



Appeal Decisions

Site visit made on 22 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/P4605/C/19/3221667 & 3221668
348 Walsall Road, Birmingham B42 2LY

- 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 appeals are made by Mr Mohammed Umar & Ms Aisha Mir against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 3 January 2019.
 - The breach of planning control as alleged in the notice is: On 1 June 2015 planning permission reference 2015/02538/PA was granted for the erection of a single storey detached building to the rear of the existing dwelling at the rear of the Premises subject to conditions: (i) Requires the scheme to be in accordance with the listed approved plans (Condition 2); (ii) Requires that the approved scheme is incidental to the main use (Condition 3). It appears to the Council that: (i) Condition 2 has not been complied with because the internal layout of the building is not in accordance with approved drawing number L(2-)01 Rev A; (ii) Condition 3 has not been complied with because the building is being used as a self-contained residential unit.
 - The requirements of the notice are: (i) Permanently cease the unauthorised use of the self-contained residential unit; (ii) permanently disconnect and remove all kitchen appliances including the cooker and washing machine that have facilitated the self-contained residential use of the building; (iii) disconnect the service to the cooker from outside the building by permanently capping all pipe work so that it is permanently disconnected; (iv) return the internal layout of the building to accord strictly with planning approval reference 2015/02538/PA and approved drawing number L(2-)01 Rev A; and (v) remove from the land all building materials and rubble arising from compliance with requirements (i) to (iv) above.
 - The period for compliance with the requirements is: 3 months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by deleting "3 months" under section 6 and replacing that with "6 months". Subject to this variation, the enforcement notice is upheld.

Grounds (b) and (c)

2. I shall consider these grounds together because findings on whether the development has been carried out in breach of the conditions will in turn answer whether there has been a breach of planning control.

Condition 2

3. The approved internal layout plan L(2-)01 Rev A shows a central passage with single large rooms either side and a WC at the end. When the Council visited the site in May 2016 the building was still under construction and its roof was too high. The height of the roof was subsequently lowered to bring it roughly in line with the planning permission. When the Council next visited in April 2017 after a complaint about the building being lived in, it had two rooms on the right-hand side of the passage while to the left was a kitchen/lounge with a fitted kitchen. The WC had a shower in it. This is the current layout.
4. The appellants assert that the building was built in accordance with the approved plans. A plasterboard partition was subsequently installed to divide one of the larger rooms. That must be the rooms on the right when entering the building. However, there is no substantive evidence to back up this claim. Moreover, I find it unlikely that the building would have been completed and then altered so quickly from some time after April 2016, to it being habitable when the Council next saw it less than 11 months later. The works would have required not only putting up another wall. Another doorway was needed to serve one of the new smaller rooms and the shower with its associated plumbing and the range of kitchen units were installed. It seems much more likely from practical building and cost points of view that the works would have been carried out in one go.
5. In view of the above, I find that on the balance of probability, the development was not, and has not been, carried out in accordance with the approved layout plan. Consequently, there has been an infringement of condition 2 which, under s171A(1)(b) of the 1990 Act, constitutes a breach of planning control.

Condition 3

6. Condition 3 as set out on the planning permission Ref: 2015/02538/PA also states that the development hereby permitted shall only be used for purposes incidental to the primary use of the premises as a single dwelling house. The primary dwellinghouse in this case is 349 Walsall Road. To my mind an incidental use for an outbuilding in the garden to a house might include, for example, a games room, a study or a home gymnasium. The condition in this case clearly prevents anything not incidental. It does not allow for primary living accommodation with all the means of self-contained living.
7. Moreover, in view of my finding above, as a matter of fact and degree, the building was probably built and kitted out as such from the outset. I note the appellants information about whether there has been a material change of use, such as physical and functional separation and various related judgements. I also note that after the Council's visit in 2017 no enforcement action was taken then. Nevertheless, the facilities in the building replicate and create a dwellinghouse. The building is therefore not incidental to the main use. Also, while I note the reasons why the appellants say it is being lived in, it is as a matter of fact being used as a self-contained residential unit.
8. I note the appellants concerns about the wording of the actual allegation. However, the Council has issued the enforcement notice because it considers the breach of planning control has occurred under s171A(1)(b) of the 1990 Act. For the reasons given, condition 3 has been contravened which also constitutes a breach of planning control.

Grounds (b) and (c) Conclusion

9. The ground (b) and (c) appeals do not succeed.

Ground (f)

10. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. Those purposes include remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Step (iv) of the enforcement notice seeks the layout of the building to be put back to the approved layout plan. It is clearly aimed at remedying this breach and as it requires no more and no less, it is not an excessive step. The other requirements also do no more than require the not incidental self-contained residential use in breach of condition 3 to cease and for the associated fixture and fittings facilitating that to be removed. These are, therefore, also aimed at remedying the breach and they too are not excessive.
11. I note the judgement of *Tapecrow v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 and the reference to imposing conditions securing alterations to a building to overcome concerns. However, the case considered in *Tapecrow* had a deemed planning application with it. As such, there was the possibility to consider whether conditions under that may be a lesser step in the context of the appeal process being remedial and not punitive. There is no such application in this case. If the appellants consider that it may be possible to keep certain internal fittings, or that they could put them back following compliance with the notice because they do not constitute a breach of planning control, that is a matter to be explored with the Council away from this appeal.
12. For the reasons given, the ground (f) appeal must fail.

Ground (g)

13. A ground (g) appeal is based upon whether the time period falls short of what should be reasonably allowed in order to comply with the steps of the enforcement notice. Despite a request for 12 months, a more reasonable period would in my view be 6 months. I am aware that the appellants may wish to explore applying for planning permission or a lawful development certificate to establish the use of the building as an ancillary annexe. If processes such as these are followed, the Council has the power to waive or relax any requirement of a notice, including extending the time for compliance. However, that would be a matter for the Council's judgement and discretion at the time. To this extent the ground (g) appeal succeeds.

Conclusion

14. For the reasons given, having had regard to all other matters, I shall vary the enforcement notice prior to upholding it.

Gareth Symons

INSPECTOR