
Appeal Decision

Inquiry held on 4 April 2017

Site visit made on 4 April 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 21 April 2017

Appeal Ref: APP/A5270/C/16/3148146

26 Clauson Avenue, Northolt, Middlesex UB5 4PR

- 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 Mariusz Siemieniuk-Juzwiuk against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered COM/2015/01197, was issued on 17 March 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the outbuilding to the rear of the premises (in the position marked 'X' on the attached plan) to use as a self-contained residential development.
 - The requirements of the notice are:
 - (a) Cease the use of the outbuilding as a self-contained residential dwelling.
 - (b) Do not use the outbuilding for any purposes other than a use ancillary to the main dwelling.
 - (c) Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling.
 - (d) Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling.
 - (e) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) 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 enforcement notice is corrected by deleting item 4(a) and substituting the words: 'The alleged breach of planning control has occurred within the last 4 years'. It is varied by deleting requirement 5(d) for the removal of the bathroom and drainage connection. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. All evidence was given on oath. The Council requested the correction to the notice set out above. The correction expresses the necessary assumption for issuing the notice, and no injustice flows from it. The variation reflects the ground (f) conclusions.

Application for costs

3. At the Inquiry an application for costs was made by the London Borough of Ealing against Mr Mariusz Siemieniuk-Juzwiuk. This application is the subject of a separate Decision.

Ground (b) – *that the breach has not occurred as a matter of fact*

4. For ground (b) to succeed, the appellant must show, on the balance of probabilities, that the alleged material change of use (MCU) to a self-contained residential development, has not occurred within the last four years.
5. However, under cross examination, Mr Mariusz Siemieniuk-Juzwiuk described two substantial periods of residential use during which the facilities within the outbuilding alone were used by the occupants for day to day domestic existence, including cooking, bathroom use, and sleeping. He confirmed that the equivalent facilities in the main house were not used by the occupants of the outbuilding, and separate access was gained via the side alleyway and a gate into the garden.
6. He told us that the first occasion was from 2009 to 2010, shortly after conversion of the building from garage and summerhouse, when the appellant's friend and his girlfriend stayed for a year or more, and that they paid about £500 per month for electricity and other costs. On the second occasion, a couple named the Alberts occupied the outbuilding from 2014 or 2015 to the end of 2016, again living in a separate and self-contained manner, without sharing the facilities of the main house, and paying £600 to £700 per month.
7. The appellant stated that the Alberts were away for periods of time. Also, that between the two substantial periods of residential use noted above, the outbuilding was occupied for shorter periods of a couple of weeks or months by visiting friends and relatives.
8. These details are consistent with the Council's evidence. Angela Williams notes in her witness statement¹ that she obtained access by warrant on 3 September 2015. She was admitted by a lady (not Mrs Siemieniuk-Juzwiuk) and observed that the building was fitted out with a kitchen and bedroom, both in use, and a bathroom. Ms Williams was concerned with the health and safety implications of the building's occupation and returned on 15 January 2016 to check that improvements necessary to allow residential occupation had been carried out.
9. In oral evidence, Ms Williams told us that the lady she met in the building on the first occasion confirmed that she was living there and paid rent. Also, that the lady was still living there the second time she visited the premises.
10. Despite intermittent use; the lack of subdivision of the rear garden; and gas and electricity services being fed from the main house which, together with Council Tax, are paid by the appellant, a history of residential use clearly exists. Moreover, on the appellant's evidence, the outbuilding was in residential use when the enforcement notice was issued on 17 March 2016.
11. I find that the breach has occurred as a matter of fact and the appeal therefore fails on ground (b).

¹ Mr Whittaker's proof, Appendix 8

Ground (d) – that it was too late to take enforcement action

12. For this ground to succeed, the appellant must show that, on the balance of probabilities, the alleged use began and was continuously carried out for a four year period before the issue of the enforcement notice, such that the Council would have been in a position to enforce against it during that time. The critical date defining the four year period before the issue of the notice is 17 March 2012. Provided it is sufficiently precise and unambiguous, the appellant's own evidence does not require corroboration, unless it is contradicted or made less probable by other evidence.
13. Such evidence normally takes the form of successive tenancy agreements, rent payment records, council tax records, utility bills, and so on. The appellant provides little or no evidence of continuous occupation. Instead, he provides evidence in support of the outbuilding having been constructed or converted in 2009 for ancillary use as an annexe to the main building and claims that the development involved is therefore immune from enforcement action.² However, the enforcement allegation does not concern operational development or use as an annexe.
14. The Council's records point to various visits, most of which did not result in access to the outbuilding. Indications of occupation appear in the records, such as Richard Hall's visit of 8 December 2014, where it is noted that he spoke to the tenant in the outhouse but she was clear that she was just a visitor and referred him to the main house.³
15. However, Mr Hall made a further visit on 16 February 2015 and notes, in his witness statement,⁴ that the entrance door led into a room with a fridge and sink but no cooker, and that there may have been a cooker at some time but the work surface was now covered in plants. Mr Hall did not appear as a witness and the appellant told the inquiry that, at the time, the cooker was in the process of being replaced whilst the occupant was away.
16. The Council's records also indicate that a visit by an unidentified officer was made on 12 February 2013 who met Mrs Siemieniuk-Juzwiuk and found the outhouse to contain a bathroom and kitchenette but to be unoccupied and used for storage.⁵ Whilst none of this evidence is conclusive, the onus is on the appellant to show continuity of residential use, and this has not been satisfactorily demonstrated.
17. On the balance of probabilities, I find that it was not too late to take enforcement action. The appeal fails on ground (d).

Ground (f) – that the steps required are excessive

18. The requirements of the notice to cease the use of the outbuilding as a self-contained residential dwelling, and not to use the outbuilding for any purposes other than a use ancillary to the main dwelling, are clear and appropriate. The notice also requires removal of the kitchen and drainage connections, and also removal of the bathroom and drainage connections, as well as removal of resultant debris.

² Exhibit MSJ1 to the appellant's witness statement

³ Mr Whittaker's proof, Appendix 6

⁴ Ibid, Appendix 9

⁵ Ibid, Appendix 5

19. However, removal of either the kitchen or the bathroom would be sufficient to prevent use as a self-contained dwelling. Many ancillary outbuildings contain toilet facilities and I see no harm in allowing the bathroom to remain. The notice is varied accordingly. This would not result in the grant of planning permission for any other use.

Conclusion

20. Subject to the ground (f) variation, the appeal fails and the notice is upheld. Neighbouring outbuildings may be in self-contained residential use in breach of planning control, but this possibility does not justify the breach in this instance.

Alan Novitzky
Inspector

APPEARANCES

FOR THE APPELLANT

Mr Gareth John Jones	Of Counsel
He called:	
Mr Mariusz Siemieniuk-Juzwiuk	Appellant
Mr Konstanty Zablocki	Civil Engineer

FOR THE LOCAL PLANNING AUTHORITY

Ms Nicola Rundle	For the Council
She called:	
Ms Angela Williams	Officer with the Council
Mr Neill Whittaker	Officer with the Council

DOCUMENTS

- 1 Council's opening statement
- 2 Email dated 1 December 2014 re: possible outhouse irregularity
- 3 Appeal Decision APP/A5270/C/15/3140939
- 4 Photographs A, B, and C submitted by the appellant
- 5 Email correspondence between the Council and G-L Law
- 6 Bundle of case law reports
- 7 Council's closing statement
- 8 Council's costs application
- 9 Notification of Inquiry date and venue