



Appeal Decision

Site visit made on 16 June 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Appeal Ref: APP/F5540/C/20/3246422

5 Wareham Close, Hounslow TW3 3PX

- 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 Abdel Rahman Mahfouz against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 24 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of an outbuilding as a separate self-contained residential unit.
- The requirements of the notice are: (i) Demolish the outbuilding; (ii) Cease the use of the outbuilding as a separate self-contained unit; (iii) Remove the bathroom and associated bathroom facilities (i.e. shower/bathing facilities, WC, wash basin and pedestal. In addition to the above items all water piping and all waste connections); (iv) Remove the kitchen and associated kitchen facilities (facilities to include the following items: kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood. In addition to the above items all waste and gas supply piping and all waste connections); (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) (c) 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 is upheld with correction and variation.

Preliminary Matters

1. The allegation in the enforcement notice refers to construction of an 'outbuilding'. However, that term is commonly understood as applying to a smaller separate building which is subordinate to a dwelling, rather than something which is a dwelling in its own right. As the notice goes on to allege that the structure is a separate self-contained residential unit, it cannot also be an outbuilding. Therefore, I shall correct the notice to replace the reference to 'outbuilding' by 'building' in the allegation and also vary the wording of the requirements accordingly. In doing so, I am satisfied that there would be no injustice.
2. Although the appeal was made on ground (c), in his written submissions the appellant also explained that the building was no longer residentially occupied and that the kitchen together with the associated pipes had been removed. Whether those steps are a sufficient remedy, having regard to the purpose of the notice, are matters relevant to ground (f). Therefore, after inviting the

Council's further comments, I shall deal with the appeal as if it had also been made on that ground.

3. As there is no deemed planning application arising from a ground (a) appeal, the planning merits of the matters alleged by the notice do not fall to be considered.

Ground (c) appeal

4. In order to succeed on this ground, the appellant must show that the matters alleged by the notice do not constitute a breach of planning control, 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 single storey building has been erected in the garden of the property. Erecting the building has involved 'development' as defined in s55 (1) of the 1990 Act, for which planning permission is required by virtue of s57 (1) of the same Act.
6. The Council's evidence showed that on 9 January 2018, when the building was not substantially completed, a shower room and toilet appeared to be under construction. Also, there were electrical connections corresponding with those of a kitchen in the part of the building later fitted out and used as such. The appellant did not explain the purpose of these installations. Providing a shower room, toilet and kitchen would have been necessary for independent day-to-day living and as a result, those installations are likely to have facilitated use of the building as a separate self-contained residential unit. By the date of the Council's visit on 18 September 2019, the building was in use as a separate self-contained residential unit. Therefore, the logical conclusion to be drawn, in the absence of any firm evidence to suggest otherwise, is that the building was erected as a separate, self-contained residential unit. My attention was not drawn to any grant of express planning permission authorising such development at the property.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), Article 3, Schedule 2, Part 1 Class E, grants planning permission for erection of a building required for a purpose incidental to the enjoyment of a dwelling within its curtilage, subject to certain size and locational limitations. Nevertheless, as is made clear in the Government's Technical Guidance¹, a purpose incidental to a dwelling does not include use as a separate self-contained residential unit, nor does it include use for primary living accommodation such as a bedroom, bathroom, or kitchen. Additionally, the building is within 2 metres of the property boundary and its height exceeds 2.5 metres, in breach of paragraph E.1 (e) (ii) of Class E. Accordingly, the building did not meet the requirements of Class E.
8. During my visit, I was able to verify that use of the building as a separate self-contained residential unit had ceased. The kitchen fixtures, fittings and appliances together with the shower and toilet facilities had been removed. Items present inside the building included several filing cabinets and dismantled partitions, together with two examination couches, a treadmill, an unplugged fridge/freezer, some drawers, a coffee table and other domestic storage. I acknowledge the appellant's comments regarding residential occupation of the building being against his will, with no financial benefit to

¹ *Permitted development rights for householders: Technical Guidance* MHCLG September 2019.

him. Also, the appellant stated that the building had been erected to store office equipment and for use as a home gym. However, that is a different form of development to what is alleged in the notice, only the latter being relevant to this ground of appeal.

9. Consequently, the appellant was unable to show that, on the balance of probability, the matters alleged by the notice do not constitute a breach of planning control. The available evidence is that planning permission has not been granted, either expressly or by the GPDO Article 3, Schedule 2, Part 1 Class E, in respect of those matters. The ground (c) appeal fails.

Ground (f) appeal

10. The ground of appeal is that the requirements of the notice are excessive for its purpose.
11. At s173 (4), the Act provides that the purpose of an enforcement notice can be (a) to remedy a breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity caused by the breach. Although not stated explicitly, by requiring the use as a separate self-contained residential unit to cease and demolition of the building, the purpose of the notice clearly falls into sub-paragraph (a) above. Had the purpose been solely to remedy an injury to amenity, the notice would surely have stopped short of requiring demolition of the building.
12. As the building remains in situ, the property has not been restored to its condition before the breach took place. As a result, the steps taken thus far by the appellant have fallen short of remedying the breach. In any event, as there is no ground (a) appeal, it is not open to me to substitute lesser steps that would leave the building in place. Therefore, ceasing the residential occupation of the building together with removal of the kitchen, shower and toilet does not represent an obvious alternative to the requirements of the notice.
13. Accordingly, I find that the notice requirements fulfil the purpose of restoring the property to its condition before the breach took place and go no further than what is necessary to achieve that objective. The ground (f) appeal fails.

Conclusion

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

Formal Decision

15. It is directed that the enforcement notice be corrected by replacing 'outbuilding' where it appears in the alleged breach of planning control at paragraph 3 with 'building' and; varied by replacing 'outbuilding' where it appears in the requirements at paragraph 5 with 'building'. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR