



Appeal Decisions

Site visit made on 5 February 2020

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2020

Appeal A: APP/F5540/C/19/3224186

Premises known as 32 Kingsley Avenue, Hounslow, London, TW3 4AQ

- 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 Manjeet Kaur against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 30 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission the change of use from a single dwelling house into two self-contained flats.
- The requirements of the notice are i. Cease the use of the property as two self-contained flats; ii. Remove all but one the bathroom and associated bathroom facilities from the ground floor of the building (i.e. Shower/bathing facilities, WC, wash basin and pedestal). In addition to the above items all water piping and all waste connections; iii. Remove all but one the kitchen facilities and associated kitchen facilities from the ground floor of the building (i.e. all kitchen and washroom facilities, facilities to include the following items – kitchen wall and base units, units kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood). In addition, to the above items all water gas and supply piping and waste connections; iv. Removal of partition walls separating the two self-contained flats; v. Revert the property back to a single family dwellinghouse; vi. Remove all resultant debris 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) (b) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/F5540/C/19/3225447

Premises known as 32 Kingsley Avenue, Hounslow, London, TW3 4AQ

- 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 Manjeet Kaur against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 30 January 2019.
- The breach of planning control as alleged in the notice is "Without planning permission the use of the outbuilding a separate self-contained residential unit."
- The requirements of the notice are i) Cease the use of the outbuilding as a separate self-contained residential unit; ii) Remove the bathroom and associated bathroom facilities from the ground floor of the building (i.e. Shower/ / bathing facilities, WC, wash basin and pedestal). In addition to the above items all water piping and all waste connections; iii) Remove the kitchen facilities and associated kitchen facilities from the ground floor of the building (i.e. all kitchen and washroom facilities, facilities to include the following items – kitchen wall and base units, units kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood). In addition to the above items all water

gas and supply piping and waste connections; iv) Remove all resultant debris 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) (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld, with corrections.

Appeal A

The appeal on ground (b)

1. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that there has not been a change of use of the main dwelling to two self-contained flats. The onus of proof rests upon the appellant, with the standard of proof being the balance of probability.
2. The property subject to this appeal is a two-storey semi-detached building. There is a single main entrance to the front of the property, which provides access to various reception rooms and to stairs serving the first floor. A patio door provides access from a reception room at the back of the building to the rear garden. Access to the rear of the property is also facilitated via two substantial external timber gates, and a passageway which would appear to be shared with a neighbouring property.
3. At ground level, the rear reception room is divided from an adjoining bedroom by a glazed sliding door, that is potentially lockable. Access to a small, secondary kitchen and shower room / toilet is facilitated via this rear reception room. It is apparent that the Council regards the rear reception room and the secondary kitchen and shower room / toilet as collectively comprising a self-contained unit. I concur with the view that the rooms in question would enable the provision of facilities for independent day to day living, including washing, cooking and sleeping.
4. From my visit it was apparent that to gain access to the aforementioned rooms at the rear of the property, it would be necessary to pass through private accommodation at the front, or alternatively to use the two external gates, to get to the rear of the house. However, whilst independent access would therefore be possible, this would not necessarily be an attractive or convenient route. Furthermore, the only means by which the alleged self-contained units are separated from one another is via the aforementioned glazed, sliding door, which does not allow for any significant consideration of privacy.
5. To my mind, the very informal nature of this separation with inter-visibility possible between rooms, suggests that there continues to be shared activity between the respective household occupants. In addition I noted during my visit, that the rear garden remains as a single entity, not having been divided into separate amenity areas, which might otherwise have suggested that it was being used by independent households.
6. Therefore although, in practical terms, the rear of the property could be used as an independent unit, for the aforementioned reasons I consider that this would not be an attractive option, and on the balance of probability, that it would more likely be used as a 'granny annexe' arrangement, possibly by

another family member. I acknowledge it is possible to form an annexe such as this, that may be considered as ancillary to the main dwelling, such that a separate planning unit is not created.

7. I therefore conclude that two self-contained flats have not been created and that the alleged breach of planning control has not occurred as a matter of fact. The ground (b) appeal therefore succeeds.

Appeal B

Preliminary matter

8. It is apparent that there are a small number of minor typographical errors in the description of the alleged breach and requirements of the notice. I am satisfied that they can be corrected without any injustice being caused to the parties.

The appeal on ground (b)

9. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. As set out above, to succeed on this ground it would need to be demonstrated that the use of the outbuilding as a separate self-contained residential unit had not occurred at the site.
10. The appellant's position is that the outbuilding is being and has been used for purposes incidental to the main dwelling, including for prayer and meditation; to provide facilities when building maintenance work was being undertaken to the main dwelling and to accommodate overseas visitors, therefore not as the alleged separate self-contained unit. He says that the temporary kitchen has now been removed.
11. From my visit it seemed to me that the outbuilding was being used for the storage of miscellaneous domestic related items, which included furniture and a lawnmower. It was plain that, despite the presence of electricity sockets and gas supply piping, the necessary fixtures and fittings to facilitate the provision of a kitchen were not in place, possibly having already been removed. Similarly despite the presence of a separate shower room, it was evident that various essential fitments were no longer there.
12. However, despite the lack of indication that the unit is currently being used as alleged, I am mindful that my decision needs to be based on the circumstances at the time when the notice was issued. The response provided by the appellant that the outbuilding was being used for purposes incidental to the main dwelling, such as to accommodate visitors occasionally, is somewhat vague. No details have been provided of the identity of guests and the duration and frequency of visits, nor when the unit was used by occupiers of the main dwelling, and by whom. When also taking into account the lack of physical integration with the main dwelling, I am not persuaded that this is sufficient to prove the appellant's case, on the balance of probability, and that a material change of use to a dwelling had not occurred. The appeal on ground (b) must therefore fail.

The appeal on ground (d)

13. 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 30 January 2015, 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.

14. The appellant claims that the layout of the outbuilding has been in place since 2006, with a temporary kitchen there now having been removed. However, no evidence has been provided of continuous residential use over the necessary 4 year period. 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.

The appeal on ground (f)

15. The ground (f) appeal is that the steps required by the notice to be taken are excessive. The appellant states that the removal of the kitchen should be sufficient to satisfy the Council. The implication is that there should be no need to remove any bathroom facilities including water piping and waste connections, in accordance with the notice. However, it seems to me that if such requirements were not fully complied with, this may help to facilitate a resumption of the unauthorised residential use in the future.
16. I therefore conclude that the requirements are warranted and proportionate measures in this case. The requirements are not excessive and the ground (f) appeal therefore fails.

Conclusion

Appeal A

17. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal on ground (d) does not need to be considered.

Appeal B

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

Appeal A

19. The appeal is allowed and the enforcement notice is quashed.

Appeal B

20. It is directed that the enforcement notice be corrected by inserting the word "as" between the words "outbuilding" and "a" in paragraph 3 and by deleting the word "units" immediately before the words "kitchen sink" in paragraph 5iii.
21. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett INSPECTOR