. On this basis the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Appeal B – The LDC Appeal

Application for costs

9. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.
10. The appellant argues the outbuilding is only 2.5m in height and is used as a gym, ancillary to the main dwelling and so is permitted development under Class E of part 1 of the General Permitted Development (England) Order 2015.
11. To benefit from Class E a building has to be incidental to the enjoyment of the dwellinghouse, a gym and games room would be incidental. However such uses have to be reasonable and not just at the whim of the house owner.
12. The plans submitted with the application show the building is divided into 2 rooms, labelled “gym” and “games room”. Both have a kitchen unit and a separate bathroom installed. When the Council visited the site on 11 May 2016 they photographed these rooms and the photographs show the kitchens and bathrooms. The main house is used as an HMO for 6 people and is divided into 6 bedsits. The Council officer reported that during his site visit the Management Agent, Mr Taub, informed him they had purchased the site with the outbuilding already being used as two flats and they had upgraded the accommodation. When I made my site visit in February this year, various items of gym equipment had been installed.
13. It is quite clear to me that a gym and games room do not require two separate kitchens and bathrooms and that the use of the building was highly unlikely to have originally been as a gym and games room, but, as the Council suggest, was intended to be further accommodation. Class E only allows for the *provision* within the curtilage of a dwellinghouse of any building required for incidental purposes. Thus a building can only benefit from those permitted development rights if it is constructed and used for the purposes that are incidental. In this case, on the balance of probability the building was not first

² Mohamed v SSCLG [2014] EWHC 4045

constructed and used for incidental purposes and so does not benefit from Class E rights.

14. Various appeal decisions have been supplied by the appellant but they relate either to new buildings, where the Council have queried the likelihood of the proposed use or conversion of an existing building to a granny annex, which is not relevant to Class E.
15. The Council also made a site visit on 16 February 2016 when the officer measured the roof height to be 2.6m to the "bottom of the roof plywood panels". As the building is within 2m of the boundary it exceeds the 2.5m maximum height. The appellant argues it is unreasonable to rely on this measurement as the site circumstances might have been different. The plans show the roof to be 2.5m. No evidence has been provided by the appellant that the site circumstances were different, nor what those circumstances might be. Buildings are often not built exactly to the plans, and given the Council's unambiguous measurement of 2.6m I have no reason to doubt the building is also too tall for Class E.
16. Consequently, for both the reasons described above I do not consider the building benefits from permitted development rights conferred by Class E and a lawful development certificate cannot be issued.

Simon Hand

Inspector