Appeal Decisions

Site visit made on 30 July 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal A Ref: APP/A5270/C/18/3207818
Appeal B Ref: APP/A5270/C/18/3207819
Appeal C Ref: APP/A5270/C/18/3207820
14 Raynor Close, Southall, Middlesex UB1 1RN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Kuljit Chagger (Appeal A), Mr Joginder singh Sehra (Appeal B) and Mrs Rashpal kaur Sehra (Appeal C) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 19 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, material change of use of the outbuilding to the rear of the property to use as a separate self-contained residential dwelling.
- The requirements of the notice are 1. Cease the use of the outbuilding as a separate self-contained residential dwelling; 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; 3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and 4. Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

Appeals A, B and C

Ground (d) appeal

1. The detached outbuilding in this appeal is situated towards the end of the rear garden of a semi-detached dwelling (No 14). During my site visit, I noted that the interior of the outbuilding consisted of a large room containing a kitchen, living and sleeping areas, and a separate bathroom. The outbuilding was occupied.

2. The ground of appeal is that on the date the enforcement notice was issued, the time for taking enforcement action had expired. 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 appellants would have to show that the material change of use of the outbuilding to use as a separate self-contained dwelling began more than four years before the date of the notice and was continuous without material interruption thereafter, the relevant test of the evidence being on the balance of probability.

3. The appellants claimed that what they described as a "rear annexe", had been lived in for over ten years. The appellants referred to an exchange of correspondence with the Valuation Office in mid-2013 (copies of which were supplied by the Council) concerning rating of the outbuilding for Council Tax purposes. However, liability to pay Council Tax on the outbuilding is not conclusive of it being continuously occupied throughout the relevant period. A property can be rated for Council Tax purposes, irrespective of whether it is in use as a dwelling. Consequently, this matter provides little evidential support for the appellants' claim.

4. Furthermore, apart from a copy of a Council letter dated 23 May 2011 concerning an application for a student exemption, the appellants did not supply details of the liability for Council Tax in respect of the outbuilding. The Council provided some copies of Council Tax bills, addressed to one of the appellants. These included a bill dated 24 November 2015 on which there was a handwritten note, presumably from one of the appellants, which suggested that the outbuilding had not been rented since August that year. The Council Tax bills were addressed to the landlord, who is one of the appellants. The bills were not addressed to any tenants of the outbuilding. The appellants did not explain why Council Tax bills were not addressed to the tenants. Therefore, the Council Tax records do not assist the appellants claim in any event.

5. The appellant supplied copies of electrical safety reports which referred to the "rear garden flat" and "rear building", dated December 2011 and July 2017 respectively. The purpose of the reports is described as "for rental" and "letting". However, these documents do not clearly indicate that the outbuilding was occupied at or around those dates, let alone provide firm evidence of such occupation being continuous throughout the four-year period. Therefore, I attach limited weight to this evidence.

6. The appellants also supplied copies of Assured Shorthold Tenancy Agreements (ASTs), the first of which was dated November 2010. Although no AST was provided for the period between March 2012 and February 2013, there were ASTs for the four-year period before the date of the notice. Nevertheless, no firm evidence was supplied which might have shown that all the tenants occupied the outbuilding for the full term of their respective ASTs throughout the four-year period. The existence of an AST does not mean that the outbuilding would have been occupied for the full term of the tenancy. The expiry date of an AST does not necessarily correlate with the actual date that tenants might have vacated the outbuilding. Tenants may vacate a property before the end of their tenancy for all sorts of reasons. Consequently, the ASTs are not a reliable indication of there being continuing occupation of the outbuilding for a period of more than four years before the date of the notice.

7. The shortcomings of the ASTs in terms of establishing continuous occupation of the outbuilding throughout the four-year period is clearly illustrated in the Council's record of a site visit by one of its officers on 11 May 2016. The accompanying site visit notes and a photograph of the interior show that the

outbuilding was unoccupied and in use for storage on that date. This visit took place when according to the ASTs, the outbuilding should have been tenanted. The visit was several months before the end of the term of the twelve-month AST dated 26 October 2015 and several months before the next-dated AST, which commenced on 26 October 2016.

8. Additionally, all the ASTs referred to a "rear studio flat" or "rear studio". There is a side extension to No 14, which I am given to understand is used as a self-contained studio flat. During my site visit, I noted that access to the studio flat is at the rear of No 14. No plans were supplied to indicate that the ASTs referred to the outbuilding. I also note that during 2017, one of the appellants applied to the Council for a Lawful Development Certificate in respect of continued use of the side extension as a separate self-contained studio flat[1]. As a result, it is unclear whether the ASTs referred to the outbuilding or the studio flat. For this and the above reasons, I attach limited evidential weight to the ASTs.

9. Relevant case law[2] distinguishes between an established dwellinghouse, when an occupier does not have to be present for it to remain in use as a dwellinghouse, and where there is no established use. In the latter case, the use has to be 'affirmatively established' over the four-year period. It was held that the correct approach is to ask whether there was any period during the four years when the building was not physically occupied, even though available, when the Council could not have taken enforcement action against the use. Secondly, it is necessary to establish whether any periods of non-occupation were *de minimis*, for example where the tenants were on holiday or whilst a property is refurbished prior to being re-let.

10. The available evidence suggests it is likely that the outbuilding was not occupied as a separate dwelling continuously throughout the four-year period and was in another use during a part of that time. When the outbuilding was not physically available for use as a dwelling, the Council would not have been able to take enforcement action. The appellants did not put forward evidence to suggest that any breaks in the occupation of the outbuilding were *de minimis* in character.

11. Consequently, the appellants have been unable to show that there was no material interruption in the use of the outbuilding as a dwelling within the four-year period. It follows that when the outbuilding was re-occupied as a dwelling, that represented a new chapter in the planning history and the occurrence of a fresh breach of planning control which is not immune from enforcement action.

12. Taking all the above matters into account, I find that the appellants have failed to provide precise and unambiguous evidence which shows, on the balance of probability, that use of the outbuilding as a separate self-contained dwelling began more than four years before the date of the notice and was continuous thereafter.

13. Accordingly, the ground (d) appeals must fail.

[1] Council Refs: 17/0398/CPE & 17/2267/CPE.
[2] *Swale BC v FSS & Lee* [205] EWCA Civ 1568.

Conclusion

14. For the reasons given above I consider that the appeals should not succeed.

Formal Decisions

15. Appeals A, B and C are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR