



Appeal Decision

Inquiry held on 31 May 2017

Site inspection made on 15 June 2017

by D E Morden MRTPI

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

Decision date: 02 June 2017

Appeal Ref: APP/A5270/C/16/3154726

18 Lea Road, Southall, Ealing, UB2 5QA

- 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 G Rai against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, reference EN160134CUOB, is dated 4 May 2016.
- The breach of planning control as alleged in the notice is the material change of use of the outbuilding to the rear of the premises to use as a self-contained dwelling.
- The requirements of the notice are as follows: A) Cease the use of the outbuilding as a self-contained dwelling; B) Remove the kitchen, including all white goods, cupboards, work surfaces, and all water and drainage connections; C) Remove all 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 building as a self-contained dwelling; and E) Remove all resultant debris from the land.
- The period for compliance with the requirements is by 10 September 2016 (i.e., 3 months from the date this notice takes effect)..
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice as corrected is upheld as set out in the Formal Decision at paragraph 12.

Application for costs

1. At the Inquiry an application for costs was made by the London Borough of Ealing against Mr G Rai. This application is the subject of a separate Decision.

Preliminary Matters

2. The enforcement notice as well as specifying 3 months as the time for compliance also set down a date (10 September 2016) which was in fact three months after the notice came into effect. I pointed out to the Council that an actual date should not be included as this would be rendered meaningless as soon as an appeal was lodged.
3. There will be no prejudice to any party if I correct the Notice to remove the date and just leave the three months' time limit as the period for compliance

and I shall make that correction whatever the outcome of the two grounds of appeal before me.

The appeal on Ground (c)

4. The onus of proof on this ground lies with an appellant to prove his/her case and in this instance to show that there has not been a breach of planning control – in this instance that there has not been a material change of use or if there has, it does not require planning permission.
5. The only comment made by the appellant was a statement on his appeal form that the building was less than 30 square metres in area; however, the notice is not concerned with the erection of the building but the use carried on within it. At the inquiry in answering my questions the appellant stated that the building had only been used prior to January 2016 by the then tenant's daughter and her new husband but they did not live in totally separately from the main house. They normally ate in the main house and sometimes occupied the living room there with the rest of the family.
6. He also stated that they all left near the end of 2015. The appellant moved back into the house in early 2016 and a couple stayed in the outbuilding whilst they were doing refurbishment work on the main house for him. He moved back into the property permanently and the woman still lives in the outbuilding and occupies it separately from the main house. All this evidence was affirmed as the truth to the best of the appellant's memory.
7. The Notice was issued in May 2016 alleging the material change of use to a separate dwelling use. The appellant's own evidence simply confirmed that by May 2016 such a change of use had taken place a couple of months before. There is no planning permission for such a use and it is not a use that is permitted by any other means. On that basis the appeal on ground (c) must fail and I shall dismiss it.

The appeal on ground (d)

8. The onus on this ground is also on appellant but as with ground (c) the appellant simply claimed on the appeal form that the building was more than four years old. That is only a defence against a notice alleging that the operational development was carried out less than four years prior to the issue of that notice.
9. In giving his evidence the appellant stated clearly that the change to a separate notice occurred in January 2016. That is only a few months before the notice was issued. In this instance the appellant has to show that the use has been carried on for at least four years prior to its issue but his own evidence was that it had only happened a few months before. The appeal on ground (d) must also therefore fail.

Conclusion

10. The evidence on both appeals (c) and (d) given by the appellant and confirmed by the Council's own documentary evidence presented at the inquiry was that the material change of use did indeed take place as alleged and also that it took place in January 2016. The use as a separate dwelling was not denied and such use was confirmed at my site inspection.

11. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the Notice, as corrected.

Formal Decision

12. It is directed that the enforcement notice be corrected by deleting the last sentence of paragraph 5 and substituting therefor 'You are required to complete the actions set out in A to E above within three months from the date this notice takes effect.' Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

D E Morden

INSPECTOR

