



Appeal Decision

Site visit made on 9 July 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 17 July 2019

Appeal Ref: APP/A5270/C/18/3210548

60 Wesley Avenue, London, NW10 7BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mrs Eman Mohy-Eldin against an enforcement notice issued by the Old Oak and Park Royal Development Corporation.
 - The enforcement notice was issued on 2 August 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a separate self-contained residential dwelling at the rear of the premises.
 - The requirements of the notice are:
 - a. Cease the use of the unauthorised dwelling
 - b. Demolish the separate self-contained dwelling
 - c. Remove all resultant debris from the property
 - The period for compliance with the requirements is 3 months.
 - The appeal proceeds on the grounds set out in section 174(2)(b),(c) and (f) of the Act.
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Decision

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

Appeal building

2. The building subject of the enforcement notice is a detached single storey flat roofed building located at the rear of the property. It has a window and pedestrian access door into the garden of No. 60 Wesley Avenue, and a second door providing access into the rear alleyway which runs along the rear of the properties on Wesley Avenue. That also links to a narrower side passageway between Nos. 58 and 56 which in turn exits onto Wesley Avenue.

Grounds of Appeal

3. Appeals on grounds (b) and (c) are legal grounds of appeal and are distinct from any planning merits of development. The Courts have held that the burden of proof in legal grounds of appeal rests with the appellant, and the test of the evidence is on the balance of probability.
4. An appeal on ground (b) is a claim that those matters (i.e. the matters stated in the notice which may give rise to the breach of planning control) have not occurred *as a matter of fact*. An appeal on ground (c) is a claim that those matters, if they did occur, do not constitute a breach of planning control. The relevant date for determining appeals on these grounds is the date the enforcement notice was issued, in this case that is 2 August 2018.

5. There is considerable overlap of the relevant evidence and factors in both of these grounds of appeal and so I will deal with them both together. Ground (f) is dealt with separately.

Appeal on Grounds (b) and (c)

6. It is the appellant's position on ground (b) that the building was not erected as a new building, but instead was a refurbishment of an existing one, and that it has not been used as a self-contained residential dwelling. With regard to ground (c) it is argued that refurbishment works to the building were "permitted development" and the building is used for ancillary purposes to the main dwelling.
7. The appellant's Grounds of Appeal statement (GOA) states that an existing building was refurbished, remains on its original footprint, and that "The only major changes have been the reconstruction of the roof by maintaining the height". Also, that the works undertaken to improve the building were permitted development under the auspices of Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.
8. Although not submitted, reference is made to an officer report which relates to a Prior Approval application for a rear extension to the main dwelling in 2016. It is claimed that at that time the appeal building already existed. However, that does not provide evidence of whether in 2016 it was the original building or a more recent replacement. The appellant's submitted photographs of the building's exterior (and other similar buildings nearby) are dated 8 September 2018. They do not provide evidence to support the appellant's case that the matters alleged did not occur, or that they do not constitute a breach of planning control.
9. Other than as described above there is little supporting evidence, for example in the form of plans of works undertaken, statements, receipts/invoices for materials/works, before and after photographs of the works, etc, to corroborate the appellant's claim that the building comprised refurbishment and ancillary use, rather than the construction of a new building as a self-contained residential dwelling. Nonetheless, the appellant's case should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable, and if her evidence is sufficiently precise and unambiguous, the appeal should be allowed.
10. The Corporation's evidence includes aerial images from 2015 and 2018. The 2018 image is consistent with the size of the building I saw during my visit to the appeal site. The images show by comparison that the building which existed in 2015 was a significantly smaller one than existed in 2018 and now. Thus, there is considerable conflict between this evidence and the appellant's claim that the building was simply a refurbishment of the original building on its original footprint. Consequently, I find that the appellant's evidence is contradicted and that her evidence is not precise or unambiguous. On the balance of probability, I therefore find that the appeal building is a new building and was constructed less than four years before the enforcement notice was issued.
11. Turning to the use of the building, I saw that it is constructed internally with two rooms; one a kitchen and living area, the other a separate toilet and shower room. The kitchen area includes storage cupboards, sink, and a fridge.

- A cooker housing unit, cooker power isolation switch, and extraction vent pipe above are also fitted, although there is no actual cooker. There was no bed in the building and it did not appear to be residentially occupied.
12. That is different to the Corporation's photographs and notes of their inspection prior to issuing the enforcement notice. They record that there was an unmade bed, a fridge containing food and drink, clothes in a wardrobe and toiletries in the bathroom. The full extractor unit above the cooker housing unit was also present.
 13. The judgment in *Gravesham*¹ sets out that the distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities (cooking, washing and toilet facilities) required for day to day private domestic existence. The Corporation argue that is the case here and that a cooker was removed prior to a site inspection by officers.
 14. Contrary to the Corporation's position the appellant claims that "there is no kitchen facilities and not use (sic) as a self-contained unit". However, it is significant that there is no claim or evidence that this was the position when the building was completed. Indeed, the appellant goes on to confirm that "some facilities" were removed. Further, at paragraph 4.2, the GOA states that "In order to resolve this issue with the Council, the appellant removed the beds and there were no kitchen facilities in outbuilding just to satisfy and build trust with the Council".
 15. While "some facilities" suggests that more than just beds were removed, paragraph 4.2 is ambiguous as to whether it confirms or not that a cooker was removed, rather than never having been installed at all. What is clear however, is that nowhere in the appellant's submissions does it unequivocally state that a cooker was never installed.
 16. The Corporation's evidence includes records of officer visits to the building and a meeting with the appellant and her agent in July 2018, and earlier telephone conversation with the appellant in June 2018. The records indicate that the appellant confirmed in June that the building was being rented out, although in the July meeting this was denied, instead stating that her son-in-law sometimes stayed there. The records also indicate the appellant confirmed at that time that she lived at a different property, the main house was rented out, and that occupiers of the main house did not have access to the appeal building. This strongly suggests that any occupation of the appeal building was independent and separate, rather than being ancillary to the main house as claimed.
 17. Taking account of all the evidence before me I find that the appellant's evidence is not precise and unambiguous and is also contradicted by the Corporation's evidence. As such, I find that the appellant has failed to discharge the duty upon her to establish, on the balance of probability, that a new building containing all of the basic facilities for living (a self-contained dwelling house) was not constructed. As such, I conclude that the matters alleged in the enforcement notice occurred as a matter of fact and the appeal on ground (b) must fail.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

18. Furthermore, the creation of the new dwellinghouse is development which requires planning permission. Since planning permission has not been granted, the development is a breach of planning control. Thus, the appeal on ground (c) also fails.

The appeal on ground (f)

19. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the cessation of the use and removal of the building. It is clear therefore that the purpose of the notice is to *remedy the breach of planning control*.
20. Although not explicitly made, the case advanced for the appellant appears to be that a lesser requirement of retaining the building as an ancillary building would be sufficient to remedy the breach of planning control. In this regard, it is argued that retention of the building would not harm the character and appearance of the area as there are other similar sized outbuildings nearby and in the wider area.
21. However, these arguments relate to the merit of the development and would be relevant if an appeal on ground (a) had been made (that planning permission ought to be granted). I cannot take them into account in this appeal under ground (f) which relates solely as to whether the requirements to remedy the breach are excessive.
22. As set out above, the purpose of the notice is to *remedy the breach of planning control*. Any lesser requirements, such as allowing the building to remain, would not fully remedy the breach. Therefore, it is clear that the requirements to cease the use and to remove the building cannot be excessive because they go no further than remedying the breach.
23. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR