



Appeal Decision

Site visit made on 6 July 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

Appeal Ref: APP/B5480/C/19/3232741

39 Rainham Road, Rainham RM13 7QT

- 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 Aderemi Badero against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 18 June 2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the unauthorised use of the outbuilding in the rear garden as a self-contained residential unit.
 - The requirements of the notice are:
 1. Cease the residential use of the outbuilding in the rear garden; AND
 2. Remove all kitchen units, beds, shower cubicle, toilet facilities and all residential paraphernalia including appliances associated with the uses; AND
 3. Remove from the site all debris and materials accumulated as a result of taking the above steps.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) 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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Decision

1. It is directed that the enforcement notice is:
 - corrected by deleting the words "2 months" within section 5 (Time for Compliance) and their replacement with "3 months".
 - corrected by deleting the existing first and second requirement, under section 5 (what you are required to do), and replacing it with the following:
 - 1) Cease the use of the outbuilding in the rear garden as a self-contained residential unit;
 - 2) Remove all kitchen units, beds, bath, shower, toilet facilities and all residential paraphernalia including appliances associated with the use of the outbuilding as a self-contained residential unit; AND
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The period for compliance with the requirements of the enforcement notice is 3 months under Section 6 (time for compliance). However, under section 5 (what you are required to do) this is stated as 2 months. The appellant appears to have understood the requirements and, in my opinion, the minor error does not render the notice unclear. It is necessary however to correct the notice by deleting reference to 2 months from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.
4. The first requirements of the notice, under section 5 (What you are required to do) is poorly worded, in so far as this should precisely match the allegation. The allegation refers to "the unauthorised use of the outbuilding in the rear garden as a self-contained residential unit" whereas, the first requirement states "cease the residential use of the outbuilding in the rear garden". It should therefore state "cease the use of the outbuilding in the rear garden as a self-contained residential unit". Furthermore, the second requirement of the notice is imprecise in so far as it refers to the removal of a shower cubicle whereas the bathroom contains a bath with a shower. It should therefore refer to removal of bath and shower. My understanding of the notice is not affected by this minor error, and there is nothing within the appellant's submission which indicates to me that he has misunderstood the requirements. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeal on grounds (b) and (c)

5. To succeed on ground (b), the onus is upon the appellant to demonstrate that the allegation has not occurred as a matter of fact. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. There is significant overlap between these two grounds of appeal, and the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
6. The appellant states that at no point in time did anyone live in the outbuilding, and that it is only used as a storage shed/games room in connection with the main dwelling. The appellant therefore considers that planning permission is not required for the development, which would benefit from permitted development rights, under the provisions of Class E of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO).
7. Whilst there is no definition of a dwellinghouse within the Act, in one notable High Court judgement¹ it was considered that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Furthermore, the Government's Technical Guidance (TG)² whilst not determinative provides a useful guide to interpretation of the GPDO. Regarding Class E development, page 41 of the TG states that "a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

² The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen" (my emphasis).

8. The main property at No 39 Rainham Road constitutes a single planning unit. The outbuilding in the rear garden is a flat-roofed structure and includes three separate rooms. The appellant states that the pre-existing structure was an unsafe dilapidated garage, and that he has replaced it with a games room/shed. The appellant also states that he has building regulations approval for the installation of running water and drainage in the building in order for him to shower after exercising. However, the evidence does not clearly or unambiguously provide much detail to support this, in terms of what it contained or its use. It is not, for instance, clear that the building was completed for use as a games room and shed.
9. Indeed, the Council's own evidence contradicts this. The Council state that on 24 October 2018, Officers visited the premises, and the owner admitted that a family member was living there for a short period. However, Officers were not given access into the outbuilding as the occupier was not at home. In a follow-up unannounced site visit, on the 28 December 2018, a Council Officer met with an occupier of the site who introduced himself as the tenant occupying the outbuilding. The tenant confirmed to the Council Officer that he pays rent to the owner and has been living there for some months. He also confirmed that he was vacating the outbuilding by 6 January 2019 but denied the Officer access to take photos internally. On the 14 March 2019, in another unannounced site visit, it was seen that the main property was under refurbishment and that household materials had been moved into the outbuilding. However, the outbuilding was also fully fitted with a kitchen and worktop units, a toilet and wash basin and was occupied, as evidence by the number of personal effects³.
10. In response to this the appellant claims that when the Council Officer visited the property and met with the tenant, the main property at No 39 was under renovation and therefore the tenant's items were being stored in outbuilding temporarily whilst his room was being refurbished. However, this does not explain why the outbuilding was also fitted out with fully fitted kitchen, with a cooker, an oven, an extractor fan, worktops and cabinets with electric sockets, a microwave, a washing machine and fridge/freezer within the building³.
11. Furthermore, I saw at my site visit, that the building contains three separate rooms which include a separate tiled bathroom containing toilet, bath and sink, kitchen worktops/cupboard in the main room with electric sockets close to the worktops and a separate room to the rear. There was also a TV aerial installed on the roof of the building. Again, there are no specific details as to why the building contains these items and individual rooms.
12. I also noted that there is separate, independent access to the outbuilding from a side gate in the fence, and that there is outside space, albeit shared, which is available for occupiers to use. The building has the distinctive characteristics of a dwellinghouse that being the ability to afford to those who use them, the facilities required for day-to-day private domestic existence. Based on the above, as a matter of fact and degree, I consider that it is less than probable that the building was only being used temporarily for the storage items, whilst the tenant's room was being refurbished.

³ Photographs of these items are included in Appendix A of the Council's appeal statement.

13. Furthermore, I find no evidence to support the appellant's claim that the bathroom was installed in order to have a shower after exercise. Such facilities would usually exist within the main house, and no explanation has been advanced why it is necessary in the outbuilding, as opposed to the main dwelling. Neither the photographic evidence submitted by the parties nor my site visit supports this view in so far as no exercise/gym equipment is shown within the outbuilding.
14. The building appears to be more than an ancillary shed/games room to the main house. Indeed, given the design and layout of the outbuilding, the facilities provided within the building, and the fact that it has been occupied by individuals on what would appear from the evidence to be an independent basis, it would constitute a self-contained dwelling within a separate and distinct planning unit. Furthermore, building regulations approval for the installation of drainage does not demonstrate that the building has not been used as a self-contained residential unit.
15. Therefore, based upon all the evidence before me, and on the balance of probabilities, the alleged breach of planning control occurred at the time the notice was issued. Planning permission is required for the use of the outbuilding in the rear garden as a self-contained residential unit, which has not been granted, and the use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.
16. Therefore, the appeals under grounds (b) and (c) fail.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR