



Appeal Decisions

Site visit made on 29 October 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal A Ref: APP/R5510/C/19/3220191

Appeal B Ref: APP/R5510/C/19/3223311

71 Dale Drive, Hayes, Middlesex UB4 8AU

- 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 Mr Kibirige (Appeal A) and Mrs Kibirige (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 4 December 2018.
 - The breach of planning control as alleged in the notice is the unauthorised conversion and material change of use of the dwelling house into two separate self-contained residential units (shown in the approximate positions hatched in blue on the site plan) without the benefit of Planning Permission.
 - The requirements of the notice are:
 - i. Cease the use of the property as two separate self-contained residential units.
 - ii. Remove all but one kitchen from the property to include oven, hob, extractor unit, sink, work surfaces, kitchen style cupboards, hot and cold water supply and foul waste drainage pipework.
 - iii. Remove all internal partitions and lockable doors dividing the property into two separate self-contained residential units to allow free internal passage to all areas.
 - iv. Remove from the land all debris, items, appliances, fixtures and fittings, building materials, plant and machinery resulting from compliance with points (ii) to (iii) above.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of the words "three (3)" from section 6 of the notice and the substitution of the words "six (6)" as the time for compliance. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice is varied by the deletion of the words "three (3)" from section 6 of the notice and the substitution of the words "six (6)" as the time for compliance. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Background

3. A planning application¹ for the conversion of the garage into a granny annexe at the appeal site was refused by the Council in April 2018. It was subsequently dismissed on appeal under section 78 of the 1990 Act in October 2018².
4. The appellants indicate that the application and section 78 appeal related to the unauthorised development as set out in the notice. However, it should be the 2018 development was the conversion of a garage to a granny annexe. The development subject of the notice is the material change of use of a single dwelling into two separate self-contained residential units. They are different and distinct forms of development. Therefore, for the purposes of clarity, my considerations under this section 174 appeal are confined to the matters as alleged in the notice.

Appeals A and B on ground (f)

5. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
6. Section 173(4) is clear that a notice can remedy the breach of planning control by either making the development comply with the terms of any planning permission, by discontinuing the use of the land or by restoring the land to its condition before the breach took place. The requirements of the notice are to cease the use of the property as two separate self-contained residential units and to remove the internal works, fixtures and fittings which have facilitated the breach. I am therefore satisfied that the purpose of the notice falls within section 173(4)(a) of the 1990 Act.
7. The appellants argue that the requirements to remove all internal partitions and all but one kitchen are excessive and go beyond what is necessary to remedy the breach. It is said that it was only the provision of lockable doors which has facilitated the material change of use and not the second kitchen or internal partitioning.
8. In contrast, the Council argues that the requirement for the second kitchen, the internal partitions and the lockable doors to all be removed would prevent the breach from reoccurring in perpetuity and would remedy the injury to amenity caused by the breach.
9. However, compliance with a notice does not discharge it. Any re-occurrence of the breach would be a breach of planning control. Moreover, for the reasons set out above, I am satisfied that the purpose of the notice is to remedy the breach, not to remedy any injury to amenity caused by the breach.
10. Nevertheless, case law has established that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune

¹ LPA Ref: 25151/APP/2018/716

² PINS Ref: APP/R5510/D/18/3206756

from enforcement, so that the land is restored to its condition before the change of use took place. The question therefore is whether kitchen and partitions were put in place to facilitate the material change of use to two dwellings.

11. The notice is clear that those alterations and fixtures which have enabled the material change of use should be removed. Case law has established that in most instances the landowner will be the person with the best knowledge of what the previous condition was and what has been done to facilitate the use.
12. However, the 'pre-existing floor plan' submitted for the 2018 application shows that the area in question was a garage prior to the works being carried out. The 'existing plan' shows the works which were the subject of that application (and the subsequent appeal) that were thereafter carried out. The plans show an internal door was installed to the hallway of the main property with the partitioning off of a shower room and the installation of a kitchenette. The plans show the living accommodation to be arranged in exactly the same manner as I observed on my site visit. I saw from my site visit that the living accommodation within the former garage contained a separate shower room, an area with a sofa bed and a kitchenette with all the facilities for independent occupation from the main house. This accommodation was also independently accessible from the main house via a gated driveway and separate access door.
13. Moreover, the Inspector in the 2018 appeal found the former garage area comprised the same living accommodation arrangements that was present on my site visit to the extent that they concluded that what had been done at the time had resulted in a separate dwelling and not a granny annexe as suggested. There is no evidence before me to suggest that the use of the garage has changed in the intervening period between the 2018 appeal decision and the issue of the notice. Indeed, it is noted that the appellants do not seek to dispute that the alleged breach has occurred as a matter of fact, hence the lack of appeal on ground (b).
14. I recognise that single dwelling houses can have more than one kitchen, as well as ground floor cloakrooms and shower facilities. They can also be internally divided in all manner of forms. I have also taken into account the circumstances of appellants with regard to decreasing mobility and the intention to predominantly occupy the garage area of the house, due to its ground floor location.
15. However, the evidence before me leads me to conclude that, on the balance of probabilities, the kitchen, lockable doors and internal partitions were all done to facilitate the breach of planning control. To that end, the requirement to remove them does not go beyond what is necessary to remedy the breach.
16. The appeal on ground (f) therefore fails.

Appeals A and B on ground (g)

17. An appeal on ground (g) is made on the basis that the time period for compliance with the requirements of the notice is excessive.
18. The appellants argue that a period of six months is more appropriate to allow time to give the existing tenant notice for relocation and for the works to be done. In contrast, the Council indicates that the breach has been ongoing since January 2018 and in seeking to appeal only on grounds (f) and (g), the

appellants must have accepted that the notice would have come into effect anyway. There has, it is said, been nothing to prevent the appellant from giving sufficient notice to tenants.

19. However, whilst the appellant has not sought to appeal on ground (a) that planning permission should be granted, the appellant had sought to regularise the situation with the submission of a planning application which was refused in April 2018. Subsequently, an appeal was made against that decision which was dismissed in October 2018. It seems to me that the appellant was entitled to anticipate success on both those occasions. Following on from that the notice was served in December 2018 and the appeal submitted in January 2019 before the notice took effect.
20. Thus, it seems to me that, the appellant has had a more limited time to afford notice to the tenants than that suggested by the Council. Whilst there is an argument that the appellant would have accepted from December 2018 onwards that the requirement to cease the use of the premises as two self-contained residential units would have come into effect regardless of the outcome of the appeal. Moreover, the appellants have appealed on ground (f), albeit unsuccessfully, but would have been entitled to assume success. It therefore seems to me that a period of 6 months for compliance would be reasonable to allow enough time for the tenants to be served notice and relocate to alternative premises, and to allow for the work to be carried out thereafter.
21. The appeal on ground (g) therefore succeeds.

J Whitfield

INSPECTOR