

Appeal Decision

Site visit made on 27 April 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/A5270/C/16/3159178

52 Milford Road, Southall UB1 3QH

- 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 Hardeep Dhuffar against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 22 August 2016 under ref. EN160744CUOB(1).
 - 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 to use as a self-contained residential dwelling".
 - The requirements of the notice are set out as follows:
 - "a) Cease the use of the outbuilding as a self-contained residential dwelling
 - b) Remove the kitchen, including all white goods, cupboards, work surfaces and all water and drainage connections
 - c) Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling
 - d) Remove all internal partitioning which facilitate the use of the outbuilding as a self-contained dwelling
 - e) Remove all resultant debris from the land".
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by deleting the last sentence in paragraph 5 in its entirety and substituting therefor the following sentence:

"The time for compliance with these requirements shall be 3 months after this notice takes effect."

2. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

The enforcement notice

3. The period for compliance in the notice is 3 months. Specifying an exact date in addition to a period is incorrect practice because if an appeal is lodged the effective date of the notice is suspended until the appeal has been determined. The date of 23 December 2016 (in the last sentence of paragraph 5 of the
-

notice) is now left as an incorrect date. I shall delete it from the notice by rewriting that last sentence in paragraph 5. Such a correction would not result in any injustice to the parties.

Background and matters of clarification

4. No. 52 Milford Road is a 2-storey, semi-detached residential property. The appeal concerns a single-storey outbuilding in the rear garden. It is in use as a separate self-contained dwelling, with access to it being via the shared driveway between nos 52 and 54 Milford Road.
5. The appellant says that the outbuilding was erected in 2004. This is not disputed by the Council. Aerial images submitted by the Council show that it was built at some point between 2003 and 2006. The enforcement notice does not attack the erection of the outbuilding. Rather, it is concerned with an alleged material change in its use to a self-contained residential dwelling.
6. Neither the appellant nor his agent attended the site visit that had been arranged. I briefly inspected the inside of the rear dwelling in the company of the tenants (2 adults and a child) and the Council's representative. It contains 3 habitable rooms including the kitchen/dining area. Immediately outside is a small area of amenity space defined by a low fence and covered with artificial grass. The appellant does not dispute that the breach of planning control alleged in the notice has occurred as a matter of fact.
7. The appeal was not originally lodged on ground (a). Facts and grounds for ground (a) were not subsequently added and the relevant fee was not paid. Thus, the planning merits of the development are not before me, as confirmed in a letter dated 7 March 2017 from the Planning Inspectorate to the appellant's agent.

The appeal on ground (d)

8. In pursuing an appeal on ground (d), the onus of proof is on the appellant in this case to demonstrate on the balance of probabilities that by the time that the enforcement notice was issued, the outbuilding had been used continuously as a self-contained residential dwelling for at least 4 years. The material date in this case is therefore 22 August 2012.
9. The appellant indicates that after its construction the outbuilding first provided living accommodation for his grandfather and then during 2009 and 2010 it was similarly used by the appellant's father. The appellant states that "The outbuilding was then utilised as a spare storage space further to my father's death and was then rented out in 2010 thus covering the last 6 years."
10. Although it was stated on the appeal form "Have tenancy agreement from 5 years ago", no tenancy agreements and no other documentary evidence have been provided by the appellant to support his assertion that the outbuilding has been rented out from 2010 onwards. The contribution made by the appellant in this appeal falls short of discharging the onus of proof.
11. Furthermore, the Council reports contradictory evidence of its own. During a site inspection on 26 August 2014, the outbuilding was found to be unoccupied. The appellant confirmed then, just as he had done over the phone to the Council earlier in the same month, that the outbuilding had only ever been

used for family purposes, ancillary to the main house and had never been rented out. There were no personal effects evident in the photographs associated with the listing of the rear dwelling to rent on Zoopla from 23 July 2014. The online advert was apparently lodged with Zoopla "to see what happens". In short, the Council found that no breach of planning control was occurring in August 2014.

12. A neighbour who resides at No. 50 Milford Road submitted written representations to the Planning Inspectorate on 22 January 2017. She states that "Although the outbuilding may have been erected many years ago, it became tenanted within the last 12-18 months...". This would place the start of the tenancy at some point between 22 July 2015 and 22 January 2016.
13. This neighbour's evidence would appear to tally with a subsequent inspection of the outbuilding by the Council on 18 May 2016 when it was found to be occupied by a couple who paid £800 in rent (presumably per month) and had been living in the outbuilding since December 2015. Aerial imagery submitted by the Council confirms that the artificial grass in front of the outbuilding was not in place in June 2015.
14. The appellant's evidence is limited in scope and is not sufficiently precise or unambiguous to demonstrate that the appeal outbuilding had been occupied continuously as a self-contained residential dwelling for a period of 4 years before the enforcement notice was issued. The Council and a third party have also provided information to make the appellant's version of events less than probable. The appellant has not discharged the onus of proof. I find on the balance of probabilities that the self-contained residential dwelling at the rear of the property was not therefore immune from enforcement action by reason of the passage of time when the enforcement notice was issued.
15. Accordingly and taking into account all other matters raised, the appeal on ground (d) fails. In view of my findings, it is not necessary for me to consider whether there has been positive deception in the planning process and/or concealment of the breach such that the development has not gained immunity from enforcement action, having regard to established case law.

Andrew Dale

INSPECTOR