



Appeal Decisions

Site visit made on 21 February 2020

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Appeal A: Ref: APP/Y1945/C/19/3236794

Appeal B: Ref: APP/Y1945/C/19/3236795

1 Eastfield Avenue, Watford, Hertfordshire WD24 4HH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Zahid Mahmood and Appeal B is made by Mrs Tahira Mahmood against an enforcement notice issued by Watford Borough Council.
 - The enforcement notice was issued on 8 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the use of an outbuilding as a self-contained dwelling.
 - The requirements of the notice are
 - (1) Cease to use the outbuilding as a self-contained dwelling.
 - (2) Remove from the outbuilding the shower, toilet, hand basin wall and floor tiling and all associated fixtures, fittings including the plumbing.
 - (3) Remove from the outbuilding the kitchen units, kitchen sink and all associated fixtures and plumbing
 - (4) Remove from the outbuilding the internal walls (as indicated in red on the plan labelled 'B' attached to the Notice) which have created the shower room.
 - (5) Remove from the land and dispose of all rubble, waste materials and debris in relation to compliance with Steps (1)(2)(3) and (4) above
 - The period for compliance with the requirements is one month for step (1) and six months for steps (2)(3)(4) and (5)
 - Appeal A and Appeal B are proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the breach of planning control alleged in the notice at paragraph 3 and substituting it with the following text: *"Without planning permission, the material change of use of an ancillary outbuilding to a self-contained dwelling"*.
2. Subject to this correction, the appeals are allowed and the enforcement notice is quashed.

Procedural Matter

3. The breach of planning control refers to "the use of an outbuilding as a self-contained dwelling". However, any change of use would need to be material in order for a breach of planning control to have taken place. In determining the appeal, I am therefore considering whether "a material change of use of an ancillary outbuilding to a self-contained dwelling" has occurred and will correct the notice accordingly. I do not consider that there is injustice to either party by this correction to the allegation.

The appeals under Ground (b)

4. The ground of appeal is that, as a matter of fact, the allegation has not occurred. In order to succeed, the appellants would need to show, on a balance of probabilities, that the material change of use to a self-contained dwelling has not occurred. The relevant date is the issue of the notice.
5. Planning permission was granted in 2012 for the outbuilding for what was described as a detached playroom. The Council's planning department received a complaint in January 2019 that the outbuilding had been constructed as a self-contained dwelling for renting out.
6. The Council visited the outbuilding in January 2019. Photographs show a single storey outbuilding with a single room with a sink within a kitchen unit and a separate kitchen worktop with space underneath as well as gym equipment and general storage of household items. There is a separate shower room with shower, toilet and washbasin to one corner of the room. During the visit, the appellants stated to officers that the outbuilding was being used as a gym for their sons.
7. A notice was then issued on 8 August 2019. The Council is of the view that the outbuilding was constructed as a habitable self-contained dwelling with a shower room with toilet and kitchenette. Although condition 4 of the planning permission restricts the use of the outbuilding to ancillary uses to the use of the main dwelling house as a single family dwelling house, the Council is not pursuing a breach of the condition but a material change of use.
8. The breach of planning control alleged is a material change of use to a self-contained dwelling. The Council is not alleging that the outbuilding has been occupied as a self-contained dwelling but that the extent of works are sufficient for a breach of planning control to have occurred. The appellants consider that the outbuilding has not been in use as a self-contained dwelling and therefore no breach has occurred. The courts have held that "too much stress has been placed on the need for 'actual use'... it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is"¹.
9. In summary, whether or not a breach of planning control has occurred will be fact-sensitive. A self-contained dwelling should be capable of providing viable facilities for day to day private existence. For example, the evidence needs to show the outbuilding has independent facilities for cooking, washing or sleeping at the date that the notice was issued.
10. The relevant date to consider is the 8 August 2019. I am satisfied, on a balance of probabilities, that the sink and kitchen worktops had been removed before the 8 August 2019. Other than the removal of the sink and the kitchen units and worktop, there is no evidence before me to indicate any other changes were made to the outbuilding between January 2019 and the issue of the notice in August.
11. There is evidence that gym use was taking place in January 2019 as well as storage use. Whilst the outbuilding was originally described as a playroom, family needs clearly change over the years and use as a family gym is not

¹ *Welwyn Hatfield BC v SSCLG and Beesley* (2011) UKSC 15

incompatible with ancillary use to the main house. There were no white goods, or kitchen equipment, no furniture or any other evidence of independent living.

12. The shower room is not shown on the original plans for the outbuilding although the appellants indicate that the shower room was used in connection with the gym. At the Council's visit in January 2019, gym equipment was present and the appellants indicated that was the current use of the outbuilding. The ongoing use of the outbuilding as a gym is compatible with having a shower room. Whilst the Council has questioned the need for a second ground floor toilet in view of the proximity of the main house, having a toilet in an outbuilding for family needs is not unusual and the appellants refer to medical issues.
13. I have found that the kitchen elements had been removed, the shower room had been in existence for some time prior to the service of the notice and is compatible with the use that existed prior to that. No new access or separation of the modest garden had taken place. Although there are gates to the side of the outbuilding to access the road, they appear to be longstanding. No evidence of separate assessments for council tax or utility bills have been provided. There was no furniture, no storage facilities or white goods or cooking facilities at the outbuilding and there is no evidence that the gym use had ceased. The evidence does not sufficiently show that the outbuilding was capable of providing viable facilities for day to day private existence with independent facilities for cooking, washing or sleeping at the date that the notice was issued or during the period leading up to the issuing of the enforcement notice.

Conclusion

14. On the balance of probabilities, the appeals on ground (b) should succeed in respect of those matters which following the correction of the notice are stated as constituting the breach of planning control. The enforcement notice is quashed as stated above.

E Griffin

INSPECTOR