



Appeal Decisions

Site visit made on 2 June 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH JULY 2020

Appeal A: APP/M5450/C/19/3240956

Appeal B: APP/M5450/C/19/3240957

Land at 43 Masefield Avenue, Stanmore HA7 3LY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Nikhil Vithlani (Appeal A) and Mrs S Vithlani (Appeal B) against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 10 October 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the detached outbuilding in the rear garden of the Land from a use ancillary to the main dwellinghouse to use as a self-contained flat ("the Unauthorised use").
 - The requirements of the notice are: (1) Cease the Unauthorised Use; (2) Remove the kitchen, toilet and shower facilities from the outbuilding; (3) Remove all internal partition, walls and doors that facilitate the Unauthorised Use; and (4) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is three calendar months after the notice takes effect.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeals A and B - Decision

1. The enforcement notice is varied by: (1) deleting the word "toilet" from requirement (2); and (2) inserting the words "not including the internal walls enclosing the toilet facility" after "Unauthorised Use" in requirement (3).
2. Subject to the variations above, both appeals are dismissed and the enforcement notice is upheld.

Preliminary matters

3. Some evidence presented in the appeals on ground (b)¹ is more appropriately, and without injustice, considered in the appeals on ground (c)².
4. The appellants consider the detached outbuilding described in the notice to be 2 buildings comprising a former summer house, which they call the habitable space building (HSB), and another outbuilding, identified by the acronym WCB,

¹ That (the matters stated in the notice which may give rise to the breach of planning control) have not occurred

² That (the matters stated in the notice which give rise to the alleged breach of planning control) if they occurred, do not constitute a breach of planning control

which they state solely functions as a toilet. However, they have not challenged the validity of the notice in this regard. The acronyms HSB and WCB are useful for descriptive purposes and I shall therefore use them as such.

5. I saw that the HSB and WCB abut very closely and have no gap at roof level, thereby appearing as a single building. Accordingly, I see no injustice in describing the built form within the area hatched on the plan annexed to the notice (Plan 2) as "the outbuilding" in this Decision.

Reasons - The appeals on ground (b)

6. For the appeals on this ground to succeed, the appellants need to show that, in the period leading up to the issuing of the notice, and on the date of issue, the outbuilding was not in use as a self-contained flat.
7. One of the appellants stated, in an application for a certificate of lawful existing development³, that the outbuilding had been used as a dwellinghouse since 20 February 2016. The Council states that a complaint of "a new residential unit being created within the outbuilding" was received on 20 April 2016 and that Council Tax records indicate the unauthorised use began in September 2016.
8. The appellants contend that the HSB is not self-contained because it lacks a toilet. However, the notice also relates to the WCB, both being within the hatched area on Plan 2, and accordingly it contends that the HSB and WCB are constituent parts of a self-contained flat.
9. The lodger agreement dated 5 July 2019, signed by the appellants as landlord, states, at point 23, that "The lodger will not have exclusive possession of toilet and the garden". While there is nothing equally explicit regarding the HSB, which is described as "the Summerhouse", taken as a whole, the agreement implies that it is to be occupied exclusively by the lodger. As evidence of this, point 16 of the agreement obligates the lodger to use the HSB "as a single private home" and point 20 records that the landlord may, at reasonable times, enter and check its condition. The latter would appear unnecessary if it had been intended that the appellants would also use the HSB and its facilities.
10. The appellants cite the *Gravesham* case⁴, and state it has established that the distinctive characteristic of a dwellinghouse is its ability to afford the facilities required for day-to-day private domestic existence. The presence or absence of toilet facilities was not considered in the *Gravesham* case as a point of law; rather it was noted that the Secretary of State had determined, as a matter of fact, that a holiday chalet with only a living room, kitchen and bedroom provided for the main activities of day-to-day domestic existence and was therefore a dwellinghouse. In particular, the Secretary of State had determined that the absence of a bathroom and inside toilet does not necessarily prevent a building that is used for residential purposes from being a dwellinghouse.
11. The appellants consider that a dwelling that does not include a toilet cannot plausibly be considered self-contained today. However, while they state that any other view would be contrary to case law and other appeal decisions, none are identified and the only evidence presented is *Gravesham*, as above.

³ P/3972/19, date of decision not given

⁴ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

12. The HSB includes facilities that allow an occupier to cook, wash and sleep separate from the main dwellinghouse. These are the main activities of day-to-day domestic existence, consistent with the Secretary of State's position in the *Gravesham* case. No evidence of those facilities being used by members of the appellants' household has been presented and none was apparent on my visit. As noted, the lodger agreement indicates they were used exclusively by the lodger, separate from, and not ancillary to, the residential occupation of the main dwellinghouse leading up to and on the day of issue of the notice.
13. This results in a break in the functional link between the use of the main dwellinghouse and the outbuilding, meaning that 2 primary uses existed on the date of issue of the notice, with the outbuilding forming a separate residential unit of accommodation and an independent planning unit. An ancillary connection between the use of the outbuilding and the main dwellinghouse has not been demonstrated and I find there was a self-contained flat in the outbuilding when the notice was issued.
14. For these reasons the appeals on ground (b) should not succeed.

Reasons - *The appeals on ground (c)*

15. For the appeals to succeed on this ground, the appellants need to demonstrate that the formation of a self-contained flat - regardless of whether they accept it has occurred - does not constitute a breach of planning control, because it is not development or does not require planning permission. This would be the case if the appellants' family and the lodger live as a single household, such that the main dwellinghouse and the outbuilding were one planning unit. If so, no material change of use will have occurred.
16. The appellants refer to cancelled Circular 10/97 and contend that the lodger's living arrangements are similar to a bed sitting room with shared communal facilities such as a toilet, circumstances in which the Circular stated "the planning unit is likely to be the whole building, in use for the purpose of multiple residential accommodation". Accordingly, they contend that there has not been a material change of use of the planning unit, which remains the land edged red on Plan 2. However, the notice does not allege a material change of use of the land edged red, but of the outbuilding occupying the hatched area within it.
17. Section 254 of the Housing Act 2004 defines a toilet as a basic amenity, which, if shared, defines the units of living accommodation sharing it as a house in multiple occupation. However, if that were so in this instance, it would contradict the appellants' statement that there has not been a material change of use of the land edged red.
18. The appellants state that their family uses the toilet facility in the WCB. I saw that the main dwellinghouse has a toilet in the bathroom and another on the ground floor, under the stairs. While the lodger agreement confirms that household members have a right to use the toilet in the WCB, the exercise of that right is another matter. No evidence of a pattern of use, indicating by how many household members and how often, has been provided. Without evidence to the contrary, it seems unlikely that a family member with access to 2 inside toilets for the exclusive use of their household would instead choose to go outside to the WCB, particularly at night or in inclement weather.

19. Accordingly, evidence that the main dwellinghouse and the outbuilding are occupied and used by people forming a single household has not been provided. The available evidence does not show the claimed shared use of the toilet facility within the WCB and indicates that the lodger's occupation of the HSB is separate to the residential occupation of the main dwellinghouse and not as part of a single household formed with the appellants' family.
20. The character of the outbuilding's use has changed from use in connection with the main dwellinghouse to a self-contained residential unit, a physically and functionally separate planning unit. This is likely to involve significant change in terms of activity, including comings and goings, with planning consequences. This results in a change in the definable character of the outbuilding. While section 55(2)(d) of the 1990 Act would exclude the use of the outbuilding for any purpose incidental to the enjoyment of the main dwellinghouse from the definition of development, an incidental use of the outbuilding has not been demonstrated.
21. The outbuilding appears in aerial photographs taken in June 2015 and the appellants state that the WCB is much older than the HSB. Although dates of construction have not been provided, a 1982 Ordnance Survey extract shows an outbuilding of similar size and position to the WCB and nothing in the position of the HSB. I saw that the WCB is not as old as the house, which a 1991 surveyor's report dated to the late 1950s. However, that report also indicated that the accommodation included an "outside w.c." at the time and therefore an external toilet facility existed before the HSB was built.
22. Taking the foregoing into account, I find that the toilet facility is an integral feature of the WCB as built prior to June 2015 and therefore would have been used ancillary to the residential occupation of the house before the breach of planning control arose.
23. However, and for the reasons given above, the use of the outbuilding as alleged in the notice is a material change of use requiring planning permission and the appeals on ground (c) must fail.

Conclusion

24. I have found that the breach alleged in the notice had occurred at the time of issue, and the outbuilding was not used for purposes ancillary to the residential occupation of the main dwellinghouse, but as a self-contained flat instead. However, I have also found that an external toilet has existed for many years and the toilet facility within the WCB pre-dates the change of use.
25. Notwithstanding its recent use, the toilet facility was not formed to facilitate the change of use. Accordingly, it would be reasonable, and would not cause injustice, to allow it to remain so it can revert to its former ancillary purpose.
26. Therefore, I have varied the requirements of the notice, insofar as they relate to the removal of the toilet facility and the internal walls enclosing it, to allow them to be retained. Subject to those variations, and having regard to all the other matters raised, I conclude that the appeals should be dismissed.

Mark Harbottle

INSPECTOR