



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2020

Appeal Ref: APP/F5540/C/19/3238133

76 Summerhouse Avenue, Hounslow TW5 9DF

- 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 Mrs Majit Kaur Eita Bains against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice, numbered OUTF/2018/00348, was issued on 10 September 2019 ('the notice').
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding to 2 (two) separate self-contained residential units.
 - The requirements of the notice are: (1) Cease the use of the outbuilding for two separate residential units; (2) Remove all of the bathrooms and associated bathroom facilities (i.e. shower/bathing facilities, WC, wash basin and pedestal. In addition to the above items all water piping and all waste connections); (3) Remove the two kitchens and associated kitchen facilities (i.e. all kitchen and washroom facilities, facilities to include the following items: - kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood. In addition to the above items all water and gas supply piping and all waste connections); and (4) Remove all the resultant debris from the Land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(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 Matters

2. The appeal was initially made under ground (b); however, the appellant agreed that the evidence she put forward was suited to ground (d) and the appeal proceeds on this basis.
3. Given the ground of appeal, it was my opinion that no site visit was required. The parties were asked if they had any objection to this. The Council had no objections, but no response was received from the appellant. As neither party would be prejudiced, I did not visit the site and the appeal has been determined on this basis.

Reasons

4. The case to be made under ground (d) is at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is on an appellant to prove their case on the balance of probability. Her case was set out in the 'Grounds and Facts' section of the appeal form.

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5. The appellant states that the outbuilding was “pre-built and part of the property” when she purchased the property some 25 years ago. This is repeated in an answer to a question on a Planning Contravention Notice (PCN) served by the Council on 31 October 2019. This is, to a large degree, immaterial. The notice is not directed at the building itself, but at its use as two self-contained flats and these submissions do not address this..
 6. In the Grounds and Facts, the appellant states that her son resided in “the flat in question”. No period is given for this use. However, in any event, this points to the use of the outbuilding as a single flat. As the notice refers to two flats, and given the absence of the dates it was used for residential purposes, this does not take the appellant’s case forward.
 7. In her answer to its question 7 on the PCN, asking when the outbuilding was split into two self-contained units, the appellant answer includes “15 years ago”. Given the penalties for knowingly or recklessly providing answers to questions in a PCN that are false or misleading, I give this answer substantial weight.
 8. However, I do not find that this answer, of itself or in combination with the evidence provided by the appellant, provides the weight of evidence needed to prove the case on the balance of probability.
 9. The appellant states that she was trying to find the information required for the submission of an application for a certificate of lawful development. I am not sure whether this relates to the breach of planning control alleged in the notice. Leaving aside the question as to whether an application for a certificate could be approved where an enforcement notice has been issued, I have not been told that any such application was submitted.
 10. The appeal proceeded along a statutory timeframe. Therefore, I do not find that the appellant had insufficient time to make her case. In reaching this position, I have taken into account the personal circumstances she refers to.
 11. Overall, I find that the evidence put forward by the appellant to show that the outbuilding has been used as two flats for more than 4 years to be scant. It does not pass the tests of precision and ambiguity and does not prove the case on the balance of probability.

Conclusion

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

Roy Curnow

INSPECTOR