
Appeal Decision

Site visit made on 7 September 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st OCTOBER 2020

Appeal Ref: APP/U5930/C/19/3235869
113 Carlton Road, London, E17 5RA

- 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 Jabbar Rzayev against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 083658, was issued on 26 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission 1. The material change of use of the outbuilding to form a self-contained residential flat (Use Class C3); 2. The associated building works to convert the outbuilding into a self-contained residential flat.
 - The requirements of the notice are 1) Cease the use of the outbuilding as a self-contained residential unit; 2) Remove all additional energy meters from the Land than facilitate the use of the outbuilding as a self-contained flat so that only one of each (gas/electricity) remains; 3) Remove the kitchen, sinks, cookers, washing machines, fridge freezers and other kitchen related accessories, fixtures and fittings from the outbuilding that facilitate the use of the outbuilding as a self-contained flat; 4) Remove the shower, toilet, sinks and associated fixtures and fittings from the outbuilding that facilitate the use of the outbuilding as a self-contained flat; and 5) Remove all resulting materials, rubble and general detritus from the Land following compliance with requirements 1 – 4 resulting from the works.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended ("the TCPA"). The application for planning permission deemed to have been made under section 177(5) of the TCPA as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the word "flat" each time that it is used and the substitution with the word "unit" in the allegation in paragraph 3 and in the requirements numbered 2, 3 and 4 in paragraph 5. Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

The Notice

2. The allegation and requirements on the notice incorrectly describe the self-contained residential unit at the rear of the garden as a flat. The outbuilding is detached from the host dwelling and all of it is in residential use and it is therefore not correct to describe the unit as a flat. It was clear to the appellant that the notice was referring to the outbuilding and, as I can correct the notice

without prejudice to the parties, I consider this to be the appropriate action in this case.

Ground (c)

3. To be successful on ground (c) the appellant would need to show that the change of use of the outbuilding to a self-contained residential unit does not constitute a breach of planning control. The parties do not dispute that there has been a change of use of the outbuilding and that it was being used as a separate residential unit at the time of the service of the notice. Such a material change of use is classed as development¹ and the outbuilding does not have planning permission for this use.
4. The appellant's argument under ground (c) is that the development would have the benefit of permitted development rights as a summerhouse ancillary to the main accommodation. However, it is not the appellant's case that it has been used as an ancillary summerhouse, or was intended to be used as such when it was constructed. The permitted development rights would not therefore apply and the appeal under ground (c) cannot succeed. There is no dispute between the parties regarding the operational element of the development, i.e. the physical structure of the outbuilding, which the Council accepts that this was completed more than 4 years prior to the issue of the notice.

Ground (d)

5. The alleged breach of planning control is the material change of use of the outbuilding. The appellant's evidence is that the change of use took place more than 4 years prior to the issue of the notice and that it has been used as a separate self-contained residential dwelling continuously throughout that time. This is an argument under ground (d), that no enforcement action could be taken in respect of the breach of planning control.
6. It is accepted by the parties that the outbuilding was completed during 2013. It is also evident that the host property was an HMO in 2013 and that the housing standards department of the Council were writing to the appellant at an address other than 113 Carlton Road. The Council records show visits by officers on 29 April 2013 and 10 August 2013 which confirm that there was an outbuilding at the rear of the garden and record that it was not being used for residential purposes. It is unclear from the records whether there was a further visit from the Council on 30 September 2013. But in any event, all of these dates fall before the date 4 years prior to the issue of the notice, i.e. before 25 July 2015, so are inconclusive evidence when considered alone.
7. The Council does not have any other direct evidence of its own. However, it is for the appellant to prove the continuous 4 years use as a separate dwelling prior to 26 July 2019 on a balance of probabilities, and the evidence must be sufficiently precise and unambiguous. The appellant has provided signed statements regarding the residential use of the outhouse, from residents of the outbuilding, the host dwelling and two neighbouring properties (108 and 110 Carlton Road). The evidence submitted covers differing time periods but two clear statements were provided from occupants of the outbuilding from March 2015 to April 2016 (Zarina Rozykulyyeva and Shamurad Imamov). The evidence submitted by various occupants of No.113 and the neighbouring

¹ Section 55(1) of the TCPA.

houses when taken as a whole state that the outbuilding was continuously occupied as a self-contained residential unit from at least March 2015.

8. The appellant's own evidence is contradictory as he states "I am residing at the residential outbuilding myself since 12/01/2012 with my wife and daughter" (which was the date that he states he became the freeholder of 113 Carlton Road) but he also states that "the rear outbuilding has been built in March 2013". No further details such the names of any occupiers, tenancy agreements, separate utility bills or other information has been submitted and it is unclear as to whether appellant has lived in the outbuilding himself. None of the statements are sworn evidence but all confirm that the outbuilding has been used as a self-contained residential dwelling without interruption since the date on which the signatory first became aware of it and I give them considerable weight in the absence of any contradictory evidence. There is a high degree of consistency in the statements provided by the occupants of the outbuilding itself as well as residents of No.113 and other nearby properties.
9. A statement has also been submitted by Christopher Brennan, who does not live locally, which confirms that to the best of his knowledge and belief the appellant has lived at 113 Carlton Road all of the time that he has known him (which is since approximately 2012) and that he is aware of the existence of the outbuilding, but Mr Brennan does not provide any evidence regarding the use from his personal knowledge or observations. I accordingly give this evidence very limited weight.
10. It appeared during the site visit that the outbuilding was occupied with all rooms in residential use. It also appeared that the outbuilding and its residential fixtures and fittings (kitchen and bathroom etc) had probably been used for at least several years, which accords with the dates provided by the appellant.
11. The Council's records from 2013, which show that the outhouse was not in residential use, are from dates earlier than 4 years immediately prior to the service of the notice (i.e. from dates prior to 25 July 2015) and so do not directly contradict the appellant's evidence regarding that relevant period. The Council's records from 2013 do contradict the appellant's own statement as he says that the outbuilding has been in continuous use since at March 2013. However, in light of the several other statements provided, which corroborate each other in relation to the period from March 2015 onwards, it is likely on a balance of probabilities that the necessary period of use did occur. In addition, the Council has not provided any other evidence to contradict the evidence provided by the appellant in relation to that relevant time period.
12. The degree of consistency in the statements provided by the appellant when considered with the other evidence submitted and the observations during the site visit make the appellant's case entirely plausible. On the balance of probabilities, on the evidence provided by the appellant, and in the absence of any contradictory evidence, it is more likely than not that the outbuilding has been used as a separate residential unit continuously for more than 4 years prior to the date of the issue of the notice. The appeal therefore succeeds on ground (d).

Conclusion

13. From the evidence I conclude that the allegation in the notice of the material change of use of the outbuilding to form a self-contained residential flat is incorrect, in that the residential use is not in a flat, but rather in a self-contained unit. Accordingly, I shall correct the allegation and the requirements in the notice to reflect this.
14. As to the appeal on ground (d) I am satisfied on the evidence that the outbuilding has been used as separate residential unit continuously for a period of 4 years prior to the service of the notice and the appeal on this ground should succeed in respect of those matters which, following the correction of the enforcement notice, are stated in it as constituting the breach of planning control. In view of the success on ground (d) the enforcement notice will be quashed, and the appeal under grounds (a) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Zoë Franks

INSPECTOR