

Appeal Decision

Inquiry and site visit held on 25 April 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 11 May 2017

Appeal Ref: APP/A5270/C/16/3152973

237 Greenford Road, Greenford Ealing UB6 8QZ

- 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 Act’].
- The appeal is made by Mr Kasim Hassan against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered EN160403CU(1), was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of an outbuilding to a self-contained dwelling.
- The requirements of the notice are to:
 - (1) Cease the use of the outbuilding as a self-contained dwelling
 - (2) Do not use the outbuilding for any purpose other than ancillary to the main dwelling;
 - (3) Remove from the outbuilding the kitchen and all drainage connections that facilitate the use as a self-contained dwelling;
 - (4) Remove from the outbuilding the bathroom and all drainage connections that facilitate the use as a self-contained dwelling; and
 - (5) Remove all resultant debris.
- The period for compliance with the requirements is stated as follows: *You are required to complete these actions by 1 October 2016 (i.e. 3 months from the effective date).*
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
- The Inquiry sat for 1 day and all of the evidence was affirmed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections as set out in the formal decision at paragraph 25 below.

Preliminary matters

1. Requirement (2) in section 5 of the notice is akin to a continuing condition. The appeal parties agree that this requirement can be deleted without making the notice any more onerous than first issued. Additionally, the compliance period is imprecise and it should simply specify three months. I am satisfied no injustice is caused to any party by any of these corrections.
 2. Mr Hassan could not attend the Inquiry but Mr Emad Al-Ebadi, his planning agent and representative, appeared as advocate witness.
 3. At the Inquiry an application for costs was made by the Council against Mr Hassan. This application is the subject of a separate Decision.
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Ground (d)¹

4. In this appeal, the onus of proof is firmly upon the appellant. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is, on the balance of probability, sufficiently precise and unambiguous².
5. In deciding when the four-year period will begin to run in the case of a material change of use to a single dwelling-house, it is necessary to look at the physical works (the date the premises were capable of providing viable facilities for day-to-day private domestic existence), rather than the date when all the works were completed, and when the use actually commenced. It is a matter of fact and degree as to when the change of use occurs. In this case, for the purposes of the legislative provisions, the evidence should show when the outbuilding became a single dwelling-house and when and how it was occupied or used³.
6. *Whether or when a dwelling-house*: Effectively, the claim is a simple one, namely, that the change of use to single dwelling-house is immune from enforcement action by reason of the passage of time. The assertion is that the change of use occurred on or before the relevant date - 31 May 2012. Mr Al-Ebadi affirms that separate cooking and washing and sleeping accommodation had actually been installed in August 2008. The argument is that on 31 May 2012 the outbuilding was already occupied and used as a single dwelling-house.
7. I pause here. The outbuilding is a fairly large structure and comprises a living and sleeping area, a separate washroom as well as a fully functioning kitchen. Yet there is little firm evidence showing exactly when works of conversion were instituted and by whom. Mr Hassan is a builder and it is said that he carried out most of the building work, but there is very little detail regarding timings and the nature of the operations. In any event, he provides no plausible explanation about the type of physical work and sequence. Likewise Mr Al-Ebadi has no personal knowledge of the building work. It is therefore unclear as to exactly when and how independent facilities for cooking, sleeping and washing were actually installed.
8. It is not uncommon to see other documentary evidence to show when the change of use was made. For instance invoices or bills for the purchase of building materials or white goods. Occasionally, invoices from trades' people are presented that show when the physical conversion work had been carried out. The absence of detailed and sufficiently precise corroboratory evidence makes comparisons between the nature of the claimed conversion and timings and sequence of the building work difficult to make. In a similar vein, I have reviewed gas and electrical safety certificates, bank statements and other correspondence. However, none of this information supports the immunity claim. This is because it does not sufficiently and precisely show when and how the outbuilding was actually capable of providing viable facilities for independent cooking, washing or sleeping. It is said that invoices are available but have not been submitted as it was not considered necessary. Given the onus in this ground of appeal, I find that admission astonishing.

¹ Section 174(2)(d) states that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

² The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviews the relevant case law regarding the onus of proof upon an appellant in this type of case.

³ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 and subsequent line of legal authorities reviewed in *Welwyn Hatfield BC v SSCLG* [2011] UKSC 15.

9. Pulling all of the above threads together, I find the totality of the available evidence incomplete and lacking in precision. It does not sufficiently verify the facts. It does not support the claim that the outbuilding was capable of providing facilities for self-contained living on or before the relevant date. My finding of fact on the material presented is fatal to the immunity claim. For completeness, I will next review the evidence about when and how the outbuilding was occupied as a single dwelling-house.
10. *When and how occupied:* The claim is that the outbuilding has been continuously used as a single dwelling-house since 2008. Although Mr Al-Ebadi has no personal experience of how or when the outbuilding has been occupied, he relies upon documentary evidence submitted such as tenancy agreements. The assertion is that a Mr Ameet Patil occupied and used the outbuilding as his own home from 1 September 2008 until 30 January 2012. However, there is no specific detail showing the nature and scale of the outbuilding's residential use from 2008 onwards. There is no witness statement from the individual nor was he called to testify. Given the significant degree of imprecision, I attach limited weight to these claims.
11. The claim is that a Mr Alamin Siddique occupied and used the outbuilding between 15 February 2012 and 15 February 2013 for monthly rent of £500.00. The tenancy agreement however refers to the dwelling known as *237 Greenford Road.../studio guest room*. It does not refer to the outbuilding. Additionally, it is unclear as to why a separate hand-written agreement was formally arranged on 13 February 2012 for a payment of £600.00 per month. Apart from an assertion that the rent increased, there is no plausible explanation as to why two different rates had been concurrently applied. Mr Siddique's written statement does nothing to clarify matters as there is no detail illustrating how much rent had actually been paid and when. Nor is there any specific detail showing occupation and use by people forming a single household. The tenant(s) was not called to give oral evidence which might have assisted in clarifying these matters. I therefore find this documentary evidence ambiguous and unreliable, which affects the amount of weight that is attached to it.
12. I have reviewed all of the other documentary information submitted in support and found lack of clarity. For example, bank statements have been presented showing rent payments but the latter is inconsistent. In any event, this kind of information does not show occupancy of the outbuilding as a single dwelling. Correspondence is addressed to the main dwelling; it is unclear whether the outbuilding had its own address. In my assessment, this corroboratory information is too weak and vague to substantiate the claim that the outbuilding had been occupied and used as a single dwelling-house throughout the relevant period.
13. It is not that uncommon for evidence to be adduced to show continuous use of a dwelling for a certain period from documentary information. This could take the form of utilities' connection charges and bills, local taxation and Electoral Register records. This information has not been submitted because Mr Al-Ebadi did not consider it necessary. That lack of attention to detail affects the weight I can attach to his claims.

Conclusion on ground (d)

14. On the balance of probabilities, I find the evidence does not sufficiently substantiate when the outbuilding became a dwelling-house. In totality it lacks precision and is ambiguous. The material change of use of the outbuilding to a dwelling-house did not occur on or before 31 May 2012. Even if an alternative view prevails on the latter point, the evidence does not show the outbuilding was continuously occupied and used by people forming a single household in the subsequent four-year period. In this appeal,

the onus has not been discharged. It therefore follows that the appeal on ground (d) must fail.

Ground (a)

15. The **main issue** is the effect of the development upon: (1) character and appearance of the host dwelling and that of the locality and (2) living conditions of occupants and neighbours with particular regard to standard of accommodation, amenity, noise and general disturbance.

Character and appearance

16. No. 237 is a semi-detached dwelling with a modest rear garden situated within a mainly residential area. The surrounding area comprises mixture of properties with moderate size gardens, some of which can be accessed from a side or rear alley. Private gardens are an important aspect of local residential character. Clearly, the creation of a separate dwelling in the back garden has planning consequences. For example, the intensified use of the appeal plot is likely to increase comings and goings to and from the rear. The dwelling has physically changed the appearance of the appeal site. While outbuildings of varying size and shapes can be found in the wider locality, the back-land location and positioning of the appeal dwelling appears out of keeping with the established settlement pattern. Back-garden dwellings do not appear to be a typical feature of the area's settlement pattern.
17. The dwelling is located on or very close to the appeal plot's boundaries. It forms an unsightly addition to the street scene because of its back-land position. On account of its siting, the dwelling appears visually intrusive in this back garden setting in private views from the host property and neighbouring properties. To my mind, the development does not meet with paragraph 56 to the National Planning Policy Framework ['NPPF'] as the dwelling's location fails to represent high standard architecture, or complement local character.
18. Drawing all of the above points together, I conclude that the development has a detrimental impact upon the character and appearance of the locality. Accordingly, it conflicts with policy 7.4 of the council's Development Management Development Plan Document 2013 ['DPD'], policy 7.4 and 7.6 of The London Plan 2016.

Living conditions

19. Policy 7.1 of The London Plan relates to lifetime neighbourhoods and aims to achieve good quality environments. Policy 7.6B (d) states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings. DPD policy 7A and 7B states new development must achieve a high standard of amenity for users and adjacent uses by ensuring high quality architecture and appropriate levels of development on site. One of the core land-use principles set out in paragraph 17 of the Framework is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
20. The location of the dwelling is likely to attract significant level of activity generated by comings and goings associated with residential living. The nature and scale of this activity is likely to be over and above levels usually associated with a more typical and subservient domestic shed. In this relatively quiet garden environment, neighbours using their back gardens are likely to experience additional noise and disturbance as a result of the dwelling's positioning.

21. The single-storey design and layout of the dwelling suggests outlook from the neighbouring properties is unlikely to be compromised. That said however current and future occupiers have unimpeded views of adjoining gardens. In addition, the dwelling is likely to be noticeable from rear elevations of adjoining properties. I consider that the location of the dwelling is likely to increase neighbours' sense of being overlooked.
22. The development is likely to bring with it all of the trappings associated with residential living, including the need for some outdoor amenity space. Given the limited size of the dwelling, outdoor amenity space is probably a valuable source of space for relaxation and domestic activity. DPD policy 7D and table 7D.2 requires development that triggers a need for open space to meet certain baselines. The area requirement for a private garden space for a flat is 5 m² per one to two persons unit, plus 1 m² for each additional occupant. The development has some 70 square metres of garden space. Nonetheless, I have strong reservations about usability. This is because the space is shared and it is not private. To my mind, such a layout compromises the amenity value of the rear garden.
23. Taking all of the above points together, I find that the development has the potential to materially harm the living conditions of existing and future occupiers. Accordingly, the development conflicts with policy 3.5 of The London Plan as well as DPD policies 7A, 7B and 7D. The design fails to meet national policy found in paragraph 17 and 56 to the NPPF.

Overall conclusions

24. Having regard to all other matters, I conclude that the appeal should not succeed on ground (d) and (a). Consequently, the enforcement notice will be upheld and I refuse to grant planning permission on the deemed application.

Formal decision

25. The enforcement notice is corrected by the deletion of the text in section 5, what you are required to do, subsection (2), and the deletion of the following text: *You are required to complete these actions by 1 October 2016 (i.e. 3 months from the effective date)* and substitution therefor by: *The period of compliance is three months.*

For the avoidance of any doubt the steps required and period of compliance is now the following:

The requirements of the notice are to:

- (1) Cease the use of the outbuilding as a self-contained dwelling;
- (2) Remove from the outbuilding the kitchen and all drainage connections that facilitate the use as a self-contained dwelling;
- (3) Remove from the outbuilding the bathroom and all drainage connections that facilitate the use as a self-contained dwelling; and
- (4) Remove all resultant debris.

The period of compliance is three months.

26. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Emad Al-Ebadi Appeared as advocate/witness

FOR THE LOCAL PLANNING AUTHORITY:

Roderick Morton London Borough of Ealing Legal Services
He called

Alex O'Neil Planning Enforcement Officer

DOCUMENTS HANDED IN AT THE INQUIRY

- 1) Letter of notification and those consulted.
- 2) Full copy of Mr A Siddique letter
- 3) Bank account statement – copy.