



Appeal Decision

Site visit made on 30 July 2019

by Stephen Hawkins MA MRTPI

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

Decision date: 3 September 2019

Appeal Ref: APP/R5510/C/18/3208642

Land at 36 Birchway, Hayes, Middlesex UB3 3PA

- 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 Inder Pal Malhotra against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 10 July 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of an outbuilding to an independent residential unit.
- The requirements of the notice are: (i) Cease the unauthorised use of the outbuilding as an independent residential unit; (ii) Dismantle and remove from the outbuilding the fitted kitchen comprising the hotplate cooking appliance, microwave oven, worksurfaces(s) and wall/floor cupboard units; (iii) Dismantle and remove from the outbuilding the shower room comprising the shower, shower cubicle, shower tray and associated plumbing, the sink unit and associated plumbing, and the toilet pan and toilet cistern; (iv) Dismantle and remove from the outbuilding the internal studwork wall delineating the shower room from the kitchen/lounge/bedroom; (v) Remove from the land all the debris, items, fixtures and fittings, building materials, plant and machinery resulting from the works in (ii), (iii) and (iv) above.
- The period for compliance with the requirements is three 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.

Ground (d) appeal

1. The detached outbuilding in this appeal is located at the rear of a semi-detached dwelling (No 36). During my site visit, I observed that the interior of the outbuilding consisted of a large room containing a kitchen, living and sleeping areas, with a separate bathroom. The outbuilding was occupied by the appellant. Solid timber fencing separated the outbuilding from the rear garden of No 36. A pedestrian path running to the side of No 36 provided access to the outbuilding.
2. 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 an independent residential unit began more than four years before the date of the enforcement notice and continued without material interruption thereafter, the relevant test of the evidence being on the balance of probability. Under this ground, the planning merits of residential use of the outbuilding cannot be considered.

3. In the appellant's signed, dated and witnessed Statutory Declaration (SD) he stated that the outbuilding was erected during 2003, being completed when a kitchen and bathroom were fitted in September that year. According to the appellant, he moved into the outbuilding in October 2003 and since then he has lived there continuously as his sole residence. The appellant stated that No 36 had been let to Council tenants from 2004 to August 2008 and to his sister from September 2008 until the end of 2012, during which time the utility bills and Council Tax were in her name. Further, he stated that from January 2013, No 36 had been let to tenants by estate agents. According to the appellant, there had been two tenancies for No 36 since 23 April 2014, the current tenants occupying it since 1 December 2016.
4. Copies of several contemporaneous documents were provided. This included a supplier order form dated 15 August 2003 for purchase of bathroom fittings including a chrome bifold door, together with a retailer's receipt dated 19 August 2003 for purchase of a cooker. An estate agent's sales particulars, which described the outbuilding as "*an independent cavity wall constructed studio annex with kitchen and shower suite facilities*" were also supplied. The particulars were undated. However, a copy of an e-mail of 20 May 2011 from the estate agents to the appellant was supplied, suggesting the particulars had been prepared around that date. A layout plan on the particulars showed the outbuilding kitchen and bathroom. There was also a photograph of the exterior showing timber fencing separating the outbuilding from the rear garden of No 36. Further, a screenshot from a property website of photographs taken in June 2011, when No 36 was listed for sale, was supplied. Some of the photographs were of parts of the interior of the outbuilding, showing furniture including a bed and several domestic electrical appliances.
5. SDs were provided by several witnesses in addition to the appellant. Witness 2 stated that the estate agency he worked for had been responsible for letting No 36 since February 2014 and that it had been let continuously from 23 April 2014. He also stated that before taking over letting No 36 he had been made aware that the appellant lived in the outbuilding, as the appellant only wanted tenants who did not object to this. According to this witness, when he visited No 36 in February 2014 for valuation purposes the appellant showed him the outbuilding. The witness described a fully self-contained flat with a fitted kitchen and bathroom, separated from No 36 by a timber fence. The witness also stated that subsequently during viewings for No 36 and on occasions he dropped in to see the appellant at the outbuilding to discuss lettings and other property matters. Also, he referred to regularly meeting the appellant near the agency's office and seeing him going to a restaurant opposite.
6. Witness 3 stated that he had known the appellant since 2001 and that they met on a regular basis. This witness attested to the appellant continuously living in the outbuilding from late 2003. The witness stated that he had been to the outbuilding regularly, including attending evenings of food and drinks on

- 'an almost monthly basis'. He also stated that No 36 had been occupied by tenants and at one point by the appellant's sister and her family.
7. Witness 4 stated that he had known the appellant since 1993 and was aware that the outbuilding had been erected in 2003. This witness stated that the appellant had erected the outbuilding and let No 36 to tenants as he did not like living in the house and could not afford to buy another one. Witness 4 stated that he had visited the appellant at the outbuilding since 2004, periodically when visiting London and many times to meet up with him. The witness described an occasion in November 2008 when he and his late partner had visited the appellant at the outbuilding.
 8. Witness 5 stated that the appellant had been a frequent customer at his restaurant since at least 2008. This witness stated that he knew about the appellant letting out No 36 and living in the outbuilding, as he had recommended tradesmen to assist with repairs there. According to the witness, his restaurant had made home deliveries to the appellant at the outbuilding since at least 2010. Witness 6 stated that he and his family had lived at No 36 since 1 December 2016, during which time the appellant had been living continuously in the outbuilding.
 9. Witnesses 2-4 were respectively, a property professional supplying a service to the appellant and two of the appellant's friends. The evidence of these individuals was largely reliant on their recollections of occasional visits to see the appellant at the outbuilding. In the case of witness 5, a local restaurant owner, there was no suggestion that he had ever visited the outbuilding; his evidence largely relied on food deliveries made to the appellant there. On its own, an individual's recollection of unspecified, occasional visits to the outbuilding or of deliveries does not provide clear and compelling evidence of residential occupation. Witness 6 was only able to refer to events at the outbuilding since December 2016. Nevertheless, when taken together the evidence of witnesses 2-5 is suggestive of a pattern of activity by the appellant over several years which is consistent with his continuous residential occupation of the outbuilding throughout that time. The witnesses were all under the impression that the appellant had been continuously living at the outbuilding. None of the witnesses stated that anyone other than the appellant had lived at the outbuilding and there was no firm evidence to suggest otherwise.
 10. Witness 2 provided direct evidence of the letting of No 36 to tenants from 23 April 2014 onwards. His evidence clearly indicates that No 36 had been continually let to tenants since at least that date. This evidence confirms that the outbuilding had been occupied as a residential unit independently from No 36 as opposed to occupation as ancillary accommodation, for a period of more than four years before the date of the notice. Therefore, this witness evidence supports the appellant's version of events.
 11. The estate agent sales particulars and website photographs dating from around May/June 2011 show that the outbuilding was separated by fencing from No 36 and it contained kitchen and bathroom facilities by that date. This suggests that, despite the description in the particulars as a studio annexe, the outbuilding was in a separate residential planning unit by May/June 2011. Moreover, judging by the presence of bedlinen and the range of domestic electrical appliances visible in the photographs, it is not unreasonable to

assume that the outbuilding was in residential occupation around that time. Therefore, this evidence also supports the appellant's version of events.

12. During my site visit, I noted that the cooker and shower door in the outbuilding were, respectively, of a similar model number and description to the items purchased around August 2003. The purchased items could have been fitted in No 36 or elsewhere. However, as the date they were purchased is around the time the outbuilding was nearing completion, it is more likely than not that they were fitted in the outbuilding around that time. Moreover, in the context of the other evidence available the presence of these items is not inconsistent with the use of the outbuilding as an independent residential unit. As a result, the evidence regarding the date of purchase of these items is also supportive of the appellant's other evidence.
13. Therefore, the evidence of other witnesses and the documentary evidence is all consistent with the appellant's version of events. Overall, I find that precise and unambiguous evidence of continuity in the occupation of the outbuilding as an independent residential unit for a period of more than four years before the date of the notice has been provided. It follows that the above evidence should be afforded considerable weight in the absence of any evidence to suggest otherwise.
14. The Council relied on a report received on 3 May 2018 to suggest that the use of the outbuilding as a separate self-contained unit commenced in or around that date. However, there was no firm evidence to support that assertion. In any event, it does not necessarily follow that a breach of planning control would be drawn to a Council's attention soon after it occurred. There are all sorts of reasons why there might be a considerable delay between a breach of planning control occurring and an interested party contacting the Council. Therefore, I give this matter little weight.
15. I am given to understand that whilst No 36 has a band D rating, the outbuilding is not rated for Council Tax purposes. Nevertheless, whether the outbuilding has been occupied continuously as an independent residential unit is not reliant on a Council Tax rating. In any event, a property can be rated for Council Tax purposes irrespective of whether it is used as a dwelling. Consequently, the absence of a Council Tax rating does not provide any firm evidence that the use of the outbuilding as an independent unit was a more recent occurrence than that claimed by the appellant.
16. Although the appellant might have set out to avoid paying Council Tax, I was not persuaded by the evidence before me that such an action was comparable with the nature of positive deception that would suggest the principles established by the Supreme Court in *Welwyn Hatfield*¹ should be applied in this case. There was no evidence to suggest that other measures were taken to hide the use of the building as a separate dwelling. The Council's references to LDC applications submitted in March and May 2018 concerning residential use of the outbuilding and to a site visit in May 2018 do not add to the factual nexus.
17. 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 an independent residential

¹ *SSCLG & Beesley v Welwyn Hatfield BC* [2011] UKSC 15 JPL 1801.

unit began more than four years before the date of the notice and has continued without material interruption thereafter. The Council provided no evidence of its own to contradict or make the appellant's version of events less than probable.

18. Consequently, at the time the notice was issued it was too late for the Council to take enforcement action.

Conclusion

19. 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.

Formal Decision

20. The appeal is allowed and the enforcement notice is quashed.

Stephen Hawkins

INSPECTOR