



Appeal Decision

Inquiry held on 13 June 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 30 June 2017

Appeal Ref: APP/Y5420/C/17/3167350

126 The Roundway, Tottenham, London N17 7HG

- 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 Grigore Iuga against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice, numbered UNW/2016/00373, was issued on 14 December 2016
 - The breach of planning control as alleged in the notice is the material change of use of a rear garden outbuilding to primary residential accommodation.
 - The requirements of the notice are: Cease the use of the outbuilding as primary residential accommodation.
 - The period for compliance with the requirements is four (4) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the addition of the words *'other than as part and parcel of the residential occupancy of 126 The Roundway.'* after *'accommodation'* in the requirements. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. At the Inquiry an application for costs was made by The Council of the London Borough of Haringey against Grigore Iuga. This application is the subject of a separate Decision.

Procedural matters

3. The appellant did not attend the Inquiry and submitted no evidence to support his initial claim on the appeal form that *'the property which is the subject of the notice has been used as a principal dwelling for more than 4 years on a continuous basis and is therefore immune from enforcement action'* and that it *'was occupied as a separate and self-contained unit of accommodation and has continuously been so since [2009]. It is entirely self-contained and there is no ancillary relationship to the main house.'*
4. Initially, the Council had requested that the allegation in the enforcement notice be changed to *'the material change of use of the rear garden outbuilding to a self-contained dwellinghouse'* because of the case that the appellant was apparently going to make on his ground (d) appeal. They submitted that he would not, therefore, be prejudiced by this change as he was claiming that the building had, in fact, been in this use.

5. Consequent upon the failure of the appellant to produce any justification for this claim or to appear at the event, the Council withdrew this request and asked instead that the requirements of the notice be supplemented by the addition of the words '*beyond a use that is ancillary to the residential occupancy of 126 The Roundway*'.
6. This, it was submitted, more accurately reflected the situation that the Council's enforcement officer found when he visited the property in October 2016. It was subsequent to this visit that the Council decided to issue the enforcement notice as it concluded that the use at that time had ceased to be ancillary or incidental to that of the main dwelling. It was considered that it was being used as primary residential accommodation separate from that in the main house, although there was no conclusive evidence that the building was being used as a self-contained dwellinghouse.
7. From the evidence available, it seems to me that the outbuilding at that time did not meet the tests for a separate dwellinghouse as set out in the case of *Gravesham BC v SSE and O'Brien [1983]*. However the character of the use, as evidenced by the photographs taken at the time of the Council's visit, appears to have been as the main living accommodation for the occupants who were living separately from the residents in the main house. As noted above, the Council concluded that it was being used for residential purposes unconnected with the use of the main house as a dwellinghouse, which would be a material change of use of the land.
8. In order to make clear that the Council is seeking to prevent this unauthorised change through the issue of the enforcement notice, I agree that the wording of the requirements should be amended. However, the use of the word '*ancillary*' could prevent the use of the outbuilding as primary residential accommodation related to the main house.
9. A building in the curtilage of a dwelling may be put to any use which is either a primary residential use or is incidental to such a use and planning permission is not required for such a change provided the use remains part and parcel of the use of the dwellinghouse. The distinction between primary purposes and incidental purposes relates only to the justification for providing a building within the curtilage of the dwellinghouse under Class E of the Town and Country (General Permitted Development) Order 2015 in the first place and does not govern subsequent changes in use.
10. In order to confirm that there is intended to be no restriction to the use of the building by the occupants of the main house for purposes such as guest bedrooms or a playroom I will amend the requirements to read as follows:
Cease the use of the outbuilding as primary residential accommodation, other than as part and parcel of the residential occupancy of 126 The Roundway.

Main Issues

11. Given the appellant's claim on the appeal form, the main issue originally appeared to be whether it is too late to take enforcement action because the building has been continuously occupied as a self-contained dwellinghouse for more than 4 years before the date of issue of the enforcement notice.

Reasons

12. As noted above, at the time the enforcement notice was issued, the evidence produced by the Council indicates that the outbuilding did not meet the *Gravesham* test for a dwellinghouse. It did not have cooking facilities and, although I was told by a neighbour that the occupants used an outdoor barbeque in the garden for preparing food, this does not alter the status of the building.
13. It should be noted that the burden of proof, on the balance of probabilities, is firmly on the appellant. However, the appellant has provided no evidence whatsoever to support the claim made on the appeal form, as set out in preceding paragraphs, that a new self-contained dwelling had been created. In the absence of any such evidence, I consider that the Council's findings on the use of the building at that time are the most probable.
14. Consequently, for the appeal to succeed on the ground that the development was immune from enforcement action, it would have to be shown that any material change of use had taken place continuously for 10 years prior to the issue of the enforcement notice, rather than the 4 years that applies only in the case of a change of use to a dwellinghouse. As the outbuilding was only constructed in 2009, this ground of appeal must obviously fail.
15. In these circumstances, the Council's concern that the appellant may have employed deliberate deception to disguise the fact that the building had been occupied as a separate dwelling is not relevant to my conclusions. This consideration would only come into play had I found that the building has been occupied as a dwellinghouse for the requisite period.

Conclusions

16. For the reasons given above I consider that the appeal should not succeed.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

The appellant did not appear at the Inquiry and was not represented

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant	Of Counsel instructed by the Solicitor to the London Borough of Haringey.
He called Fortune Gumbo BSc, MSc	Acting Team Leader, Planning Enforcement and Appeals, London Borough of Haringey.

INTERESTED PERSONS:

Eileen O'Connor	Local resident
Isabell Clancy	Relative of Mrs O'Connor

DOCUMENTS

- 1 Opening statement on behalf of the Council
- 2 Costs application by Council