



Appeal Decision

Site visit made on 5 November 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/B5480/C/19/3223013

The land at 14 Mount Avenue, Romford RM3 0DE

- 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 Miss Sophie Pinner against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 24 January 2019.
 - The breach of planning control as alleged in the notice is the erection of a single storey outbuilding for the primary use as a Beauty Salon.
 - The requirements of the notice are to: (i) Demolish the outbuilding; and (iv) Remove all materials and debris resulting from step (i) from the site.
 - The period for compliance with the requirements is two months after this Notice takes effect.
 - Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered. The appeal is therefore proceeding on the grounds set out in section 174(2)(a) (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the (iv) of the second step of Part 5 of the notice and its substitution with (ii). Subject to this correction the appeal is allowed and the enforcement notice is quashed.

Procedural matters

2. The appeal was initially submitted on ground (b) (those matters alleged in the notice have not occurred). However, it was clear from the evidence that some of the evidence should more appropriately be considered under ground (c) (those matters (if they occurred), do not constitute a breach of planning control). The appeal under ground (a) is exempt from the deemed application fee and was accepted later as an additional ground. The Council have been made aware of this. The appeal is therefore proceeding on grounds (a), (b) and (c).
3. Paragraph 5 of the notice sets out the steps that are required to be taken to remedy the breach of planning control. However, I note that there is an error in the sequential numbering of the steps. This is however a minor error and I consider that the notice is capable of correction in this regard, without causing injustice to the parties.

4. During the course of the appeal a letter and land registry documents have been submitted by Laytons LLP on behalf of the owners of the adjacent land, Gardens of Peace Muslim Cemetery. It is their clients position that part of the land, identified by the notice, lies within their freehold title No. BGL90684. They also refer to restrictive covenants that prohibit commercial uses on the land. I acknowledge that there may be an overlap between the two title plans, when compared with the plan attached to the enforcement notice. However, whilst the enforcement notice plan does not have the position of the outbuilding plotted, I have no evidence before me to lead me to conclude that the building has been built outside the registered title of the appeal site title No. EGL249430.
5. I note that the Gardens of Peace Muslim Cemetery were not formally served with a copy of the notice as required by section 172. Nonetheless, they have been made aware of this appeal and have taken the opportunity to make representations. They have therefore not been substantially prejudiced in the event that the notice includes part of their land. I acknowledge the concerns that they have raised about various covenants and the matter of potential trespass. However, these all fall outside the scope of this appeal.

Background

6. There is some overlap with the appellants evidence for the various grounds of appeal. In particular, matters of dispute under ground (b) which relates to whether the development has taken place as a matter of fact, and ground (c) that the matters stated in the notice did not constitute a breach of planning control. It is therefore my intention to consider the evidence before me in the context of the appropriate grounds.

Reasons

Ground (b)

7. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. This is known as one of the legal grounds and therefore the onus of proof is on the appellant.
8. The appeal site comprises a two storey dwelling set within a modest front and rear garden in a primarily residential area. The dwelling has been extended in the past and there is an area of hard surfacing to the front for off street parking.
9. The appellants case is that whilst the building has been built, it was not constructed for the primary use as a beauty salon, as alleged in the notice. I saw from my site visit that a substantial building has been built towards the rear boundary of the garden. It is finished to a high quality and is accessed through a personal door from the garden. The building is divided into four rooms with heating, water and electrical power provided. At the time of my visit two rooms were being used as a playroom and home gym. There was a third smaller room, with a small wash hand basin and a fourth by the entrance. It is understood that the business has now relocated from the site to alternative premises.
10. The enforcement notice was issued on 24 January 2019. I have been provided with evidence from the Council in the form of a copy of the delegated enforcement report that sets out site inspection dates, and a number of

photographs date marked 12 September 2018. There is no dispute that this site inspection took place on the stated date. The delegated officer report for the subsequent planning application (P1451.18) also refers to the unlawful use of a beauty salon being underway and the retrospective nature of the application.

11. I acknowledge that the appellants stated chronology of events suggests that, at the time these photographs were taken the building was being used for the purpose of storage of business related equipment. Nonetheless, in the four photographs taken from inside the building the rooms appear to have treatment beds set out with hygiene covers, waste bins, chairs, flowers and a variety of treatment products. The room closest to the entrance had a desk or table and there were a number of products displayed on shelving and leaflets.
12. In my judgement the building at the time of this inspection had the appearance and characteristics of a beauty salon, rather than a building that was being used for the storage of beauty salon equipment.
13. Accordingly, I find that on the balance of probability the breach as alleged in the notice had occurred at the time that the notice was issued. Consequently, the appeal on ground (b) is dismissed.

Ground (c)

14. Turning to ground (c), that the matters stated in the notice did not constitute a breach of planning control. This is another legal ground where the onus is on the appellant to make out the case that there has not been a breach of planning control. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it's not corroborated. If there is no evidence to contradict or make the appellant's version of events, less than probable and their evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground.
15. The appellant's case is that the building was initially constructed for purposes incidental to the enjoyment of the dwelling, namely a playroom, home gym and storage. Works on the building commenced during 2017 and were largely complete in or around March 2018. I have no evidence to suggest that the original layout differed from that seen at my site visit.
16. It is not in dispute that the building complies with the other provisions of Schedule 2 Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended in 2017. The only area of dispute is whether the building was constructed for business purposes. If so then it is the Council's view that it would not benefit from rights conveyed by the above Order.
17. The main consideration is therefore firstly; whether the building was constructed for a purpose that would have been required incidental to the enjoyment of the dwellinghouse; and secondly whether the building was actually used for such a purpose following completion.
18. The appellant has provided a number of photographs stated to have been taken on various dates. These include a range of photos of three of the rooms, all stated to have been taken between 17 April 2018 and 21 June 2018. In the April photographs the rooms appear to be empty. However, in May 2018 there are clearly toys in the room annotated as the playroom and exercise equipment

in the room referred to as the gym, in June 2018. I have also been provided with an invoice for the various plumbing works, including three sinks dated 11 September 2018. Whilst these are in the name of Jack Giddens they relate to the appeal property.

19. I acknowledge that the building has been completed to a high specification and the internal layout of four rooms is perhaps unusual for a building of this size. However, these in themselves are not necessarily indicative of a building that has been constructed other than for incidental purposes.
20. The appellant maintains that the building was initially built to provide additional space for their growing family. The photographic evidence substantiates the appellants claim that the building was used as a playroom and home gym, following its completion in about April 2018. I have no evidence before me to suggest that this compelling evidence should not be given substantial weight. It appears that the addition of the sinks resulted in the opportunity for the business to operate from the building. This is confirmed by the Councils photographs in September 2018.
21. On the basis of the above I find that, on the balance of probabilities, the building was constructed and used for purposes ancillary to the enjoyment of the dwelling house. The appeal on ground (c) is therefore allowed and the notice is quashed.

Overall conclusion

22. From the evidence before me, I conclude that the requirements of the notice set out in the enforcement notice are incorrect.
23. For the reasons given above I conclude that, following correction, the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not need to be considered.

Hilary Orr

INSPECTOR