



Appeal Decisions

Site visit made on 6 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2019

Appeal A Ref: APP/Y5420/C/18/3208547 135 Perth Road, London N22 5QH

- 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 Mr Joshua Jacob Friedlander against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 2 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a rear garden outbuilding to a dwellinghouse.
- The requirements of the notice are: 1. Cease the use of the rear garden outbuilding as a dwellinghouse; 2. Remove from the outbuilding all cooking facilities; 3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/Y5420/X/18/3219363 135 Perth Road, London N22 5QH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Joshua Jacob Friedlander against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2018/1611, dated 30 March 2018, was refused by notice dated 7 June 2018.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the rear outbuilding as a separate, self-contained residential flat.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Preliminary Matter

1. The appellant's surname was misspelt on the appeal form in Appeal A and on the application and appeal forms for Appeal B. I have used the correct spelling.

Appeal A

Ground (d) appeal

2. The outbuilding is located in the rear garden of an end of terrace property. A gated pedestrian path at the side of the property provides access to the outbuilding. During my site visit, I observed that the outbuilding interior consisted of a large room containing a kitchen and sleeping/living area, with a separate bathroom. The outbuilding was furnished and occupied.
3. The ground of appeal is that at the date the enforcement notice was issued, it was too late to take enforcement action. At s171B (2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Therefore, in order to succeed on this ground, the appellant would have to show that use of the outbuilding as a dwelling began more than four years before the date of the notice and continued without material interruption thereafter, the relevant test of the evidence being on the balance of probability.
4. When assessing whether the use of the outbuilding as a dwelling has been continuous for the purpose of s171B (2) any four-year period is relevant, not just the four years immediately preceding the date of the notice. Therefore, if the use as a dwelling had become immune from enforcement action at any stage prior to the date of the notice it would be lawful, provided such use had not been lost either by abandonment, the formation of a new planning unit or a further change of use.
5. According to the appellant's Statutory Declaration (SD), he acquired the appeal property in September 2016. An SD was provided by the former owner of the property (witness 1) who stated that on 1 August 2012 she had signed an Assured Tenancy Agreement (AST) with a tenant in respect of 'the rear flat'. Witness 1 stated that this tenant occupied the rear flat continuously and without interruption, from the commencement of the tenancy on 1 August 2012 until she sold the property at the end of August 2016. She also attested to living in the dwelling at the front of the property from 2003 until the date of sale and to all post being addressed to that dwelling, as there was no separate address or post box for the rear flat. A copy of a six-month AST dated 1 August 2012, together with copies of 12-month ASTs dated 1 February 2013, 2014, 2015 and 2016 were supplied. The ASTs were all signed by the witness and the same tenant. They all referred to the 'rear of 135 Perth Road'. Also, a copy of a report to witness 1 dated 25 July 2012 concerning the condition of domestic electrical installations at 'rear studio 135 Perth Road' was supplied.
6. Witness 2 provided two SDs. He attested to having been the tenant of the rear flat, occupying it continuously and without interruption from the commencement of his tenancy on 1 August 2012 until the end of August 2016. A signed copy of the AST dated 1 August 2012 was also exhibited. The witness explained that he had used a shortened, anglicised version of his first name, as that is how he is commonly known. The witness also confirmed that his post had been addressed to the dwelling at the front of the property. A copy of the witness's driving licence bearing the property address was exhibited. Copies of

his monthly bank statements between January 2014 and September 2016 bearing the property address were also supplied.

7. The SDs were all signed and dated in the presence of a solicitor. Therefore, the witnesses have properly attested to the truthfulness of their evidence. There is nothing to suggest that any part of the SD copies provided had not been part of the documents that were signed by the witnesses with a solicitor present. Therefore, I am not clear why the Council should insist that every page of the SDs should have been signed by the witnesses and a solicitor.
8. Witnesses 1 and 2 provided first-hand evidence of continuous use of the outbuilding as a dwelling between 1 August 2012 and the end of August 2016, i.e. a period of more than four years. The plans exhibited with the SDs confirmed that what they both called 'the rear flat' is the outbuilding. The accounts of both witnesses are consistent. They are precise and unambiguous. The SDs supplied by witness 2 clearly show that he was the tenant of the outbuilding during the above period. Successive ASTs lend further support to the witness accounts, as they clearly show that witness 2 occupied the outbuilding continuously throughout the four-year period. Witness 2's bank statements and driving licence had the property address on them. However, as both witnesses explained, there was no separate postal address for the outbuilding. Therefore, the address on these documents are not inconsistent with witness 2 occupying the outbuilding during the four-year period. There is no evidence to suggest that witness 2 lived in the dwelling at the front of the property. Whilst the electrical condition report does not confirm actual occupation, it shows an intention to let the outbuilding shortly before the date when, according to the other evidence, witness 2 occupied it. Consequently, the witness and documentary evidence should be afforded considerable weight in the absence of evidence to indicate otherwise.
9. I note that the Council had requested removal of the outbuilding's kitchen and water supply in 2011. At a site visit on 1 July 2011, a Council officer observed that the water had been disconnected. However, this was around a year before the date when, according to the evidence submitted on behalf of the appellant, occupation of the outbuilding commenced. Therefore, nothing in the previous investigation casts any substantive doubt on the witness accounts.
10. The officer report in Appeal B indicated that when the site was visited on 22 January 2018, the outbuilding was in use as a self-contained flat. Consequently, the basis for the Council now concluding that the outbuilding was unfit for habitation on that date is unclear. Whilst the Council referred to there being anecdotal evidence of significant gaps in occupation of the outbuilding, no information was supplied to support this assertion.
11. The prior approval application submitted in June 2017 for a large single storey rear extension¹ involved physical alterations to the dwelling, not the outbuilding. As the outbuilding is in the appellant's ownership and it was part of the site shown edged in red on the plan accompanying the application, it could not sensibly have been regarded as adjoining premises. Moreover, I am given to understand that at the time of the above application, the outbuilding was vacant and undergoing refurbishment. In his SD, the appellant stated that the failure to refer to the outbuilding was an oversight. Furthermore, I am mindful that the application was submitted by an agent, rather than the

¹ Council Ref: HGY/2017/1812.

appellant himself. For all the above reasons, I do not agree that the appellant either misled the Council as to the true nature of the use of the outbuilding, or alternatively that the outbuilding was not in use as a dwelling at that time.

12. Therefore, the Council's submissions carry little evidential weight. In any event, the available evidence shows that use of the outbuilding as a dwelling had, more likely than not, already been continuous for a period of more than four years some time before the 2017 and 2018 events described above. As a result, the use was already lawful by that time. Moreover, those events are not evidence of the use of the outbuilding as a dwelling having been abandoned, superseded by a further change of use or of a new planning unit having been formed.
13. Taking all the above matters into account, I find that the appellant has provided sufficiently precise and unambiguous evidence to show, on the balance of probability, that use of the outbuilding as a dwelling began more than four years before the date of the notice and continued without material interruption thereafter, becoming lawful some time during August 2016. Evidence provided by the Council did not contradict or make the appellant's version of events less than probable. Consequently, at the time the notice was issued it was too late for the Council to take enforcement action.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (g) does not need to be considered.

Appeal B

Reasons

15. In Appeal A I found the available evidence showed that on the balance of probability, use of the outbuilding as a dwelling had begun and then continued without material interruption for the required period. It follows that similar conclusions should apply in respect of Appeal B.

Conclusion

16. Therefore, I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the outbuilding as a self-contained residential flat was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the Act.

Formal Decisions

17. Appeal A is allowed and the enforcement notice is quashed.
18. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Stephen Hawkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 March 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured solid black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence demonstrates that, on the balance of probability, use of the rear outbuilding as a self-contained residential flat began more than four years before the date of the application and continued without material interruption thereafter.

Signed

Stephen Hawkins

Inspector

Date: 3 September 2019

Reference: APP/Y5420/X/18/3219363

First Schedule

Use of the rear outbuilding as a separate, self-contained residential flat.

Second Schedule

Land at 135 Perth Road, London N22 5QH.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 3 September 2019

by **Stephen Hawkins MA MRTPI**

Land at: 135 Perth Road, London N22 5QH

Reference: APP/Y5420/X/18/3219363

Scale: Not to scale



