
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2020

Appeal Ref: APP/F5540/C/18/3219377

160 Pears Road, Hounslow, London TW3 1SJ

- 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 Mrs Lakhbir Kaur against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 23 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of an outbuilding as separate residential accommodation.
 - The requirements of the notice are
 - i. Cease the use of the outbuilding as separate residential accommodation.
 - ii. Remove all the bathroom and associated bathroom facilities within the outbuilding (ie shower/bathing facilities, WC, wash basin and pedestal). In addition to the above items, all water piping and all waste connections.
 - iii. Remove all the kitchen facilities and associated kitchen facilities within the outbuilding (ie all kitchen and washroom facilities, facilities to include the following items - kitchen wall and base units, kitchen sink, kitchen work top surfaces, cooking facilities and cooker hood). In addition to the above items, all water, gas and supply piping and waste connections.
 - iv. Remove all partition walls.
 - v. Remove all resultant debris from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. A site visit was arranged for 2.35pm on Monday 4 November 2019 and the appellant's agent was informed about this on 22 October 2019. The letter set out that it was important that the appellant make arrangements for the Inspector to be met at the site to enable the inspection to be made. If the appellant could not attend, then she was to arrange for someone else to take her place and if that was not possible, she was to inform the Planning Inspectorate.
3. On the day of the site visit, neither the appellant nor her representative met the Inspector at the site and the Inspector had not been advised of any other arrangements. The Inspector had been met at the site by a representative from the Council who knocked at the door of the host property and spoke to a gentleman through an open window who did not know about the site visit and

had clearly just woken up. As there was also no response to the phone call made to the agent when access could not be achieved, the Inspector decided it would be inappropriate to proceed any further and the site visit was aborted.

4. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

5. The appeal has been made in respect of a detached outbuilding within the large rear garden of 160 Pears Road. Access to it is via the gap between the host property and 158 Pears Road. The Council's photographs show that the outbuilding is laid out as two separate self-contained residential units, each with a kitchen and bathroom. Access to one unit is from the elevation facing the host property and access to the second unit is from the rear elevation of the outbuilding. The notice attacks the use of the outbuilding as separate residential accommodation from the host property. It does not allege any operational development.

The ground (d) appeal

6. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, she needs to show, on the balance of probabilities, that the use of the outbuilding as either one or two self-contained residential units began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on 23 November 2018 so the appellant needs to show that the material change of use began not later than 23 November 2014 and continued without material interruption.

The appellant's case

7. The appellant submits that the outbuilding was substantially complete by 2006 and that since 2008 it has been used as a single dwelling and occupied by various tenants, to date. It has also been inspected in 2012 by Mr Cassidy from the Council's Building Control service. No documents have been enclosed with the appeal paperwork and the appellant states within the appeal form that the 'relevant documents' can be examined at the site visit.

The Council's response

8. The Council submit that the appellant's case is unclear. As part of their investigation the Council issued a Planning Contravention Notice (PCN) which was responded to by the appellant on 28 April 2018. In her response she states that the outbuilding was erected in 2012 and that it has been used as separate residential accommodation since 2013. She also explains that a bathroom and kitchen were installed in 2013 as the host property was being refurbished at that time and these facilities were needed in the interim.
9. Photographs from a Council site visit on 12 October 2012 show that the appeal outbuilding had not been built at that point but at the bottom of the garden

they show that there appeared to be two detached outbuildings. The Council also submit copies of photographs taken at another site visit on 14 August 2013 which show the appeal outbuilding being constructed. Foundations have been laid and the external walls are in the course of being constructed but there is no floor or roof and there are no windows or doors.

10. The Council's investigation showed that the outbuilding is laid out as two self-contained units and there are photographs dated 1 August 2018 which show this. At the August site visit the Council officer was told by the tenant of one of the units that he had occupied it for more than a year but the other unit had been unoccupied for several months as the previous tenants had been evicted.
11. The appellant submitted copies of tenancy agreements from 2008 to 2018 to the Council that refer to a two bedroom self-contained annex but these have not been included with the Council's case.

Assessment

12. The appellant has indicated that the appeal should follow the written representations procedure. The Procedural Guide and the How to complete your enforcement notice appeal form - England document states it is the appellant's responsibility to provide evidence with their appeal to prove what is claimed in respect of any appeal on ground (d). This has not occurred in the current appeal and the appellant's offer to show 'relevant documents' at the site visit is not in accordance with the appeal procedure. The appeal process has been set down in legislation so that it is clear to all parties how it should operate. It is also necessary to abide by the procedure so that it can be seen that the appeal is conducted in an open, fair and impartial manner.
13. Notwithstanding this oversight by the appellant, I find there are inconsistencies within her case as made in the appeal form as it is not clear whether her submissions relate to the older outbuildings at the bottom of the garden or to the use of the appeal outbuilding. In any event, the Council's photographs show the appeal outbuilding was not built in 2012, contrary to what was stated in the appellant's response to the PCN and her claims made in the appeal form.
14. Although the copies of the tenancy agreements sent to the Council are not before me, it would appear from the Council's description of them that they do not relate to the use of the appeal outbuilding. This is because the appeal outbuilding has been divided into two self-contained units and was built midway through the period covered in the tenancy agreements. There is a further discrepancy in that the appeal outbuilding is referred to as a single dwelling in the statements made in the Grounds and Facts section of the appeal form and in the appellant's response to the PCN.
15. Having regard to all of the evidence, I am not persuaded that the use of the appeal outbuilding, either as one or two self-contained residential units, began more than four years before the notice was issued and continued without material interruption for a period of four years thereafter. This is because the appellant's evidence is not sufficiently precise and unambiguous. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be inconsistent with Council records. It is not clear when the residential use of the appeal outbuilding began and whether it continued without material interruption for the requisite period. The appeal on ground (d) therefore fails.

Conclusion

16. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR