
Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/F5540/C/19/3238924

Land to the rear of 16A Worthing Road, Hounslow TW5 0ER and known as 16C Worthing Road, Hounslow TW5 0ER and land on the north side of New Heston Road, Hounslow

- 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 Rajinder Pandher against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 13 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection and use of an outbuilding as a separate residential unit.
 - The requirements of the notice are:
 - i. Cease the use of the outbuilding as a separate residential unit
 - ii. Remove all kitchen and kitchen related facilities from the outbuilding
 - iii. Remove all bathroom and bathroom related facilities from the outbuilding
 - iv. Demolish the outbuilding
 - v. Permanently remove all resultant debris from the Land as a result of carrying out the works above.
 - 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 (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.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and development given the grounds of appeal and points in dispute. Both the appellant and the Council were given an opportunity to comment on this approach and no responses were received.

The Notice

3. The breach of planning control alleged relates to the erection of and use of an outbuilding as a separate residential unit. The Council's officer report refers to the use of the outbuilding as a self-contained dwelling. The appellant has not disputed this description and consequently, it is on this basis that I have considered the appeal.

The appeal on ground (c)

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
5. By virtue of s.55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
6. The appellant's case on this ground is limited, he stated that the outbuilding is an outbuilding under 30sqm and constitutes permitted development. However, no further explanation or justification was provided to support their claim.
7. The outbuilding is a single storey structure located to the rear and within the curtilage of the bungalow, 16A Worthing Road.
8. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Article 3 Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. The Council's evidence indicated that they visited the property on three occasions between 30 August 2016 and 25 May 2017. The Council stated that on each occasion the outbuilding was lived in as a separate residential unit. A photograph submitted by the Council shows the inside of the outbuilding and a sleeping and kitchen area are evident. The appellant provided no evidence to dispute that the outbuilding is being used as a separate residential unit.
10. The erection and use of the outbuilding as a separate residential unit (dwellinghouse) is not an incidental use. The development would not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.
11. In any event, in order to benefit from any planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition five attached to planning permission 01237/16A/P14 restricts the erection of structures and buildings within the curtilages of 16A and 16B Worthing Road.
12. Consequently, notwithstanding the use, the erection of the outbuilding even if used for incidental purposes, would not be permitted by the GPDO. It is development for which express planning permission is required, and that could only be granted on application made to the local planning authority in the first instance.
13. I conclude that the appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no

record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (d)

14. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
15. It seems to me that the Council are alleging the erection of an outbuilding and its use as a separate residential unit (dwellinghouse), namely operational development. By virtue of s.171B(1) of the 1990 Act where there has been a breach of planning control consisting of the carrying out of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach, being the date the outbuilding was substantially completed.
16. Alternatively, even if the Council are alleging the erection of an outbuilding and its subsequent use as a dwellinghouse, that is to say a material change of use to a dwellinghouse, the relevant period would be four years (by virtue of s.171B(2) of the 1990 Act).
17. Consequently, in either case the material date is four-years prior to the date of issue of the notice, namely 13 September 2015.
18. The appellant provided no evidence to substantiate their claim that the outbuilding was erected more than four years ago. The Council's evidence included an email from a third party, dated 9 March 2016, raising concerns about the erection of an outbuilding. A photograph attached to the email appears to show the building, subject of the appeal, under construction.
19. In an appeal on ground (d) the burden of proof lies with the appellant. In the absence of contrary evidence, I have no reason to doubt that the building was under construction and not substantially complete in March 2016, after the material date. Consequently, the appellant's ground (d) claim cannot succeed.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR