
Appeal Decision

Site visit made on 8 January 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref : APP/C5690/C/19/3230270

Land at 58 Cotton Hill, Bromley, Kent, BR1 5RR

- 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 Noel Black against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The notice was issued on 17 April 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the single storey outbuilding situated in the rear garden of the land to use as a dwellinghouse.
- The requirements of the notice are i. cease the use of the single storey outbuilding situated in the rear garden of the premises as a dwellinghouse; ii. remove all bathroom fixtures and fittings from the single storey outbuilding situated in the rear garden.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Ground (f) appeal

1. This ground of appeal is that the steps required by the notice are excessive.
2. There are two purposes that an enforcement notice may seek to achieve –firstly, to remedy the breach of planning control and secondly, to remedy the injury to amenity caused by the breach. In this case the notice requires the cessation of the unauthorised use and therefore its purpose is to remedy the breach of planning control. No lesser steps than those set out in the notice could achieve that purpose.
3. The Appellant argues that the removal of the bathroom is excessive as he intends to use the outbuilding as a gym and a bathroom would be incidental to that use.
4. But the notice concerns use as a dwellinghouse. It is not within the remit of this appeal to consider use as a gym.
5. It is established law that an enforcement notice can require the removal of works that facilitate an unauthorised material change of use even if those works do not of themselves require permission. The bathroom is integral to use of the outbuilding as a dwellinghouse. It facilitates the unauthorised use and therefore its removal is reasonable.

6. For the reasons given above this ground of appeal does not succeed.

Ground (g) appeal

7. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice includes a six month compliance period.

8. The Appellant argues that 12 months would be a reasonable period as this would enable his daughter who resides occasionally in the outbuilding to find an alternative home.

9. The rights of an individual to a home must be taken into account. I have balanced competing interests – the private right of the Appellant to develop his land and the rights of occupiers to a home and the public interest of bringing the identified harm to an end without unnecessary delay. I consider that six months strikes an appropriate balance so as to be proportionate and not to violate individual rights. There is no evidence before me that alternative accommodation is unlikely to be secured in six months.

10. For the reasons given this ground of appeal does not succeed.

Formal Decision

11. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector