



Appeal Decision

Site visit made on 27 July 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/A5270/C/20/3248879

52 Kingshill Avenue, Northolt, Middlesex UB5 6LG

- 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 Farook Srajaddini against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 19/EN1601, was issued on 31 January 2020.
 - The breach of planning control as alleged in the notice is the erection of a separate self-contained residential dwelling at the rear of the premises.
 - The requirements of the notice are:
 1. Cease the use of the separate self-contained dwelling;
 2. Remove the line of fencing separating the dwelling from the garden of the main house;
 3. Demolish the dwelling; and
 4. 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) (f) and (g) 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 varied by: the deletion of three months and the substitution of five months as the time for compliance. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Procedural matter

2. The appellant did not attend the arranged site visit and therefore I was unable to gain access to the outbuilding. I was however given access to the rear garden and was able to see the building. Upon review of the appeal and the submissions from the Appellant and the Council I consider that a logical decision on the appeal can be reached without the need for a further scheduled site visit. I have therefore considered the appeal on this basis.

The site and relevant planning history

3. The appeal site comprises a two storey semi-detached dwelling in a predominantly residential area. The building has been sited in the rear garden of the dwelling. The rear garden has been sub-divided with a timber fence and a side access leads from the highway to an existing garage, the rear garden and the outbuilding.

4. Since the appeal was submitted a conditional planning application was granted on 24 June 2020, for the 'retention of single storey detached garden building to be used as a summerhouse' (Ref. 201707HH).

Reasons

Ground (f)

5. An appeal under this ground is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). The notice issued by the Council clearly sought to remedy the breach of planning control. This objective would be achieved through the cessation of the residential use, demolition of the building and restoration of the land.
6. It is the appellant's case that whilst the enforcement notice requires the demolition of the outbuilding, there is no longer a need to demolish the building as the above planning permission has since been granted to retain it for use as a summerhouse. The appellant has asked for the notice to be varied to reflect this permission.
7. The planning permission granted by the Council is subject to a number of conditions. I have considered these conditions and agree with the Council that they are necessary. In contrast, if I was minded to vary the notice as suggested, this would bring s173(11) into effect and would mean that compliance with the notice would give rise to an unconditional planning permission for the outbuilding resulting in potential conflict between these permissions.
8. S180(1) of the Town and Country Planning Act 1990 Act (as amended) provides that where, after the service of a notice, planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.
9. Drawing the above points together, I find that a variation to the notice, as suggested, would result in potential conflict between the notice and the conditional permission. Consequently, under these circumstances, I find that the requirements are not excessive and the appeal on ground (f) fails.

Ground (g)

10. For an appeal under ground (g) it is necessary to consider whether the compliance period, of three months, is too short.
11. I am mindful of the uncertain situation that currently exists with regard to COVID-19. The status of the building could not be confirmed at the site visit and remains unclear. The officer's report for the planning application, suggests that the breach has been rectified, although does not provide any further details. It is common ground that the kitchen has been removed. However, the appellant's final comments dated 1 June 2020 suggest that although eviction is underway it may not be completed until later in the year. If this is the case and

the building is still occupied, the decision I have made will result in disturbance and upheaval for these residents.

12. Accordingly, in view of the ongoing uncertainty about the extent that compliance has been achieved, I consider that a small extension to the time of compliance to five months would be reasonable. This would give time to ensure that the residential use ceases with any remaining compliance works carried out. The appeal on ground (g) therefore succeeds in this regard.
13. If additional time beyond this is required, the Council have referred to s173A where they have the power to extend the time for compliance with the notice. It is important to note that this is a purely discretionary power within the Councils' gift to exercise.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Hilary Orr

INSPECTOR