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## Appeal Decision

Site visit made on 25 November 2019

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 5 December 2019**

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**Appeal Ref: APP/M5450/C/19/3222207**

**60 Hibbert Road, Harrow Weald, Harrow, HA3 7JS**

- 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 Mohammed Enus against an enforcement notice issued by the Council of the London Borough of Harrow.
  - The enforcement notice was issued on 27 December 2018.
  - The breach of planning control as alleged in the notice is: Without planning permission a) the material change of use of the land from a single family dwellinghouse to use as five flats ("Unauthorised Use"); b) the construction of a detached outbuilding in the rear garden of the land ("Unauthorised Outbuilding").
  - The requirements of the notice are: 1. Cease the unauthorised use; 2. Remove all materials associated with the conversion of the dwellinghouse to flats; 3. Remove all kitchens except (1) one from the dwellinghouse; 4. Remove all bathrooms except (2) two from the dwellinghouse; 5. Remove all internal partitions from the main dwelling which enable the Unauthorised Use; 6. Demolish the Unauthorised Outbuilding; 7. Remove from the Land all material and debris arising from compliance with the requirements of the notice.
  - The period for compliance with the requirements is: Six (6) calendar months after the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(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. The appeal is dismissed and the enforcement notice is upheld.

### The ground (c) appeal

2. The appellant accepts that the change of use of the house into five flats did require planning permission. As such, this ground of appeal relates to the outbuilding only. The burden to make out the case that there has not been breach of planning control rests with the appellant.
3. The appellant relies on the outbuilding being permitted development because it was substantially complete prior to the conversion of the dwellinghouse into flats. The appellant states that the outbuilding was largely complete by 3 August 2015 and that the flats came into being on 1 October 2015. Although the appellant says they were 'granted' it is not clear what that terms means as

- planning permission, for example, has not been granted. I shall though take it the appellant asserts that the flats came after the outbuilding.
4. However, the appellant also states that the rear extension, loft conversion and the outbuilding were substantially complete by August 2015. The text below the appellant's aerial photograph dated June 2015 states that it shows the outbuilding under construction at the groundworks stage and that it clearly shows the extension and loft conversion substantially built. The appellant's telephone photos from 3 August 2015 also show on-going works to the main property, including the new extension.
  5. This chronology appears to show that works to the main property were started before the outbuilding and in the lead up to August 2015 there was an overlap in the sets of work. It would have made sense whilst builders were on site working on the main property to have also been involved with constructing the outbuilding which would explain why it looks like it did at the beginning of August 2015. Given the relatively short time from August 2015 to 1 October 2015, it also appears, as a matter of fact and degree, that the works to the property also involved its conversion to five flats. The layout plans submitted by the Council show, for example, much of flat B being in the ground floor extension. The Council also states that its Council Tax records show that the land was in use as five flats since 1 September 2015, which is a whole month before the appellant's claim of when the flats came into being. This has not been disputed by the appellant.
  6. Schedule 2, Part 1, Class E of the Town and Country Planning (General permitted Development) Order 1995 (GPDO) allows for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. In view of the above, the outbuilding could not have been provided for purposes incidental to the enjoyment of the dwellinghouse, because by then the house was being converted into flats. The interpretation of a dwellinghouse in the GPDO does not include a building containing one or more flats. As a matter of fact and degree the outbuilding was not development permitted by the GPDO.
  7. Notwithstanding the above, despite the outbuilding originally being in the back garden to the property, access into it is now only gained by a rear access track that starts from next to 58 Hibbert Road. There is a locked gate from the track into the passage leading to the door into the outbuilding. The gate from the rear garden to the main property is bolted at the top and the bottom on the outbuilding side meaning that occupiers of the flats cannot access the building from their side of the gate. There is no evidence to show that residents of the flats have any connected use of the outbuilding. Consequently, as a matter of fact and degree, the outbuilding now appears to be a separate planning unit thus falling outside the scope of the planning permission granted by the GPDO.
  8. I note that the appellant considers the building fits in with the character of the area and neighbours have not complained about it. However, these are matters of planning merit which I cannot consider as there is no deemed planning application. Moreover, they are points not relevant to a ground (c) appeal. Nothing else has been raised that persuades me from my findings above. The outbuilding is development that required planning permission. That was not conveyed by the GPDO. In the absence of planning permission, there has been a breach of planning control.

9. Therefore, the ground (c) appeal must fail.

### **The ground (f) appeal**

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. In this case, the notice alleges the change of use of the dwellinghouse to five flats and the erection of a building. The steps require the unauthorised use to cease, for the works carried out to facilitate that use to be removed, for the outbuilding to be demolished, and for the resulting materials arising from these works to be removed from the land. From this, the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its condition before the breach took place. The steps require no more and no less. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control.
11. It is noted that the appellant wishes to keep the bathrooms because of the intention to convert the property into a House in Multiple Occupation with 4 en-suite bedrooms with a communal area and a shared kitchen. However, that is a matter which can be explored with the Council away from this appeal. If planning permission was granted for such a use, that could override the requirements of the enforcement notice by virtue of s180 of the 1990 Act. The Council also has the power to waive or relax any requirement of the notice which it could do if a future lawful use justified the retention of more than two bathrooms. Nevertheless, these are matters beyond my control and they do not go to show that the requirements of the notice exceed what is necessary to remedy the breach of planning control that has occurred.
12. Keeping the outbuilding so that it could be used in the future or modifying its roof may be appropriate if an alternative lawful use of the main property arises. However, such works or future uses would not remedy the breach of planning control related to constructing of the outbuilding. They too are matters for pursuing with the Council away from the appeal.
13. In view of the above, the ground (f) appeal also fails.

### **The ground (g) appeal**

14. Because of concerns related to the length of the tenancy agreements with the occupiers of the flats, the appellant needs the time for complying with the requirements of the notice to be extended to 31 May 2020. Given the time taken for the appeal, the stated 6 calendar months compliance period would not start until the date of my decision. As that will be in December 2019, the time for compliance would not interfere with the terms of the tenancies. I see no other reasons why the time period specified falls short of what should be reasonably allowed. As such, the ground (g) appeal also does not succeed.

### **Conclusion**

15. For the reasons given, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice.

*Gareth Symons*

INSPECTOR