



Appeal Decision

Site visit made on 24 May 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2018

Appeal Ref: APP/T5150/C/17/3180180

153 College Road, London NW10 5HB

- 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 Mrs Jemma Allett against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 12 June 2017 under ref. E/17/0050.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of a timber enclosure to the front of the property and the material change of use of the garage to a flat."*
 - The requirements of the notice are set out as follows:
 - "STEP 1 Completely and permanently cease the use of the garage as a flat.*
 - STEP 2 Remove kitchen and bathroom from the garage.*
 - STEP 3 Remove all partitions, doors, facilities, fixtures and equipment that facilitate the conversion of the garage. This includes the removal of the front door and its replacement by a garage door.*
 - STEP 4 Demolish the timber enclosure to the front of the premises.*
 - STEP 5 Remove all waste materials and debris associated with the unauthorised use and development."*
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (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 deletion of the words *"and bathroom"* in schedule 4, step 2. Subject to that variation, the appeal is dismissed and the enforcement notice is upheld.

Background and matters of clarification

2. The appeal site comprises an end-of-terrace two-storey house. Part of the allegation in the enforcement notice refers to a material change of use of the garage to a flat. The northern wing of the house was originally built as a garage but the internal space has been used for other residential purposes over the years in association with the dwelling.
3. I see that in August 2016 the appellant referred to a *"ground floor garage"* in her successful application for a lawful development certificate for the proposed installation of a window in its side wall (ref. 16/3867). Many garages are no longer used for their original purpose as a place to keep a motor vehicle but they are commonly still referred to as garages. The

appellant has not been misled by the use of the word “garage” in the enforcement notice and I see no need to correct the notice in this regard.

4. Grounds (b), (c) and (d) are legal grounds of appeal, distinct from any planning merits. The Courts have held that the onus on proving them rests with an appellant. The test of the evidence is made on the balance of probability. As the appellant has not made an appeal on ground (a), there is no deemed planning application before me and I cannot consider the planning merits of the two matters alleged in the notice. I understand that the appellant added grounds (b) and (d) in relation to the alleged material change of use only but for the avoidance of doubt I shall briefly consider these grounds in relation to the alleged timber enclosure too.
5. I shall consider each of the alleged developments separately against the three grounds of appeal. In order for an appeal on ground (b) to succeed, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact. For success on ground (c), it needs to be shown that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. On ground (d) it has to be demonstrated that at the date when the enforcement notice was issued it was too late to take enforcement action.

The alleged erection of a timber enclosure to the front of the property

6. From photographs submitted by the Council and third parties and from what I saw at my site visit, it is clear that a timber enclosure has been erected at the front of the property. Put another way, it has occurred as a matter of fact.
7. Some parts of the structure are over 2m in height and even the lowered front section of fence, where planting has been introduced behind, is 1.55m above the footway. The erection of the enclosure was a building operation. It is development within the meaning of section 55 of the 1990 Act as amended for which section 57 indicates planning permission is required. This has not been obtained from the local planning authority and planning permission would not have been available through the operation of the General Permitted Development Order (GPDO) for the reasons set out in the Council’s statement (paragraphs 4.1.9 and 4.1.10) relating to height. The timber enclosure constitutes a breach of planning control.
8. The timber enclosure was substantially completed in all probability at the beginning of 2017. Thus, when the enforcement notice was issued on 12 June 2017, it was not too late to take enforcement action, following the relevant four-year time limit for enforcement action against operational development laid down in section 171B(1) of the 1990 Act as amended.
9. The appeal on grounds (b), (c) and (d) in respect of the timber enclosure therefore fails. The existence of front boundary fencing at other properties on College Road is of no direct relevance to these grounds of appeal. The enforcement notice would not prevent the appellant from erecting a fence or fences in accordance with the height regulations in the GPDO.

The alleged material change of use of the garage to a flat

10. I saw that the main room in the northern ground floor wing of the appeal property contains a fitted kitchen (including a sink, fridge, oven, hob and microwave) and a living and sleeping space with a television and fold-out double bed. Off that room is an en suite shower room and a boiler room. After the removal of the garage doors, this accommodation now has its own conventional front entrance door. There is also a gated entrance and a small screened outdoor patio between that door and the footway.
11. I consider that the living accommodation provided in this ground floor wing affords to those who use it the facilities for day-to-day private domestic existence in a manner that is physically distinct and separate from the rest of the accommodation in the appeal property. There is nothing to indicate that any occupiers who make use of this wing would need to rely upon any shared facilities in the appeal property. It is more than a room/space inside the house; it is a self-contained studio flat. The Council points to an online advertisement which says "*Amazing flat close to tube station has been welcoming Booking.com guests since 6 Apr 2017.*" This date seems to tally with the completion of the building works at the property by Heath Design and Build. The Council says the flat appears on other websites.
12. In the light of the foregoing, I am not satisfied that it has been demonstrated that the use in question has not occurred as a matter of fact. The appeal on ground (b) in respect of the material change of use therefore fails.
13. In essence, under ground (c), the appellant's case is based on the premise that she did not need planning permission as the space has been used as a habitable workspace/photographic studio and guest room since she bought the property in 1996 and has contained a fitted kitchen/utility room, sofa bed and bathroom since then. It is claimed that no new amenities have been added at any time. Access was possible through the garage door or from the main house. In her final comments, the appellant says there has been a kitchen for the last 10 years.
14. The uses the appellant describes would have been ordinarily incidental to the enjoyment of the dwellinghouse as such. The photographs taken by the appellant and the Council before the works by Heath Design and Build took place show a typical spare room containing a utility area (washing machine, laundry and ironing board), shelving with books, desk with computer equipment, storage units and general storage.
15. Whilst the building work listed by Heath Design and Build included the phrase "*Strip out existing fitted kitchen and utility room*", I have little idea what the kitchen contained. The photographs of the previous layout before me do not show a full range of kitchen fittings. Letters included with the appeal papers from persons familiar with the layout of the building do not refer to a fitted kitchen or sleeping space, although they do confirm the existence of a shower room. No affidavits have been submitted.

16. The certificate of lawfulness issued under ref. 16/3867 is of little assistance to the appellant. The application form and decision notice restrict the content of the certificate to the proposed installation of the side window although I accept other details (for instance, a new front entrance door) were shown on the plans. It is a telling point that the existing garage plan used in August 2016 for that application described the existing garage area as follows: *"Garage space containing spare bathroom utility space storage and office area."* The utility/storage area is marked on the existing plans where there is now a fully fitted kitchen. Those plans (existing and proposed) again point to incidental usage of the space and not to use as separate primary living accommodation. The last sentence in the letter from Sarah McDougall (of Orah London) in all probability puts it correctly by saying: *"It was a professional area that was part of the family home."*
17. Section 55(3)(a) of the 1990 Act as amended declares that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. This is what has occurred and it is development within the meaning of section 55 for which section 57 indicates planning permission is required. This has not been obtained from the local planning authority and there is no suggestion from any party that planning permission would have been available through the operation of any development order. A breach of planning control has occurred here and the appeal on ground (c) in respect of the material change of use therefore fails.
18. Looking at all the evidence in the round, the space in question did not become a self-contained studio flat until April 2017. Thus, when the enforcement notice was issued on 12 June 2017, it was not too late to take enforcement action in respect of this flat, following the relevant four-year time limit for enforcement action against the change of use of any building to use as a single dwellinghouse laid down in section 171B(2) of the 1990 Act as amended. The appeal on ground (d) in respect of the material change of use therefore fails.

Requirements of the enforcement notice

19. The appellant has had an en suite shower room for some considerable time and even though it was refurbished and possibly reduced in size at the beginning of 2017, I consider the requirement to remove the bathroom is excessive. If the bathroom was retained and all the other requirements of the notice were complied with, the property would effectively revert to its state prior to the unauthorised change of use to a flat and the breach of planning control would still be remedied. A minor variation has been made to the notice accordingly.

Andrew Dale

INSPECTOR