



Appeal Decision

Site visit made on 21 January 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/Z5060/C/18/3214735

Land and Premises at 7 Crabtree Avenue, Romford RM6 5EX

- 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 S A Khan against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 25 September 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of an outbuilding to a one-bedroom dwelling.
- The requirements of the notice are Cease the use of the unauthorised independent residential unit; Remove all alterations and fixtures enabling the conversion to a one-bedroom independent residential unit; Remove the fence creating a partition between the main dwelling and the independent residential unit and the gate affording direct access from the service road; Remove all consequent waste material from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 174(2) (a), (c) and (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

The appeal on ground (c)

1. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant's case is that the alleged use constitutes permitted development on the grounds that the use has existed in excess of four years. This, however, is a ground (d) argument which is dealt with later in my decision. An appeal on ground (c) would be considered independently of the question of immunity periods, the relevant question being '*would the development have required planning permission?*'.
2. The appellant states that when the property was purchased, the outbuilding was being used ancillary to the main dwelling, as living accommodation by family relatives and guests. I acknowledge that it is possible for a building to form an annexe to a main dwelling, and to afford living accommodation, such as a 'granny annexe', that may still be considered a part of the main dwelling, such that a separate planning unit is not created. The question of whether an entirely independent unit of accommodation has been created will depend on the individual circumstances of the case.

3. From my visit it was apparent that the outbuilding subject to the notice provides all the facilities to enable independent living, including sleeping, cooking and washing accommodation. The unit is tightly enclosed by boundary fencing, which serves to reinforce the sense of severance between the outbuilding and the main dwelling. Although the outbuilding can be reached via a side gate and the back yard serving the main dwelling, it can also be accessed via separate rear entrance gates, therefore entirely bypassing the main dwelling. In addition, the rear entrance gates provide access to a potential car parking space, immediately adjacent to the outbuilding, which by its nature is distinct from parking which is possible at the front of the main dwelling.
4. It therefore seems to me that the outbuilding is substantially separated from and independent of the main dwelling. It could function entirely independently of the donor property. I also note from the appeal form that it is not the appellant's case that the outbuilding continues to be used by a relative of the occupiers of the main dwelling or that there is any shared living activity between the different occupiers.
5. Even if the Council has previously acknowledged an ancillary relationship between the building and the main dwelling, this is not the conclusion I reach based on the present circumstances and the information and evidence before me. Given the lack of apparent shared living activity between the respective occupiers of the main dwelling and the outbuilding, my view in this regard would not be altered if the level of physical separation between the two was to be reduced. I have not been provided with any evidence to persuade me that the change of use of the outbuilding to independent living accommodation has not resulted in the creation of a separate planning unit that would have required planning permission. The ground (c) appeal therefore fails.

The appeal on ground (d)

6. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the outbuilding as a dwelling had commenced at least 4 years before the notice was issued, that is by 25 September 2014, and had continued in such use over a four year period. It must be shown that there has not been any significant interruption in the use in order to demonstrate the necessary continuity.
7. The appellant claims that the outbuilding has been used continuously as living accommodation for more than 4 years. However, given that the onus of proof rests on the appellant, there has been no evidence provided to support this proposition. Accordingly, I am unable to conclude, on the balance of probability, that the change of use is immune from enforcement due to the passage of time. The ground (d) appeal therefore fails.

Conclusion

8. The appellant has not appealed under ground (f), that is that the steps required by the notice to be taken are excessive. The requirements of the notice include removing the gate affording direct access from the service road. However, I consider that for a single property to continue to have access at the front and rear would not be uncommon, and this attribute would not, in

itself, result in an independent unit of accommodation. This specific requirement of the notice, therefore, goes beyond what is necessary to remedy the breach as described, and should be omitted. I am satisfied that I am able to vary the notice accordingly without causing injustice to the parties.

9. Subject to this variation, for the reasons given above, I consider that the appeal should not succeed.

Formal Decision

10. It is directed that the enforcement notice be varied by deleting the following words in paragraph 5:-

“and the gate affording direct access from the service road”

11. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR