



Appeal Decision

Site visit made on 2 June 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2020

Appeal Ref: APP/A5270/C/19/3240269

185 Somerset Road, Southall, Middlesex UB1 2UQ

- 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 Sarojben Patel against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 30 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a separate self-contained residential dwelling at the rear of the premises.
- The requirements of the notice are: Cease the associated residential use of the rear dwelling; Remove the kitchen and drainage connections for the rear dwelling; Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) 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.

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

Preliminary Matters

1. During the appeal, the appellant's case was expanded to argue that a separate self-contained residential dwelling had not been erected. However, that is relevant to ground (b)- 'that the matters stated in the enforcement notice which may give rise to the breach of planning control have not occurred'. Therefore, having afforded the Council the opportunity to comment further, I have determined the appeal as if it were also made on ground (b).
2. As there is no deemed planning application arising from an appeal under ground (a), arguments regarding the planning merits of a separate self-contained dwelling cannot be taken into account in my decision.

Application for costs

3. An application for costs was made by the Council of the London Borough of Ealing against Mrs Sarojben Patel. This application is the subject of a separate Decision.

Ground (b) appeal

4. To succeed on this ground, the appellant must show that a separate self-contained dwelling has not been erected, the relevant test of the evidence being on the balance of probability.

5. The appeal property contains a two storey, end of terrace dwelling. A detached building has been erected towards the end of the rear garden. In photographs supplied by the Council dated 19 September 2019, the interior of the building contained a bedroom, a shower room with a toilet and wash basin and a kitchen including a built-in oven, hob and extractor. Therefore, at the time the notice was issued it is more likely than not that the building had the facilities necessary for independent day-to-day living, this being the distinctive characteristic of a dwelling for planning purposes. The building also contained such facilities when I visited. The presence of a made-up double bed, together with household electrical appliances and everyday domestic items, also shown in the Council's photographs, are incidences of residential use. Further evidence supplied by the Council and an interested party indicated that the building had at times been occupied as a separate self-contained dwelling.
6. The building is similar in terms of its size, design, external appearance and siting to the home office granted planning permission in March 2018¹. However, the appellant did not supply any firm evidence to show that the building had been used in conjunction with the main dwelling, either as a home office, for manufacturing toiletries, or as ancillary accommodation. There was no firm evidence to indicate that the building did not contain all the facilities of a separate self-contained dwelling at the time of its substantial completion.
7. Consequently, on the balance of probability, I conclude from the available evidence that a separate self-contained dwelling has been erected as a matter of fact and the ground (b) appeal fails.

Ground (f) appeal

8. The ground of appeal is that the requirements of the notice are excessive for its purpose.
9. At s173 (3) and (4), the Act provides that the requirements of an enforcement notice can, either wholly or partly, achieve one of two purposes. The purposes are remedying a breach of planning control, including by discontinuing the use of the land or by restoring the land to its condition before the breach took place, or; remedying any injury to amenity caused by the breach.
10. The notice requires the unauthorised use of the building as a separate self-contained dwelling to cease and the removal of associated works. Such requirements are clearly aimed at remedying the breach, as opposed to remedying an injury to amenity. Had the latter been the case, there would have been lesser requirements in the notice. However, as demolition of the building is not required, the property would not be restored to its condition before the breach took place. Accordingly, although the notice does not state as such, its purpose must be to partly remedy the breach by discontinuing the unauthorised use.
11. The kitchen is integral to and facilitates the unauthorised use of the building as a separate self-contained dwelling; it is unlikely that the building could properly function as a dwelling otherwise. Therefore, in the absence of a requirement to remove the kitchen and the associated drainage connections, the purpose of partly remedying the breach would not be achieved, as the unauthorised use would not be discontinued. There is no firm evidence to indicate that the

¹ Council Ref: 178073HH.

provision in future of a similar kitchen facility, associated with use of the building in conjunction with the main dwelling as a home office, for manufacturing toiletries or as ancillary accommodation, is a realistic proposition. Consequently, varying the notice so that removal of the kitchen is not necessary does not represent an obvious alternative to the notice requirements.

12. Accordingly, I conclude that the requirements of the notice are not excessive for their purpose and the ground (f) appeal fails.

Conclusion

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

Formal Decision

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

Stephen Hawkins

INSPECTOR