
Appeal Decisions

Site visit made on 25 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7th October 2020

Appeal A: APP/A5270/C/19/3241896

Appeal B: APP/A5270/C/19/3241897

48 Montague Road, Southall, UB2 5PD

- 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 A and B are made by Mrs Ranjit Kaur Sidhu and Mr Harjit Sidhu respectively against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 19EN1250(2), was issued on 24 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission material change of the rear garden outbuilding to use as a separate self-contained dwelling.
 - The requirements of the notice are 1. Cease the use of a rear garden outbuilding to use as a separate self-contained dwelling; 2. Remove all kitchen facilities and drainage connections that facilitate the use of a rear garden outbuilding as a separate self-contained dwelling; Remove the bathroom facilities and drainage connections that facilitate the use of a rear garden outbuilding as a separate self-contained dwelling; and 4. Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matter

2. The appeals originally included an appeal under ground (a) of section 174(2) of the 1990 Act but this was subsequently withdrawn prior to determination.

Ground (d) and hidden ground (b)

3. To succeed on ground (d) in this case it is necessary to prove that no enforcement action could have been taken on the date that the notice was issued because the outbuilding had been used continuously as a separate self-contained dwelling for a period of at least 4 years.
4. The Council have not disputed the appellants' case that the outbuilding was built in mid-2000s or argued that planning permission would have been required for the conversion works.

5. Harjit Singh Sidhu has provided evidence in a sworn affidavit that the outbuilding was converted to provide independent accommodation between mid-August and late October 2014 and that it was then occupied by the appellants' two adult children, Simran Singh Sidhu and Himat Kaur Sidhu from 1 November 2014. Photographs dated from September 2014 have also been provided which appear to show the conversion works part way through (although the dates shown on the photographs may not be accurate). Simran Singh Sidhu has also provided a sworn affidavit that he has been living in the outbuilding since 1 November 2014. The Council have not provided any direct evidence to rebut these elements of the appellants' evidence. A third party representation (which is unsworn evidence) states that the works were completed about 2 years ago with people living in it at some subsequent date but, the evidence indicates, on the balance of probability, that the works were undertaken in 2014.
6. However, whilst the appellants' evidence is sufficiently precise and unambiguous on the balance of probability regarding the date that the building work was undertaken and the date that the outbuilding began to be used for residential purposes, it is less clear regarding whether that use was as a separate self-contained dwelling. Simran Singh Sidhu refers to the outbuilding as an independent residential unit and Harjit Singh Sidhu states that his son and daughter have been living independently since 1 November 2014. However, no corroborating evidence such as separate utility bills or further details are provided to show as to what this means in practice. The electoral register only shows one record at 48 Montague Road for all occupants (some of the records including Simran Singh Sidhu and Harjit Singh Sidhu notwithstanding some changes in the individuals recorded). The Council has also provided the Council Tax information which show that there is only one account registered to the address.
7. In addition, the appeal form and statement of grounds and facts originally submitted stated, in relation to the ground (a) appeal which was subsequently withdrawn, that no separate planning unit had been created and that "it is not uncommon to use an outbuilding to make life easier for the members of the family". The observations during the site visit tally with the appeal as originally submitted i.e. that the accommodation in the outbuilding was a use ancillary to the main dwelling and that 48 Montague Road is therefore a single planning unit. The outbuilding is accessed through a narrow gated alleyway to the side of the main dwelling and appears to share the garden. During the visit the occupant of the outbuilding also entered into the rear of main house which supports the case that the use of the outbuilding is ancillary rather than in a separate use. The evidence submitted in the appeals is not sufficiently clear and precise on the balance of probability to show that the outbuilding has been used as a separate self-contained dwelling continuously for the four years prior to the issue of the notice. The appeal on ground (d) cannot therefore succeed.
8. Whilst the appellants have not specifically pleaded ground (b), which is that the matters alleged have not occurred, they have made submissions that support it, and the observations during the site visit also lend weight to an appeal on this basis. To succeed on ground (b) it is necessary to prove that the matters stated in the notice have not occurred. The outbuilding contains a bathroom and kitchen, facilities that would normally be for purposes integral to the use as a

dwelling-house but case law provides that this type of annexe, often referred to as a granny annexe, can remain part of the same planning unit depending on the specific circumstances of the case. In this case, on the evidence submitted by the appellants it appears on the balance of probability that the planning unit remains in a single family occupation (albeit of three generations) and there has not been a change of use of the outbuilding to a separate self-contained unit as alleged in the notice.

9. The Council have argued that the occupation of the main house is not that of a single household and that there are differences between the evidence submitted by the appellants and the information recorded on the electoral register. The appellants have suggested that only the edited version (known as the Open Register) has been included and, whilst it is unclear on the evidence whether this is the case, the appellants have provided a consistent and sufficiently precise account on the balance of probability regarding the details of the occupants of the main house and outbuilding throughout the course of the appeal. Harjit Singh Sidhu provided evidence in his sworn affidavit that at that time his family consisted of two elderly parents, three children, himself and his wife which accords with information regarding the names on the electoral submitted in the final comments.
10. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

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INSPECTOR