



Appeal Decision

Site visit made on 18 April 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2018

Appeal Ref: APP/A5270/C/17/3179776

64 Manor Farm Road, Wembley, HA0 1BW

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Martin George [hereafter "the appellant"] against an enforcement notice issued by the Council of the London Borough of Ealing [hereafter "the Council"].
 - The notice ref. COM/2011/00547(1) was issued on 1 June 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of the land at the rear of 64 Manor Park Road to use as a self-contained residential dwelling.
 - The requirements of the notice are:
 - A. Cease the use of the Land as a self-contained residential dwelling;
 - B. Remove the kitchen and drainage connections which facilitate the use of the outbuilding at the Land as a self-contained residential dwelling;
 - C. Remove the bathroom and drainage connections which facilitate the use of the outbuilding at the Land as a self-contained residential dwelling; and
 - D. Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in s174(2)(d) of the Act. Since the prescribed fee has not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under s177(5) of the Act have lapsed.
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Decision

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

Preliminary matters

2. The site visit had been arranged on an accompanied basis but the appellant was not in attendance. I was therefore unable to see and enter the building concerned.
3. However, as there is only ground (d) to consider (which is a legal ground of appeal concerning the history of the use rather than what is presently on the ground) I did not consider it necessary to make a return visit. I shall determine the appeal on the basis of the written and photographic evidence that is on the file.
4. In a legal ground of appeal the standard of proof is one of balance of probability. The burden of proof is upon the appellant.

The appeal on ground (d)

5. An appeal on ground (d) is that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of the alleged breach. The relevant time period for enforcement in the case of a breach involving a change of use of a building to use as a single dwellinghouse is four years (s171B(2)). In the case of a material change of use of land the relevant period is ten years (s171B(3)).
6. The Council believes that the building was purpose built as a separate dwellinghouse and used as such from the outset. In the Council's submission there has been no change of use of an existing building so the four year immunity period does not apply. The breach alleged by the notice is the change of use of the land which carries a ten year time limit.
7. Whilst the appellant has described the works as a "conversion" he has not challenged the Council's allegation of the change of use of the land as a matter of fact. No appeal has been made on ground (b)¹. Neither has the appellant sought to dispute that the relevant time period is ten years as was set out in the enforcement notice.
8. I shall, therefore, proceed to determine the appeal on the basis that the time period for enforcement is ten years.
9. The relevant date for this determination, therefore, is 1 June 2007 that being the date ten years prior to the issuing of the enforcement notice. For the appeal to succeed the appellant must prove, on balance of probability, that the change of use of the land occurred by that date at the latest and has continued, without interruption² for a period of at least ten years.
10. The appellant says (on his appeal form) that the rear building has been in use for ten years. However, he gives no precise evidence concerning the exact date that the change of use occurred. The appeal form is dated 10 July 2017 so, taking a literal interpretation of what he has said, that would indicate the use commenced on 10 July 2007 (ten years earlier). This would have been after the relevant date and within the time period for enforcement.
11. The Council has brought two aerial photographs. The photograph dated 26 May 2010 shows a substantial building (the subject building) to the rear of the main dwelling. An earlier photograph, dated 3 May 2007, appears to show a smaller outbuilding which the appeal building (apparently) later replaced.
12. There is nothing to be seen on the 3 May 2007 photograph to indicate that building works were progressing (materials on site and foundations for example) towards the erection of the subject building. It is less than probable that, in the short (four week) time period between the date of the photograph and the relevant date, the existing outbuilding would have been removed and the new dwelling constructed and brought into use.
13. Overall, the appellant's evidence is imprecise, ambiguous and lacking in substance. There is no documentary evidence (tenancy agreements, utility

¹ An appeal on ground (b) is that the matter alleged in the enforcement notice has not occurred as a matter of fact.

² Short suspensions of use, during a change of occupiers for example, would not normally stop the time period from running.

bills, marketing evidence for example) or statements from persons with first hand knowledge of how the building had been used over the relevant time period which may have helped towards supporting the appellant's case. In essence, the appellant's case amounts to no more than mere assertion, which is unsupported by evidence, and is far too thin and imprecise for me to place reliance upon it.

14. Even if I had been considering the appeal under the four year timescale, I still would not have been able to deduce from the evidence that the use had taken place continuously for the relevant period and, thus, to find in favour of the appellant.

Other matters

15. The quality of the accommodation and the absence of any known objections from neighbours are not matters that I can take into account under ground (d), which is determined only upon its evidential facts.

Conclusion

16. I find that the evidence falls significantly short of being clear, precise and unambiguous and that it renders less than probable the appellant's claim that the time period for enforcement had passed. On the evidence, it is more likely than not that a change of use of the land to a self-contained residential dwelling had occurred within the ten year time period for enforcement and that the enforcement notice was issued in time on balance of probability. The burden of proof that is upon the appellant to demonstrate otherwise has not been satisfactorily discharged.
17. For the reasons given above I conclude that the appeal should not succeed.

Susan Wraith

Inspector