
Appeal Decision

Inquiry held on 22 March and 2, 15 & 16 May 2017

Site visits made on 22 March and 15 May 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/A5270/C/16/3150254

24 Mornington Road, Greenford, Middlesex UB6 9HH

- 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 Khawaja Imtiaz Ahmad against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 13 April 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 to use as a self-contained dwelling.
 - The requirements of the notice are to:
 - a) cease the use of the outbuilding as a self-contained residential dwelling;
 - b) remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;
 - c) remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;
 - d) remove all internal partitions which facilitate the use of the outbuilding as a self-contained residential 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 grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. It is directed that the enforcement notice be varied by the deletion from paragraph 5 of the words *"You are required to complete these actions by 20 August 2016 (i.e. 3 months from the effective date)"* and the substitution therefor of the words: *Time for compliance: nine months from the date that this notice comes into effect.* Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. On the first day the inquiry was adjourned without any evidence being heard as the Council had failed to send out letters notifying interested persons of the inquiry in sufficient time. However, I undertook an accompanied inspection of the outbuilding on that day.
 3. At the start of the second day, I heard an application for an adjournment made on behalf of the Appellant. In essence, although not accusing any member of the Council's team of any specific wrongdoing, it was suggested that there was
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a real risk that the proceedings could be perceived as not having provided the opportunity for a fair hearing.

4. In summary, the Appellant said that the Council's evidence was possibly inadmissible or, if not, should be given no weight since employees of the firm, Ivy Legal, had investigated the breach of planning control for the Council and they were also acting for the Council as advocate and planning witness at the inquiry. There could thus be a perception that the evidence gathered during the investigation had been presented in such a way, and enforcement action taken, so as to benefit Ivy Legal by generating more work for that company. Calling upon s289(3) of the Act, the Appellant asked that I adjourn in order to seek a ruling from the High Court in this matter.
5. The Council, in response, pointed out that there is no appeal on ground (b) that the matter alleged had not occurred, which one might expect had the investigation of the breach been misrepresented. In addition, the person who issued the notice was an employee of the Council at the time, albeit that she is now employed by Ivy Legal and is the planning witness for the inquiry. Many Councils farm out some of their functions to private firms, including their legal responsibilities, by employing contractors or sometimes outsourcing entire teams. Ivy Legal, providing the advocacy and planning witness at this inquiry, is no different from the Authority itself being represented by an in-house solicitor and planning officer. Moreover, if the Inspector thought there was reason to do so, she could limit the weight to be attributed to the Council's evidence.
6. I declined the invitation to adjourn and refer the matter to the High Court. It is up to the Council to decide how it discharges its functions and who it employs to present its case. There was no suggestion that the investigations into the breach of planning control had been misrepresented in any way and it was common ground that the breach had occurred. In addition, the Appellant's Advocate was at liberty to make submissions as to the weight that should be afforded any evidence and why.
7. The Council had provided an interpreter for the Appellant's witnesses on the first day, but it had decided not to do so again. That was because a judge, in a permission hearing on another case, had said that a party should be responsible for providing an interpreter for its own witnesses if one was needed. The Council had so advised the Appellant but no interpreter was present on the second day; the reason given being one of cost. Although less than ideal, I agreed to the suggestion from the Appellant's Advocate that the Appellant's Planning Consultant could take on the role. However, it quickly became apparent that he did not have the necessary skill to translate with accuracy and so once again the inquiry had to be adjourned.
8. The unexpected adjournments resulted in the Advocate for the Council being unable to attend on the third and fourth days due to maternity leave. She was replaced by a colleague from the same firm who had been present on the second day.
9. At the outset of the inquiry, the Appellant withdrew his challenge to the validity of the notice.
10. All oral evidence to the inquiry was given on oath. Witnesses of fact were excluded until they had given their evidence but Mr Ahmad, despite being

warned not to speak to his family after he had given his evidence and before they had given theirs, was found doing so.

The appeals on ground (d)

11. The ground of appeal is that at the time the notice was issued, it was too late to take action. In an appeal on this ground the onus is on the Appellant to make out his case on the balance of probability. Section 171B(2) of the Act indicates that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The case for the Appellant

12. The outbuilding was converted into a dwellinghouse in 2009. From September that year the Appellant's son, Mr Irfan, who had formerly been living in the main dwelling with his parents, moved into it and has been living there ever since. In 2010 the Appellant's son married and since then he and his wife have lived in the outbuilding. They now have two children (aged five and one) who live with them.
13. The following is relied on to support the case:
- aerial photographs to show that the building was provided with a pitched roof at about 2009;
 - two documents from a building company from 2009, together with numerous receipts for building materials;
 - signed affidavits, statements and oral evidence from the Appellant, his wife, his son and his daughter in law;
 - electoral registration entries which confirm the Appellant, his wife and son have been registered at No.24 Mornington Road from 2006 and his daughter in law from 2011;
 - three tenancy agreements, each of 3 year's duration, starting from 1 August 2009 and continuing through to 2018.
14. Sufficient evidence is provided to make out the Appellant's case on the balance of probability and the Council brings no evidence of its own to contradict the Appellant's version of events.

The case for the Council

15. The Appellant's evidence relies largely on the written and oral testimony of himself and his family. The Council's evidence contradicts the Appellant's version of events in particular as follows:
- complaints from neighbours that there were people living in the outbuilding were first received in 2014, only 3 years hence;
 - several site visits were undertaken, the following of which are of note. The Fire Brigade visited on 5 February 2016 when it was found that two Caucasian men between 40 and 59 were living in the outbuilding, one named Mr Xlimer. In addition, on 4 April 2016 the tenant told a visiting officer for the Council, that he had only been in residence for three months. Two visits to the house after the inquiry had opened gave the impression that the Appellant's son and family were resident in the house;

- an e mail from an interested person suggests that people other than the Appellant's son and daughter in law have been living in the outbuilding.
16. The main evidence on continuous use has been the statements from the Appellant and his family which have been shown to be suspect with significant collaboration and fabrication between them.

Appraisal

17. The test of the use as a dwellinghouse requires consideration of both the physical characteristics and how it has been used.¹
18. Looking first at the physical changes said to have been undertaken in 2009 to convert the outbuilding to a dwellinghouse, the accommodation currently comprises a single living room in which there is a double bed, sofa, television and furniture for storing clothes and personal effects, and a separate kitchen and bathroom. The aerial photographs do show a pitched roof to have been provided around 2009. That could be commensurate with conversion works taking place, but need not necessarily have been so. In addition, Mr Ahmad's many receipts for building materials bought early in 2009 lend support to his account, although, as the Council pointed out, the address given on those receipts is 24 Mornington Road, his home address, and not the outbuilding and it is feasible that the materials might have been used in the main house or indeed at any any other property belonging to him.
19. There are two documents from a building firm both dated January 2009. That dated 4 January itemises work to refurbish the building including fitting a new bathroom and kitchen although no mention is made of a new roof. That dated 15 January lists internal partitions, doors and windows and again does not mention the new roof. When asked by the Council, Mr Ahmad was unable to explain why the Company name was incorrect² or why no company details were included on the documents. Of particular concern is that the one dated 15 January, includes a typed statement "Works completed and payment £3000-00 received dated 15 May 2009". That date post-dates the date of the document by four months. That anomaly could not be explained by Mr Ahmad and casts the veracity of the two documents submitted into considerable doubt.
20. Without the builder's documents, the receipts for building materials not demonstrated to be connected to the outbuilding and the change to the form of the roof are insufficient in themselves to demonstrate that the outbuilding was converted physically to a dwellinghouse in 2009 on the balance of probability. I am mindful, however, that I also have the evidence of the Appellant and his family in relation to this matter to which I return below.
21. In terms of use of the outbuilding, confirmation has been provided from the Council's electoral services that the Appellant, his wife and son have been registered from 2006 at 24 Mornington Road and the Appellant's daughter in law since 2011. However, that is no evidence that his son's family have been living in the outbuilding. They could all have been occupying the main house. It does not assist.
22. The three tenancy agreements covering a continuous period from 1 August 2009 to 1 August 2018, taken at face value, would suggest that the Appellant's

¹ Whether it contains all the necessary facilities for day to day living and whether it has been so used.

² It should be JS Builders (Southall) Ltd and not JS Builders Ltd; the latter being a firm in Worcestershire.

son had occupied the outbuilding continuously since 2009. That cannot, however, be reconciled with the Council's recorded site visit of 4 April 2016 where the tenant of the outbuilding was said to have stated that he had been in occupation for only 3 months and paid £300 a month in rent³.

23. Even if one was to accord that visit limited weight given the Appellant's criticism of the firm representing the Council, there is a recorded visit from an independent third party, the Fire Brigade. The Crew Manager, attending a fire in a garage at 18 Mornington Road became aware that the outbuilding at No.24 was being lived in. He records a visit on 5 February 2016 between 1800 and 1830 hours, when he fitted a smoke alarm. He notes that there were two white men resident, aged between 40 and 59, and gives the name of one as Mr Xlimer. He says Mr Ahmad told him that his family occupied the building and he commented that this was clearly not the case. I find no reason to doubt the accuracy of the Crew Manager's contemporaneous notes; he has no reason to be other than truthful. In cross examination, Mr Ahmad said he had no knowledge of Mr Xlimer whilst his son said that he was a Polish colleague who came round to help with the garden. However, this seems most unlikely at 1800 hours in February and does not explain the presence of the second white man or the absence of anyone else in the outbuilding.
24. These two records of site visits, and in particular that of an independent party, the Fire Brigade Crew Manager, brings into question the authenticity of the Tenancy Agreements. In oral evidence, the Appellant's witnesses were consistent in their explanations that the tenancy agreements were necessary for insurance purposes and to give Mr Ahmad leverage should he want to evict his son. No insurance documents were provided however. In addition, the content of the tenancy agreements do not tally with the signed affidavits, statements and oral testimony of the witnesses.
25. The Appellant, his wife and son all said in their statements that a rent of £300 is charged and yet in the Tenancy Agreements the rent starts in 2009 at £350 and was increased in 2012 and 2015 by £50. This apparent inconsistency was further contradicted in oral evidence when I was told that the son did not pay any rent at all but in fact contributed by doing shopping for his parents whenever they needed anything. The affidavits of 15 February from Mr Ahmad and Mr Irfan were remarkably similar to one another, as were the four subsequent statements from all four witnesses dated 13 March 2017 suggesting that they had been written together and in a manner to make sure that were consistent, one with another. Oral evidence to the inquiry was also remarkably similar between witnesses but no cogent explanation was offered as to why there was inconsistency between the Tenancy Agreements, written statements and oral evidence.
26. My own observations of the appeal building and main house did not bear out the Appellant's version of how the buildings were used. When I visited the property on the first occasion, I had heard no evidence and only had the statements from Mr Ahmad and Mr Irfan dated 15 February 2017. In summary, all that these said was that Mr Irfan had rented a room in the main house before the outbuilding was let to him in 2009 where he now lived with his wife. There was no mention of the family relationship or of any children. Given the different surnames, I had no knowledge that Mr Irfan was

³ The rent at that time was was £450 per month

Mr Ahmad's son and so, at that time, there was no reason for me to inspect the main house. My impression was that the outbuilding was occupied by a couple unrelated to the occupiers of the main house.

27. On 15 May, however, and now being aware of the family situation (having received and read the fuller statements from the witnesses dated 13 March 2017⁴), I announced that I wished to visit the property again and to look inside the main house. It seemed unusual to me that a family of four would live in the outbuilding with only one living/bed room whilst the main house which included a single storey rear extension and a loft conversion should only be occupied by the Appellant and his wife.
28. At that visit, and having asked permission, I opened all cupboards and drawers in the outbuilding but found no children's clothes or any other items to suggest that children were in occupation. There were no children's toiletries or children's personal items in the bathroom. The total evidence of any occupation by children was a small box of toys, 2 small pairs of shoes, two small coats hung on the outside of the wardrobe on hangers, some disposable nappies and a container of powdered baby milk and some baby medicine in the kitchen. These few items were insufficient to convince me that children lived in the building; rather they appeared to have been "arranged" within the building and were "on-show". Mr Irfan could not show me to where the children's clothes were kept and there was nothing in any of the drawers or cupboards relating to children.
29. I was surprised to find that, despite my having announced my wish to look inside the main house; there was a room on the ground floor and three bedrooms on the first floor which were locked. When I asked for them to be opened Mr Ahmad said the keys were with his wife who had not accompanied us. I was thus unable to inspect those rooms. On the top floor, however, and surprisingly, there was a self-contained bedsit occupied by a Polish man.
30. I found the house to give a stronger impression of being lived in by children than the outbuilding despite being prevented from inspecting the interior of some of the rooms. In the kitchen there were items dotted about such as the odd toy, a small zip up cardigan hanging on a door, children's cutlery on the sink drainer, baby food and a child's towel. In the living room, nappies and a toilet roll had been left on the back of the sofa, there were some more odd toys lying about and a child's small sock had been left discarded under the coffee table. In the bathroom there was a small plastic stool that a child might stand on when washing. Even without being able to look inside the four locked rooms and in contrast to the outbuilding, the house gave me the impression of being lived in by a child or children with items scattered about as one might expect rather than looking as if they had been arranged for show.
31. Finally, on this visit, I asked to look inside the two sheds in the garden. The larger one looked to me as if it was lived in by a male occupant. There was an unmade double bed, a large amount of clothing and shoes, a fridge and the radiator was on.
32. Returning to the inquiry, Mrs Irfan said the children's clothes are kept in a suitcase on top of the wardrobe in the outbuilding and that her husband would not have known where they were kept. This seems to me less than probable

⁴ Document 4

bearing in mind that they would be frequently required and that there were drawers and a wardrobe available in the building. Furthermore, even if Mr Irfan never had any involvement with dressing his children, he could hardly be unaware of where their clothes were, given the cramped nature of the accommodation for four people and that they would all be in the one living area at the same time. Mr Irfan, on the other hand, suggested that the children's clothes were in the main house as they had been taking care of it whilst their parents were on holiday and at his sister's house as she was taking care of their daughter that day. My view is that, even if the children had been staying temporarily elsewhere, their main residence would not be cleared of all clothes other than two coats and two pairs of shoes.

33. Whilst I can understand a young family wanting independence; the descriptions of how they live their life in one room with no access to the main house stretches credibility. With only one bed and a sofa and Mr Irfan sometimes working nights, the arrangements described are that the five year old sleeps on the sofa whilst the baby shares the bed with her parents. When the children are in bed during the evenings the parents sit on the side of the bed and Mr Irfan eats in the kitchen standing up. When Mr Irfan needs to sleep during the day Mrs Irfan visits her sister in law with her children or goes to the park.
34. Despite living in such close proximity to his parents; doing their shopping for them; spending time with them and his sister's family in the main house at weekends; having his post delivered there; looking after the house when his parents are away; and his children going to play there or in the garden; I was told that he does not, as a rule, hold a spare key and that he does not go through the garden to reach the house but rather takes the longer route through the alleyway, between Nos.26 and 28 and along the road to knock at the front door.
35. Mrs Ahmad said there was no Tenancy Agreement in place for the man living in the loft and yet they ostensibly have always had one for their own son to protect their interest if they want to evict him. That seems illogical.
36. To explain what I found in the large shed, Mr Ahmad said he sometimes has an afternoon nap there rather than going upstairs and Mrs Ahmad said that he suffers from high blood pressure and has knee problems. However, the clear impression I gained from what I saw was that the shed was being lived in rather than used for the occasional nap.
37. Mrs Ahmad initially said that no one had a spare key to the main house, but when asked what she would do if she got locked out she said her daughter, who lives elsewhere, has one. That is illogical when her son is closer and the families are clearly on very good terms.
38. When asked who the man sitting on the bed in the outbuilding was in the photograph at Document 2 of the Appellant's evidence, Mr and Mrs Ahmad didn't know although Mrs Ahmad suggested it could be a friend of her son. However, Mr Irfan said it was his father.
39. All in all, I found the oral evidence of the four witnesses highly unsatisfactory and, rather than confirming the version of events set out in the written statements and suggested by the Tenancy Agreements, cast the authenticity and accuracy of those documents into doubt. My own observations during my second visit – what I saw, what I did not see and what I was prevented from

seeing⁵ – only adds to my doubts as to the reliability of the Appellant’s account and that of his witnesses.

40. Overall the evidence presented for the Appellant is not sufficiently precise or unambiguous so as to be able to conclude that the use of the outbuilding as a dwellinghouse has become lawful. Whilst it seems to me that the outbuilding is lived in at the present time, I doubt, from what I saw, that it is occupied by the Irfan family. But even if I am wrong on that point no clear, credible and un-contradicted evidence has been presented to demonstrate continuous use as a dwellinghouse for any defined period of four years with no material change in the use thereafter. I find the Tenancy Agreements suspect given the clear contradictory evidence from an independent source (the Crew Manager from the Fire Brigade) and each of the Appellant’s four witnesses has a personal interest in the outcome of the appeal. The Appellant has undermined the credibility of his own evidence with inconsistent accounts⁶ and unexplained anomalies⁷ such that, even without the evidence for the Council, his case would not have been made out. Moreover, the Council presented evidence of its own and importantly from an independent source which further made the Appellant’s version of events less than probable. There is no reliable independent evidence presented for the Appellant to corroborate his version of events.
41. I conclude that the Appellant has not made out his case and the appeal on ground (d) fails.

The appeal on ground (f)

42. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary. In this respect the Appellant argues that the cessation of the use can be brought about by requiring the removal of the kitchen and that the removal of the bathroom, drainage connections and internal partitioning are excessive.
43. The Council at item 5 of paragraph 4 of the notice sets out the purpose of the notice which is to remedy the breach of planning control. Section 173(4)(a) of the Act says this can be achieved by restoring the land to its condition before the breach took place. In addition, it is well established that it is not excessive to require the removal of all items and works introduced to facilitate the use in order to remedy the breach.
44. I note the Appellant’s statement about how the outbuilding might be used in the future and his reference to permitted development rights. However, given that the main house is not in use as a single family dwelling⁸, the property does not benefit from such rights. Nonetheless, whilst I accept that the outbuilding could be used for any purpose ancillary to the lawful use of the property as a whole, it is still not excessive to require everything introduced to facilitate the unlawful use to be removed. The Appellant’s own evidence suggests that the bathroom, kitchen and partitioning were not present prior to the change of use. Thus the appeal on ground (f) fails.

⁵ Inside the locked rooms within the house

⁶ Between written and oral evidence

⁷ Such as the dates on the builder’s letter

⁸ It has a self-contained flat at second floor

The appeal on ground (g)

45. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what is reasonable. In this case the Appellant asks for nine months, indicating how difficult it would be for the Irfans to find alternative accommodation and drawing particular attention to the best interests of the children. I have already expressed doubts that it is this family which occupies the outbuilding having found insufficient evidence within the building of occupation by children. Even if it was so occupied, I do not believe that the best interests of the children would be served by living in such cramped conditions.
46. Nonetheless, it is clear that the building is currently lived in by at least one adult and possibly by a couple. The notice would result in the loss of their home such that their rights under Article 8 of the European Convention on Human Rights would be engaged. In addition, the interference with the Appellant's property would engage his rights under Article 1 of the First Protocol. These rights are however qualified ones such that interference may be justified in the public interest. In this instance, the public interest is the proper planning of the area. Nonetheless, I consider 3 months to be a particularly short period within which to enable the occupiers to seek alternative accommodation and for the Appellant to have undertaken the necessary remedial works. The period of nine months requested would strike an appropriate balance between the competing interests such that the interference would not place a disproportionate burden on the Appellant or the tenants.
47. The appeal on ground (g) succeeds.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr D Azad	Solicitor
He called	
Mr K I Ahmad	Appellant
Mrs A Ahmad	Appellant's wife
Mr M Irfan	Appellant's son
Mrs H Irfan	Appellant's daughter in law
Mr S S Basuta	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs I Visagie (1 st & 2nd days)	Solicitor, Ivy Legal appointed by the Council
Mr R Morton (3 rd and 4 th days)	Solicitor Ivy Legal appointed by the Council
They called	
Ms I Smith	Planning consultant, Ivy Legal appointed by the Council

DOCUMENTS submitted following the opening of the inquiry

- 1 Letter of notification of the inquiry dated 17 March 2017
- 2 Correspondence with Mr F Rodrigues and letter of notification of adjourned inquiry dated 24 March 2017
- 3 E mail correspondence between Ms I Bhogal and Mrs I Visagie 13 – 17 March 2017
- 4 Statements for the Appellant's witnesses dated 13 March 2017 and passport extracts
- 5 E mail from Mr F Rodrigues dated 25 April 2017
- 6 S289(3) of the Act, extract from the Solicitor's Code of Conduct and Web page from Ivy Legal
- 7 Further extract from the Solicitor's Code of Conduct
- 8 E mail correspondence relating to the provision of an accredited interpreter
- 9 Witness Statement of N Rundle dated 15 May 2017
- 10 Closing submissions for the Council
- 11 Closing submissions for the Appellant