[1] The Planning Inspectorate

Appeal Decision

Inquiry held on 11 April 2017

Site visit made on

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 21 July 2017

Appeal Ref: APP/A5270/C/16/3151099
928 Greenford Road, Greenford, Ealing UB6 8QN

- 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 by John McDaid against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, ref. EN160126CUOB, was issued on 20 April 2016.
- The breach of planning control alleged in the notice is the material change of use of a single storey detached outbuilding 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) Do not use the outbuilding for any purposes other than a use incidental to the main dwelling;
  - c) Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;
  - d) Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling; and
  - e) Remove all resultant debris.
- 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. The prescribed fees have not been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

The Inquiry

2. Evidence at the Inquiry was taken under oath or solemn affirmation

Background matters

3. No. 928 Greenford Road is a two-storey semi-detached house standing on the eastern side of the road, immediately adjacent to a railway viaduct to the north of the site. There are concreted areas to the front, side, and rear. The outbuilding subject of the enforcement notice is a single storey building to the rear of the house. It has rendered walls and a low-pitched roof, the plan provided indicates it is about 6 metres wide and 4.5 metres deep. The front entrance door leads directly into a kitchen/sitting area. The kitchen is fitted out with a sink, cooker, fridge, worktops, and storage cupboards, and has an

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[1] https://www.gov.uk/planning-inspectorate

extract fan. In the space beyond the kitchen/sitting area is a double bed and a wardrobe, and there is a shower cubicle with a WC and wash-hand basin. At the time of my visit the unit was clearly occupied.

4. A retrospective planning application for the conversion of the main house into a self-contained maisonette at ground floor level (part) and first floor level and office use at ground floor level (Class B1(a) use), and the continued use of the outbuilding (gym/store) to the rear, in connection with the existing maisonette was refused in 2009[2]. On a visit by a Council officer in September 2009 the outbuilding was seen to have a two room layout, with kitchen facilities and a WC/shower room. At that time the building contained gym equipment.

5. The appellant continued to use the main dwelling for a mixed use, despite the refusal of planning permission, and an enforcement notice was issued in June 2011[3], alleging the material change of use from a single dwellinghouse to an office (Class B1(a)) use. The notice required cessation of the unlawful use 6 months after the notice took effect on 1 August 2011 – that is, by 1 February 2012.

6. The appellant wrote to the Council by e-mail on 26 April 2012, saying that he would be vacating the property imminently. This did not happen, and on a further visit by an officer on 1 May 2013 it was seen that the outbuilding was empty, although it was a fully self-contained unit. The officer requested removal of the kitchen within one month. Later that month an officer from the Council Tax team visited, and the appellant told him that the outbuilding was a storage shed. An officer's note on the Council's record system, dated 28 June 2013, stated the kitchen had been removed and that the outbuilding was unoccupied. As a result the Council closed the case.

7. Further complaints were received in September 2013 and August 2015 to the effect that the outbuilding was being occupied.

The appeal on ground (d)

8. The appeal on ground (d) is that the alleged development is immune from enforcement action. The burden of proof is upon the appellant to show that on the balance of probabilities the alleged use of the detached outbuilding as a self-contained dwelling has been continuous for a period of 4 or more years prior to issue of the notice on 20 April 2016.

9. In an appeal such as this - on the 'legal' ground (d) - with matters of fact in dispute, there is well established legal authority to say that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probabilities.

10. The appellant put forward extensive evidence in the form of copies from rent books for a considerable number of properties that he owns. According to these, the 'back flat' at no. 928 was occupied by Jimmy Risbane from 23 August 2010 until 27 March 2011, and then by Martin Quinn (nicknamed 'Daisy') from 3 April 2011to 3 February 2013. There is then a gap until Joe

[2] Decision notice P/2009/3676, dated 21 December 2009.
[3] Enforcement notice ref. COM/2008/00507, issued on 29 June 2011.

Burnley first occupied the back flat on 29 August 2013, and apparently stayed there at least until May 2016.

11. Martin Quinn has provided a sworn affidavit saying he occupied the outbuilding from 30 March 2011 to 3 February 2013. Joe Burnley has provided an affidavit dated 24 May 2016 to the effect that he occupied the outbuilding from 29 August 2013 onwards.

12. A letter from Rita Barber to the Council Tax Department dated 22 October 2012 states that Quinn moved to 928 Greenford Road on 1 October 2012, and a further letter of 16 July 2014 states that the Quinn tenancy ended on 30 June 2014. This differs significantly form the rent book evidence for the Quinn tenancy. Furthermore, on the basis of the information in the two Barber letters there is an apparent overlap of occupation by Quinn and Burnley between August 2013 and June 2014.

13. The letter of 16 July 2014 also states that Allan Davies and Brian Breslin moved in on 1 July 2014. In the rent book extracts Brian and Mickey Breslin are listed as living at 42 Hill Rise from at least 1 January 2012 until 14 October 2012, but in the following extract are listed at 928 Greenford Road from 21 October 2012 – although not occupying the back flat – and until 28 June 2015. Brian Breslin was summoned to appear at Ealing Magistrates' Court in January 2015 for non-payment of Council Tax. However, the summons was returned to the Council, and on enquiry the appellant's partner confirmed that Breslin had never lived at 928 Greenford Road. Although not directly related to occupancy of the back flat, this undermines the credibility of the rent book evidence.

14. Furthermore, I notice that in the rent book copies provided, the columns relating to the outbuilding appear in different positions. Between January 2012 and July 2013 the column appears between those for Castle Road, and columns relating to five flats in Keble Close. From August 2013 the column previously for the outbuilding becomes a sixth column for Keble Close, with the outbuilding column in a new position. In March 2015, the entries for the outbuilding again take up one of the columns for the Keble Road properties. I find this inconsistency to be somewhat improbable in the context of what are otherwise regularly recorded lists of properties. This adds to my view that the rent book evidence is not entirely reliable.

15. In cross-examination under oath Ms Barber said Breslin had stayed at Greenford Road 'for a few nights, while passing through London', and that he and Allan Davies did not move in on 1 July 2014. Mr McDaid contradicted this in his cross-examination, and said that Breslin had lived at Greenford Road for a few years, and had moved out 'probably two years ago'.

16. Overall, I found the two principal witnesses to be unreliable, notably concerning the question of whether or not Breslin had been a tenant, and the appellant's admission that he had told the Council the outbuilding was used as a gym, rather than a dwelling, 'for Local Planning Authority purposes'. Furthermore, I can give little credence to the appellant's claim that he did not think the outbuilding needed planning permission, or Building Control approval, when he is very clearly a quite major property owner. Given the highly inconsistent evidence about Breslin's occupancy in particular, I have little confidence in the reliability of the rent book entries.

17. In a case such as this it might be expected that a range of evidence would be provided including such things as tenancy agreements, payment and return of deposits, bank statements showing payments made, utility bills, and Council Tax records. These documents could be expected to cover the full 4 year period. As it is, the lack of any tenancy agreements means that the full names of tenants are not necessarily available, and the rent books give minimal information as to their identities. The appellant claimed

18. Property rental is clearly a substantial part of the appellant's business, and it would be very much in his own interests that such records were kept. Again, I can give little credence to the idea that the appellant's properties were let in such an informal way.

19. Invoices from a kitchen fixtures supplier dated 23 February 2010 are addressed to J & J Transport Ltd – a company owned by the appellant - at the Greenford Road address. However, there is no indication that these fixtures were specifically destined for the outbuilding. Indeed, in cross-examination the appellant conceded that they might be the wrong invoices. Furthermore, the Council officer had seen kitchen fixtures in the outbuilding in September 2009- some time before the appellant claims they were installed.

20. The affidavits put in by Burnley and Quinn provide little information, except the same dates as appear in the rent books. They appear to have been drawn up by the same person, and cover limited periods of the 4 years. Neither of these men appeared at the Inquiry, so their evidence could not be tested under cross-examination. I can give little weight to these documents.

21. An e-mail from the appellant to his planning agent on 18 May 2016 says that the back flat at the appeal property was occupied by his son from 5 February 2013 to 5 April 2013 and again from 1 June 2013 to 27 August 2013. No contemporary evidence was available to show the son's occupation for those periods, nor was he available for cross-examination. The part of the rent book purportedly relating to the back flat for that period is notably vague for the period from 10 February 2012 to 28 July 2012, and no evidence was available of the claimed two occupants from 7 April 2013 to early May 2013. I can give this evidence very little weight. Furthermore, this period coincides with the time when the Council had recorded on their visit of 28 June 2013 that the kitchen fixtures had been removed from the outbuilding. It appears to me likely that this could have been a significant break in the claimed continuous occupancy.

22. Overall, I consider that on the balance of probabilities the appellant has not demonstrated that use of the detached outbuilding as a self-contained dwelling has been continuous for a period of 4 or more years prior to issue of the notice on 20 April 2016. The appeal on ground (d) must therefore fail.

Conclusions

23. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed, and I intend to uphold the notice.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Broderick BA(Hons) DipTP	Planning Consultant PB Planning Consultancy Ltd.

He called:

Rita Barber	The appellant's administrator.
John Mc Daid	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Izindi Visagie LLB MBA	Solicitor, acting for The London Borough of Ealing Council.

DOCUMENTS

1 Attendance list.
2 The Council's letter of notification of the appeal, dated 20 March 2017.
3 Letter of representation, with photographs.
4 Statement of Common Ground.
5 Appendices to Mr Broderick's proof of evidence.
6 Appendices to Mrs Visagie's proof of evidence.
7 Bundle of correspondence between the Council Tax Department and the appellant, and related documents.
8 Enforcement notice ref. COM/2008/00507,issued on 29 June 2011.