



Appeal Decision

Site visit made on 26 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 6 December 2019

Appeal Ref: APP/A5270/C/18/3217246

33 Manaton Crescent, Southall, Middlesex UB1 2SY

- 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 Hamid Rabbani against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 26 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission: Material change in use of single storey rear outbuilding to a separate self-contained dwelling.
 - The requirement of the notice is to:
 - Cease the use of the outbuilding as a separate self-contained residential dwelling.
 - The period for compliance with the requirements is 3 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), 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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Summary of decision

1. The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below and in the Formal Decision.

Preliminary Matters

2. The development involves the use of a single-storey building within No 33's rear garden as a self-contained unit of residential accommodation. In such instances S171B (2) of the 1990 Act says that where there has been a breach of planning control involving 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.
3. The Council issued the enforcement notice due to its consideration that the use of the building as a single dwelling was at odds with the prevailing pattern of development, that it does not provide for a satisfactory standard of accommodation for its occupiers, and is also detrimental to the living conditions of neighbouring occupiers. However, in determining this appeal, due to the deemed planning application having lapsed, I am unable to take into account the planning merits and/or impacts of the development. The decision will instead be based strictly on the evidential facts and on relevant planning law.

The Appeal on ground (d)

4. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced 4 years before the date of the issue of the enforcement notice, ie prior to 26 October 2014 (hereinafter referred to as "*the material date*") and has continued since.
5. A Certificate of Completion of Work has been submitted which shows that the building, described on the certificate as a 'detached gym and store room', was inspected and certified complete by the Council in June 2011. The appellant indicates that the building was originally constructed to be used in an ancillary capacity to the main dwelling, although internal alterations were then carried out to provide both a kitchen and a bathroom. As a result, and following an inspection in September 2011 by Council officials, I understand that the outbuilding was separately banded for Council tax.
6. The Council mentions that a further inspection in January 2012 showed that the building was still being used as a gym by members of the family. The inspection sheet also shows that, in addition to the facilities already installed, the building also contained a boiler. No evidence is provided by the Council as to any change of circumstances between this date and an attempted inspection by a Council official on 4 October 2018. On this occasion, although it was not possible to gain access inside the outbuilding, the owner indicated that it was now let out to a family for residential occupation.
7. Access to the outbuilding was, though, secured on 12 October 2018 when the Council official noted that it was being occupied by a small family as a self-contained residential unit, with a private garden to the rear. An independent point of access to the outbuilding was via a gate to the side of the main dwelling. This reflects the findings at my site visit when I entered the building and was met by two adults who indicated that this was their residence.
8. The appellant claims that the outbuilding has been continuously rented out as a self-contained dwelling since 2012, yet also mentions that it has been utilised as a self-contained residential unit from February 2014. Only limited material has been submitted by the appellant in support of this contention. This includes Council tax bills for the outbuilding relating to the years 2016/17, 2017/18 and 2018/19 and a letter of support, dated 4 August 2019, from the occupier of No 35, which indicates that the building was originally used by the family at No 33 and was then rented out for over four years. I have given this letter due regard but I am also concerned as to the absence of corroborating evidence produced such as a series of tenancy agreements or statutory declarations from previous occupiers indicating dates of occupancy which would carry significantly more weight. In this respect only a single signed Tenancy Agreement dated 20 August 2018 between the appellant and Mr and Mrs Gete, the tenants, has been provided.
9. The outbuilding's previous use by family members as a gym, along with the domestic facilities within, would have likely amounted to an extension to No 33's living accommodation involving interaction between this and the main dwelling. Given the absence of earlier tenancy agreements and with the appellant saying that the outbuilding was later rented to third parties not related to the household I consider that the change in circumstances amounted to a material change of use in planning terms. This development required the

benefit of planning permission and, in the absence of such, a breach of planning control has occurred.

10. For the use to be lawful, the outbuilding needs to have been in continuous residential use for the four year period from the material date. Having assessed the evidence supplied I consider that, despite the kitchen and bathroom facilities installed in 2011, its use has since been mainly on a casual basis and for incidental purposes by family members. There is little information to convincingly suggest otherwise. Indeed, from the evidence adduced only Mr and Mrs Gete would appear to have occupied the outbuilding as a place of settled residence. Even so, there is nothing compelling to suggest they, or anyone else, lived there prior to August 2018 when the Tenancy Agreement was signed. Without more precise and unambiguous evidence the appellant has not discharged the onus upon him to demonstrate on the balance of probability that the change of use took place before the material date or that it was continuous.
11. Accordingly, I conclude that the ground (d) appeal must fail.

The Appeal on Ground (g)

12. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a 3 month period is too short and requests that this be increased to 6 months.
13. Along with the appeal the appellant has produced a letter addressed to Mr and Mrs Gete of the Garden Flat at 33 Manaton Crescent. Dated 24 November 2018, the letter indicates that due to the Council's enforcement action the contracted tenancy would not continue after its expiry in March 2019. However, as mentioned, at the time of my site visit, the outbuilding was still occupied and I am mindful that its vacation to comply with the notice's requirements will likely cause some significant disruption.
14. In the circumstances, I am satisfied that the appellant's request to increase the period for compliance to six months would be reasonable to allow for the occupiers to find alternative premises and for the outbuilding to be properly vacated, enabling the requirements of the notice to be met. On this basis the appeal succeeds on ground (g) and I will vary the notice, accordingly.

Conclusion

15. Although the ground (d) appeal fails, for the reasons given above I conclude that a reasonable period for compliance would be 6 months, and I am varying the notice, accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

16. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Timothy C King

INSPECTOR