



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2020

Appeal Ref: APP/Y1945/C/19/3232608

Land at 41 Brightwell Road WD18 0HR

- 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 Ms Sanaa Ahmad against an enforcement notice issued by Watford Borough Council.
 - The enforcement notice was issued on 5 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of an annexe ancillary to the main dwelling house into a self-contained dwelling.
 - The requirements of the notice are: (1) To cease the use of the annexe as a self-contained dwelling. (2) To remove the external doorway at the side of the annexe and re-instate the external wall in materials to match the existing side elevation. (3) To remove the unauthorised roof attached to the side of the property. (4) To reinstate the access to the main dwelling hall via the doorway from the bedroom in the annexe as per planning permission ref: 08/01252/FUL. (5) Remove from the land all 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: Step (1) within two calendar months from the date this Notice takes effect. Step (2), (3), (4) and (5) within six calendar months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds 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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Procedural Matters

2. As the enforcement notice has been appealed on ground (d), views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence before me, given the evidential onus rests with the appellant.
3. The various submissions of the appellant also amount to hidden ground (f) and (g) appeals. As the Council has however responded to these matters, injustice

would not arise from considering these grounds of appeal, and, neither would a site visit be necessary for the purposes of my decision.

The Enforcement Notice

4. Requirement (5) of the enforcement notice contains a minor typographical error which I shall correct in my formal decision below. Injustice to the parties would not consequently arise from this correction.

The ground (d) appeal

5. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. As this concerns the change of use of an ancillary annexe to a self-contained dwelling, it will be necessary to demonstrate a continuous four-year period of use prior to the issue of the enforcement notice, which was on 5 June 2019.
6. Planning permission was granted¹ for an ancillary granny annexe in March 2009. It is this annexe that has been enforced against as a self-contained dwelling. The evidence is that the appellant purchased the property in February 2016. She first viewed the property in November 2015 and considered the annexe was being used as a separate dwelling at that time.
7. The evidence, which includes a Statutory Declaration from the appellant, is that following several months of DIY renovation, the annexe was advertised for occupation. It was then occupied as a self-contained dwelling between September 2016 and March 2019 by three different tenants. Since that date it has not been occupied, following a visit from the Council concerning the alleged breach of planning control.
8. The Statutory Declaration of the previous owner, Mrs Chase, states that the annexe was primarily occupied by family members or close family friends. In my view this is what might be reasonably expected of an annexe in ancillary use. This therefore does not provide evidence that the annexe was used as a self-contained dwelling or that there was the sub-division of the planning unit. The appellant says that she had conversations with the son of Mrs Chase about the use of the annexe, but aside from this assertion, there is no tangible written evidence before me that I can reasonably rely upon in this regard.
9. Moreover, the property information document that has been submitted, which provides the name of another occupier at the time the property was in the process of being sold to the appellant, does not actually provide evidence of a tenant occupying the annexe as a self-contained dwelling. Neither does the Solicitor's email of 27 June 2019, as this only states that the annexe was used for 10 years by a family member. That the annexe was 'locked off' and seemingly occupied on the occasions when the appellant viewed the property in connection with her purchase, does not demonstrate that it was being used as a self-contained dwelling. Furthermore, these viewings only represent a short snap-shot in time, as opposed evidence of a continuous four-year period of use as a self-contained dwelling.

¹ Council Ref 08/01252/FUL

10. The Statutory Declaration of Mrs Chase does however demonstrate that the side external door and plastic roof shelter above has been in existence for a period of more than 4 years; the evidence being that the doorway was constructed at the same time the 2009 planning permission was implemented and the roof added in 2011. I shall therefore return to this matter later in my decision.
11. Notwithstanding this, I am not satisfied on the balance of probabilities that the appellant has demonstrated the continuous use of the annexe as a self-contained dwelling for a relevant period. Consequently, the appeal on ground (d) must fail.

The ground (f) appeal

12. The purpose of the enforcement notice is to remedy the breach of planning control as it does not seek to under-enforce. Therefore, for a ground (f) appeal to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
13. The Council do not appear to dispute that the external doorway and roof attached to the side of the property has been in existence for a period of more than 4 years, and so would otherwise be immune from enforcement action. They have however taken enforcement action on the basis that these aspects are part and parcel and therefore integral to the unauthorised change of use. However, this cannot be the case as they were in existence prior to the unauthorised change of use to a self-contained dwelling, which on the evidence before me, commenced in September 2016. It therefore functioned as an ancillary annexe with the door and roof prior to this, indeed, since at least 2011.
14. Accordingly, given the longstanding existence of the external door and roof it would be excessive to require their removal. The remaining requirements of the enforcement notice would still adequately remedy the breach of planning control.
15. To this effect the hidden ground (f) appeal succeeds.

The ground (g) appeal

16. In responding to recent correspondence about determining the appeal without visiting the site, the appellant also raised² that in the event her appeal was dismissed it would be difficult to get a builder, as well as the financial implications, at a time of an ongoing public health emergency. A considerably longer period was therefore requested. I nevertheless consider that adequate time has been provided by the Council given the evidence is that the annexe is no longer occupied and that owing to the success of the ground (f) appeal only limited building works and clearance are now required to be undertaken within the next 6 months. Furthermore, the Council have powers under section 173A(1)(b) of the Act, but that would be a subsequent matter and is entirely for them.
17. For these reasons the hidden ground (g) appeal fails.

² In her email of 24 March 2020

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with a correction and variations.

Formal Decision

19. It is directed that the enforcement notice be corrected and varied by:

- deleting the words "(1) To cease the use of the annexe as a self-contained dwelling. (2) To remove the external doorway at the side of the annexe and re-instate the external wall in materials to match the existing side elevation. (3) To remove the unauthorised roof attached to the side of the property. (4) To reinstate the access to the main dwelling hall via the doorway from the bedroom in the annexe as per planning permission ref: 08/01252/FUL. (5) Remove from the land all and dispose of all rubble, waste materials and debris in relation to compliance with Steps (1), (2), (3) and (4) above." and their replacement with the words "(1) To cease the use of the annexe as a self-contained dwelling. (2) To reinstate the access to the main dwelling hall via the doorway from the bedroom in the annexe as per planning permission ref: 08/01252/FUL. (3) Remove from the land and dispose of all rubble, waste materials and debris in relation to compliance with Steps (1) and (2) above."
- deleting the words "Step (1) within two calendar months from the date this Notice takes effect. Step (2), (3), (4) and (5) within six calendar months from the date this Notice takes effect." and their replacement with the words "Step (1) within two calendar months from the date this Notice takes effect. Step (2) and (3) within six calendar months from the date this Notice takes effect."

20. Subject to this correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR