
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2020

Appeal Ref: APP/A5270/C/19/3224271
49 Churchill Gardens, Acton, London W3 0JN

- 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 Shabeer Patel against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 30 January 2019.
 - The breach of planning control as alleged in the notice is the material change of use of a rear outbuilding to a separate self-contained residential dwelling.
 - The requirements of the notice are: Cease the use of the outbuilding as a separate self-contained residential dwelling; Remove the kitchen and associated drainage connection; Remove any resulting debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) 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.

Reasons

2. An appeal under s174(2)(d) of the 1990 Act is based on the claim that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In this case those matters are a separate self-contained dwelling. Under s171B(2) of the 1990 Act, where there has been a breach of planning control consisting in 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. Therefore, the appellant must show, on the balance of probability, that the change of use of the outbuilding to a separate self-contained residential dwelling occurred over a substantially uninterrupted basis for at least four years before the enforcement notice was issued, that being 29 January 2015. The burden of proof to make out the case rests with the appellant.
4. The appellant states that he moved into the outbuilding on 27 December 2014 and from the beginning of January 2015 he has rented out rooms in the main

building. I have had regard to the rental contracts relating to the main property. However, they only pertain to renting out rooms in the house to certain individuals. They do not show how the outbuilding was being used. Moreover, in direct contradiction of the appellant's statement is the note of a visit by the Council's House in Multiple Occupation (HMO) team on 16 May 2016 which records "*Owner answered the door. He said he lives with friends. Then I asked if he has any tenants at the house and he said no*".

5. It is acknowledged that it is not clear why the Council officer did not gain access to the property at that time or whether she asked to go inside. Nevertheless, the appellant now says that if she had gone inside, she would have seen that the rooms were unoccupied. Although this is evidence about how the main house might have been occupied, whereas the appeal is about the use of the outbuilding, this most recent comment by the appellant would seem to undermine what he said when submitting his appeal that from January 2015 he has been renting out rooms in the main building.
6. In terms of the Council's note about living with friends, it might be the case that the appellant meant he had friends living with him at the time before they carried on travelling, or it may be that the Council understood this comment to be that the appellant lived with friends elsewhere. Despite what the appellant says the Council would have seen in the outbuilding in May 2016, either way the evidence is not sufficiently clear about where the appellant was then living.
7. Also in conflict with the appellant's assertions is an application made by the appellant for a mandatory housing licence in March 2017 when he declared that "*I am a live in landlord at the property*" and he ticked "no" to the question "*Does the property currently have use of an outbuilding for residential purposes?*" It may be the case that as now stated the appellant meant that he was a live-in landlord in the sense that his live-in dwelling was by then the outbuilding and with the benefit of hindsight he could have been more elaborative to avoid confusion. On the other hand, taken on its face, given that the housing licence application only pertained to the main property, the statement made about being a live-in landlord could only properly relate to the landlord living in that larger building, and not the outbuilding. The inconsistencies cast further ambiguity over the case that needs to be made out.
8. Then in February 2018 when Council tax officers visited the property, they could not gain access to the outbuilding because the landlord (Mr Patel) had lost the keys to it. If, as claimed now, the appellant was living in the outbuilding at that time, it appears unusual that he had lost the keys. It may be the case that on that day the appellant had misplaced the keys and he subsequently contacted the Council to invite them to inspect inside the outbuilding. Nevertheless, there are contradictions in the versions of what happened when the Council Tax officer visited.
9. On that same day, the email from the Council tax officer to the Council's planning enforcement team records that the "*Landlord purports to live in the ground floor rear bedroom*". That position it appears was maintained when a Council planning enforcement officer visited in August 2018. The note of that visit records "*When the owner was asked about the main house, he replied that 4 tenants and himself share the property*". I have read the appellant's comments made in response to the Council's records which largely centre around having cleaning obsessions which mean that while cleaning the

outbuilding he will sometimes move into the main house when there is a spare room, or he will share a room with a tenant in the house who is a friend. It is not my place to seek out evidence from the appellant's therapist about cleaning obsessions. However, what the appellant states is all information that now does not sit squarely with the Council's previous records.

10. In addition, the same note records that when the owner was asked about the intended use of the outbuilding, *"he stated that it was his office and that sometimes he may use it as a TV room"*. It does seem that when inspected, the inside of the outbuilding had a fully fitted kitchen, shower room, open plan sitting room and a double bed. However, when it came to how the building was used, the appellant has not disputed his previous statement about it being an office and sometimes a TV room which is different from being his main place of residence.
11. The only direct independent evidence about the occupation of the outbuilding is a letter dated 18 March 2018 from the Valuation Office Agency noting a new entry for the "Garden Annex R/O 49" because it comprises a dwelling for Council Tax purposes. The effective date of alteration was 20 February 2018. However, this only shows that on a certain date the outbuilding was a dwelling for Council Tax purposes. It does not show that the building was a self-contained residential dwelling from at least 29 January 2015.
12. Taking all the evidence in the round, the contradictions between the versions of events from both sides mean that the appellant's evidence is not sufficiently precise and unambiguous to show that, on the balance of probability, the use of the outbuilding as a self-contained residential dwelling had existed over a substantially uninterrupted basis for four years beginning with the date of the breach by the time the enforcement notice was issued. The appellant has not discharged the burden upon him. Consequently, it was not too late for the Council to take enforcement action. The appeal must fail.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR