



Appeal Decision

Site visit made on 5 February 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/M5450/C/18/3217038

Land at 79 Spencer Road, Harrow HA3 7AN

- 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 Syed Rizvi against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 16 October 2018.
- The breach of planning control as alleged in the notice is 1. Without planning permission, the material change of use of the land from a single dwelling house to use as two dwelling houses ("the Unauthorised Use"); 2. Without planning permission, the erection of a wooden canopy with Perspex roof ("the Unauthorised Canopy").
- The requirements of the notice are 1) Cease the Unauthorised Use; 2) Remove all but one (1) kitchen from the Land; 3) Remove all but two (2) bathrooms from the Land; 4) Remove all the walls and internal partitions that facilitate the Unauthorised Use and build in accordance with the approved plans of the planning application reference P/3259/13; 5) Demolish the Unauthorised Canopy; 6) Remove from the Land all materials and debris resulting from compliance with steps (1) to (5) above.
- The period for compliance with the requirements is six calendar 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 upheld, with variations.

Application for costs

1. An application for costs was made by Mr Syed Rizvi against the London Borough of Harrow. This application is the subject of a separate Decision.

Preliminary Matters

2. Within the appellant's statement it is claimed that the alleged unauthorised breach did not constitute development. I have therefore accepted this as an appeal under ground (c), namely that there has not been a breach of planning control, which is duly dealt with below.
3. The Council has raised the concern that the appellant's ground (b) appeal was only made at final comments stage, when no new evidence should be provided. However, it seems to me that this element of the appeal is in direct response to a specific point raised in the Council's statement, and which was not therefore capable of being made at the outset. The Council has been given the opportunity to respond to this specific point and as such I consider that no injustice would be caused through me accepting to consider this element of the appeal.

4. The alleged change of use relates to a two-storey side extension to the main dwelling. This side extension was part of a larger development scheme at the property, granted planning permission by the Council on 13 December 2013¹. The approved plans provided show that internal access between the main dwelling and the extension at both ground and first floor levels would be facilitated.
5. There has not been an appeal on ground (a), that is that planning permission should be granted. As such the planning merits of the development, including any potential benefits with regard to the appellant's personal / family circumstances are not before me for consideration.

The appeal on ground (b)

6. The appeal on ground (b) is that the breach of planning control alleged in the enforcement notice has not occurred. The appellant's ground (b) case is focussed on the alleged change of use and does not relate to the alleged canopy. It is based on the Council's statement that at the time of its visit to the property in June 2018, prior to the notice being served, there were no signs that the appeal site was being used as a separate dwelling.
7. It seems to me that although the Council say in their statement that there were no signs of use, from the photographs provided, the unit was nevertheless still fitted out, at that time, with the necessary facilities for independent day to day living, including cooking, washing and sleeping accommodation. Notwithstanding this, the appellant has provided sworn evidence in the form of a statutory declaration, within which it is stated that there was never any internal access between the extension and the main dwelling and that the two storey side extension was completed and arranged as separate / self-contained two bedroom residential accommodation, ready for occupation / use in July 2014.
8. It would also appear from the appellant's representations that it was accepted that the side extension should be rated separately from the main dwelling for Council tax purposes, the use having been in place since 2014.
9. The statutory declaration appears to me to be precise and unambiguous. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give this significant weight. Through constructing a building that was never internally connected to the main dwelling and which was completed as separate self-contained residential accommodation, it seems to me that the appellant's development resulted in two dwelling houses, when previously there had been one.
10. Therefore notwithstanding the apparent contradictory remarks by the Council as to whether the use was occurring, I find the appellant's representations, particularly within the statutory declaration, together with the photographs provided by the Council from its site visit, to be compelling evidence that, on the balance of probability, the alleged breach of planning control had occurred at the time when the notice was issued. The ground (b) appeal therefore fails.

¹ Ref P/3259/13

The appeal on ground (c)

11. The appeal on ground (c) is that the matter alleged does not constitute a breach of planning control. This ground, too, focusses on the alleged change of use and not the canopy. The appellant states that during the construction process a decision was taken to install a kitchen and shower room at ground floor level and a separate staircase to access the first floor of the side extension. He says that the decision was taken, in good faith, on the understanding that s(55)(2) of the Act states that "*The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.*"
12. However s(55)(3)(a) of the Act states that "*the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse, involves a material change in the use of the building, and of each part of it which is so used.*" Section 55(1) of the Act states that the making of any material change in the use of any building constitutes development.
13. The works undertaken have resulted in the creation of a separate unit of residential accommodation, and as such there are now two dwellinghouses, which expressly constitutes an act development. Accordingly the improvements and alterations undertaken to the property go beyond what can be regarded as not constituting development. There is no suggestion that the works undertaken constitute permitted development in the context of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The development undertaken would therefore have required planning permission. The ground (c) appeal therefore fails.

The appeal on ground (d)

14. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in relation to the alleged change of use. 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 side extension as a dwelling had commenced at least 4 years before the notice was issued, that is by 16 October 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.
15. There is no dispute between the parties that the side extension was completed in July 2014. However, even if the extension was completed in its current form at that time, as the appellant seeks to verify with various certification, and no structural alterations have been undertaken to it since then, it would still be necessary to demonstrate that the unit has been in continuous use.
16. However, despite reference to the unit being occupied by visitors and guests from time to time and also by a family carer, there is a lack of evidence provided to support the proposition that the unit has been used continuously as residential accommodation, without any material break in occupation, for the required 4-year period. Whilst the unit has been rated separately for Council tax purposes, it would appear that this was done retrospectively following the enforcement investigation. This does not therefore support a claim of

continuous use being brought to the Council's attention throughout the immunity 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.

17. It is the Council's case that the existence of the dwelling was deliberately concealed from the Council, such that the normal immunity period test should not apply. In light of my findings above there is no need for me to conclude on this matter, suffice to say that I consider concealment was unlikely, given the admissions made in the appellant's statutory declaration and the evidence revealed in the Council's photographs.

The appeal on ground (f)

18. The ground of appeal is that the steps required by the notice to be taken are excessive. With regard to the unauthorised change of use the objectives of the notice are to discontinue the use of the land and to secure compliance with planning permission Ref P/3259/13. With regard to the unauthorised canopy, the objectives are to return the land to its condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach.
19. The appellant has raised the concern that the requirement to remove all but two bathrooms from the land, would necessitate works to remove a bathroom from the detached outbuilding in the rear garden. I agree that because the notice does not seek to address the outbuilding it would be appropriate to vary this requirement so as to unequivocally exclude reference to it. Such a variation would not undermine the objective of the notice and could be achieved without resulting in injustice to the parties.
20. However, it seems to me that the existence of various fixtures and fittings including the kitchen and bathroom are part and parcel of facilitating the independent use of the unit. Notwithstanding any work that may or may not be undertaken in the future in connection with the lawful use of the property, if these fixtures and fittings were allowed to remain in place they would make it unreasonably difficult to prevent the resumption of the unauthorised residential use. I do not therefore concur with the view that step 5 3) should be deleted altogether.
21. Furthermore it is the appellant's case that the requirement to build in accordance with the approved plans (paragraph 5 4)) would be unreasonable, as this would necessitate the demolition of certain parts of the extension. However the requirement would only require accordance with the plans insofar as it is necessary to remedy the breach of planning control and should not be taken as requiring the removal of any subsequent or different development that the notice does not seek to address and that has permission. Accordingly there is no justification for the omission of this clause. However the wording should be varied to clarify that the requirement applies insofar as it serves to eliminate the unauthorised dwelling.
22. The appellant has submitted amended drawings showing how the design of the canopy could be reduced in size in an effort to agree a compromise solution. However this would not go so far as to remedy the breach as set out above and because my consideration of the ground (f) appeal is limited to the question of whether the steps undertaken would be excessive in relation to this objective,

the merits of a revised canopy design would not be within the remit of my deliberations in this case. As set out above, I am unable to consider the planning merits of the development, or any part thereof, in the absence of a ground (a) appeal.

23. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by ceasing the use of the property as two dwelling houses; complying with the planning permission and by the demolition of the unauthorised canopy. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail, with the exception of the variations warranted, as referred to above.

Conclusion

24. For the reasons given above I conclude that the appeal on grounds (b), (c) and (d) should not succeed. I shall uphold the enforcement notice with variations.

Formal Decision

25. It is directed that the enforcement notice be varied by inserting the words "(excluding the outbuilding in the rear garden)" at the end of paragraph 5 3) and by inserting the words "(insofar as this serves to eliminate the unauthorised dwelling)" at the end of paragraph 5 4).
26. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR