

Appeal Decision

Site visit made on 21 April 2017

by L J O'Brien BA (Hons) MA

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 15 June 2017

Appeal Ref: APP/A5840/C/16/3161220

3 Chaucer Drive, London, SE1 5TA

- 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 Watte Wijesiri against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 15 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the former garage, shown edged green on the plan attached to the enforcement notice, to a self contained studio flat within use class C3.
 - The requirements of the notice are: 5.1 - Cease the use of the Property as more than one dwelling; 5.2 - Remove all kitchen facilities from the former garage (shown outlined in green on the plan attached to the enforcement notice) and for the avoidance of doubt remove the kitchen sink, the kitchen worktop and kitchen cupboards, the wall tiling around the kitchen unit, the plumbing and electricity connections to the kitchen facilities, and any other kitchen and cooking facilities; 5.3 - Remove all bathroom facilities from the former garage (shown outlined green on the plan attached to the enforcement notice) and for the avoidance of doubt remove the shower, the wash hand basin, the toilet, the plumbing and electricity connections to the bathroom facilities, and the partition walls and doors surrounding the bathroom facilities; 5.4 - Remove the water heater installed under the kitchen worktop and all plumbing and electricity connections to the water heater; 5.5 - Remove the dedicated electricity supply to the former garage, along with the electricity meter, the electricity meter cabinet and the consumer unit; and 5.6 - Remove from the property any material and debris arising from compliance with the requirements of 5.1 – 5.5 above.
 - The period for compliance with the requirements is 1 month after the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Preliminary Matter

1. I attended the site on 21 April at the appointed time and was met by a representative from the Council. No representative for the appellant was in attendance and access inside the property was therefore unavailable. A number of attempts were made to contact the agent and appellant but with no success. As the appeal is made only on grounds (f) and (g) I am confident that a further site visit is not required. A letter was sent to the parties to advise them of this and allow opportunity for objections. None were received and I shall determine the appeal based on the evidence on file and my observations from the 21 April.
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Decision

2. The appeal on ground (g) is dismissed.
3. The appeal on ground (f) is allowed in part. I direct that the enforcement notice is varied by, under Section 5, What you are required to do, the deletion of requirements 5.3 and 5.4 in total, the deletion of the number "5.5" and replacement with the number "5.3", the deletion of the number "5.6" and replacement with the number "5.4", under 5.6 the deletion of "of 5.1-5.5 above" and replacement with "of 5.1-5.3 above". Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Reasons

The appeal on ground (f)

4. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
5. In order to assess an appeal under ground (f) it is necessary to establish the purpose of the notice (i.e. does it seek to remedy the breach or the injury to amenity). The notice alleges the unauthorised change of use of the former garage to a self-contained studio flat and requires the use to cease and the removal of the kitchen, bathroom, water heater and dedicated electricity supply. Whilst the notice refers to remedying the injury to amenity as well as remedying the breach within the reasons for issuing the notice, it is clear from the requirements that the notice seeks to remedy the breach and not only the harm to amenity. Where this is the purpose the relevant consideration for an appeal on ground (f) is whether the steps are excessive to remedy the breach.
6. The appellant suggests that requirements 5.3, 5.4 and 5.5 of the notice which state that the bathroom, water heater and dedicated electricity supply must be removed are excessive. A Lawful Development Certificate from 2006 has been submitted which confirmed that the garage could lawfully be converted into a habitable room and the accompanying plans show bathroom facilities. The appellant argues that the water heater, dedicated electricity supply and bathroom facilities are part of this lawful use.
7. The evidence before me suggests that the bathroom was in place and being used lawfully prior to the most recent breach. It therefore follows that its removal is not essential for the purposes of remedying the breach and the steps required by the notice in this regard are consequently excessive. I am also satisfied that the removal of the water heater is not necessary to remedy the breach of planning control in this case as, whilst it does allow the unauthorised use to take place, I have no evidence which suggests it was not installed to facilitate the lawful use of the former garage as a habitable room ancillary to the main dwelling.
8. I am not satisfied that a dedicated electricity supply, electricity meter, electricity meter cabinet and consumer unit are necessary and part of the use of the garage for additional accommodation in connection with the main

dwelling. Rather, these elements facilitate the use of the former garage as a separate dwelling and their removal is required to remedy the breach.

9. For the reasons given above I conclude that the requirements of the notice are excessive with regards to the removal of the bathroom facilities and water heater and uphold the appeal to this extent. However, I do not consider the requirements of the notice in respect of the electricity supply excessive and the appeal in this regard fails.

The appeal under ground (g)

10. This ground of appeal is that the time given to comply with the requirements of the notice is too short. The Council have given one month. The appellant holds that a period of three months would be a reasonable and practical amount of time to allow their preferred builder to undertake the works.
11. I have been provided with little evidence to support the appellant's case and am not persuaded that the benefits to the appellant would outweigh the need to remedy the breach expeditiously in the public interest. The Council state that the unauthorised use has already ceased and given that I shall delete the requirements to remove the bathroom and water heater I consider that one month from the date of the notice is a reasonable time frame within which to carry out the remaining works.
12. For these reasons the appeal under ground (g) fails.

Conclusions

13. I have considered all other matters raised but these do not change my conclusion that the appeal under ground (f) succeeds to a limited extent. The appeal under ground (g) is dismissed.

Laura O'Brien

Appointed person