

Appeal Decision

Site visit made on 20 January 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Appeal Ref: APP/T5150/C/19/3219780

42 & 42A Norwood Avenue, Wembley HA0 1LY

- The appeal is made by Danraj Singh under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/17/0278) issued by the Council of the London Borough of Brent on 11 December 2018.
 - The breach of planning control alleged in the notice is "the material change of use of an outbuilding to a dwelling".
 - The requirements of the notice are as follows: -
 - "STEP 1 Cease the use of the outbuilding as a dwelling.
 - STEP 2 Remove all items and equipment associated with the use as a dwelling, including the removal of the shower, toilet, kitchen, cooker, microwave and kitchen sink.
 - STEP 3 Remove all associated items, debris and materials arising from the compliance with Steps 1 and 2."
 - The period for compliance with these requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g). Since there is an appeal on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
-

Decision

1. It is directed that STEP 2 of SCHEDULE 4 to the enforcement notice be varied by replacing "including the removal of" by "apart from".
2. Subject to this direction, the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Ground (c)

3. The purpose of an appeal on ground (c) is to demonstrate that the matters stated in the enforcement notice do not constitute a breach of planning control. Those matters are "the material change of use of an outbuilding to a dwelling". The appellant does not claim that this change of use has not occurred or that it did not require planning permission. The appeal has therefore not succeeded on ground (c). What the appellant is in fact seeking to do under ground (c) is to retain certain items and equipment that are in the outbuilding. I have dealt with this issue under ground (f) below.
-

Ground (a)

4. The purpose of an appeal on ground (a) is to obtain planning permission for the matters stated in the notice to be a breach of planning control, i.e. the use of the outbuilding as a dwelling. The appellant has, however, accepted on the appeal form that the use of the outbuilding as a dwelling should cease. What he is in fact seeking under ground (a), as under ground (c), is to retain certain items and equipment that are in the outbuilding; this is the issue dealt with under ground (f) below.
5. I do not consider that planning permission should be granted for the use of the outbuilding as a dwelling, since any benefits that this has in providing cheaper accommodation are outweighed by the shortfall in the internal floor space and the inadequate amount of external amenity area that is available, taking into account the fact that this area is shared with the occupiers of the house. The use of the outbuilding as a dwelling is as a result contrary to the Brent Local Plan Development Management Policies DMP 1 and DMP 19. The appeal on ground (a) has therefore been dismissed.

Ground (f)

6. The purpose of an appeal on ground (f) is to maintain that the requirements of the notice exceed what is necessary to remedy the breach of planning control alleged in it and any injury to amenity caused by the breach. The breach in this instance is the material change of use of the outbuilding to a dwelling, and the requirement in STEP 1 to cease the new use will remedy that breach and the injury to amenity it has caused. The appellant has accepted that STEP 1 must be complied with.
7. However, in order to restore the outbuilding to its condition before the change of use took place, the notice can also require the removal of works integral to and solely for the purpose of facilitating the change of use to a dwelling, even if those works on their own did not require planning permission or are permitted development. STEP 2 seeks to do this, and it is this requirement that the appellant takes issue with.
8. The appellant states that the outbuilding had kitchen and bathroom facilities when he bought it in 2003 along with the ground-floor flat in the house, and that he has recently carried out renovation works relating to these facilities. At the time of my inspection, they were in use as part of the dwelling in the outbuilding, together with the bedroom furniture and other residential items and equipment that STEP 2 requires to be removed. The appellant indicates that after STEP 1 has been complied with there will be an ongoing need to retain the kitchen and bathroom facilities because cooking facilities that are separate from the ground-floor flat will be required for faith reasons.
9. The Council are clearly sceptical about the appellant's assertions, but have not produced evidence that casts significant doubt on them. There are no convincing reasons to reject them and I have therefore accepted what he has stated about the kitchen and bathroom facilities. Accordingly, I have decided that STEP 2 should not require the kitchen and bathroom facilities to be removed, because on the balance of probabilities they are not works integral to and solely for the purpose of facilitating the change of use of the outbuilding to

a dwelling. The notice has therefore been varied so as to exclude them from STEP 2 and the appeal has succeeded on ground (f) to this extent.

Ground (g)

10. It appears from reading the appellant's representations on ground (g) that he may not have appreciated that the period allowed by the notice to comply with its requirements does not start until the date of this appeal decision. The period allowed is four months, which will therefore be long enough according to these representations. No further action is called for on ground (g).

D.A.Hainsworth

INSPECTOR