
Appeal Decision

Site visit made on 6 October 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/N5090/C/20/3254544

Land at 48 Holders Hill Avenue, London NW4 1ET

- 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 Ellis Samuels against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 12 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding in the rear garden to a separate dwelling.
 - The requirements of the notice are:
 - 1 Cease the use of the outbuilding as a separate dwelling.
 - 2 Permanently remove all kitchen facilities from the outbuilding, including kitchen units, sinks, cookers and food preparation areas.
 - 3 Permanently remove all bathroom facilities from the outbuilding, including toilets, basins, baths and showers.
 - 4 Permanently remove all constituent materials resulting from the works in 2. and 3. above from the property.
 - The period for compliance with the requirements is five 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of requirement number 3 from section 5 of the enforcement notice. Subject to this variation, the enforcement notice is upheld.

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use as a dwelling to cease and the removal of those facilities which are considered to facilitate the use, I find the purpose is to remedy the breach of planning control.
3. The appellant's case on this ground is that the outbuilding was originally erected and used as a gym with shower/wc, for purposes incidental to the dwelling 48 Holders Hill Avenue, a development for which a lawful development certificate (proposed) was granted by the Council¹. They stated it was used this way for a few years before the dwelling was formed and therefore, it is

¹ Application reference F/03753/13

- excessive to require the shower/wc facilities to be removed as they already existed.
4. It is a well-established principle that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. However, there is also a right under section 57(2) of the Act to revert to the last lawful use following the issue of an enforcement notice.
 5. The Council have not sought to demonstrate that the outbuilding was erected as a dwelling, indeed the allegation relates to the material change of use of the outbuilding to a separate dwelling.
 6. The appellant has not provided any substantive evidence to demonstrate the outbuilding was erected as a gym with shower/wc and that is the lawful use, nor have the Council provided evidence to contradict this contention. Consequently, there is no evidence to suggest that the bathroom facilities were installed solely for the purpose of facilitating the use as a dwelling.
 7. It is not unusual nor ordinarily excessive for a notice directed at a material change of use to a dwelling to require the facilities which enable its use as such to be removed. However, it is necessary for me to consider whether there is an obvious alternative which would overcome the planning difficulties, at less cost and disruption.
 8. In this case, on balance, it seems probable that the outbuilding was erected as an incidental gym with shower/wc. Consequently, and as in order to remedy the breach of planning control it is sufficient to require the use as a separate dwelling to cease and the kitchen facilities to be removed, I find that the requirement to remove all bathroom facilities is excessive. I will therefore vary the notice accordingly prior to upholding it. The appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

9. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that five months is not enough time to ensure that the move can be carried out smoothly, especially if it terminates in a cold season and suggested a period of eight months would be more appropriate.
10. The purpose of the time period within an enforcement notice is to allow for the unauthorised use to cease and for the physical works associated with the use to be removed.
11. The appellant has provided little substantive evidence about their circumstances or explanation about why moving in the cold season would be particularly problematic. I cannot therefore be certain, on the basis of the evidence before me, that a period of eight months is necessary to secure compliance with the notice, or that the period of five months specified in the notice is not proportionate to the breach of planning control that has occurred.
12. Accordingly, the appeal on ground (g) fails.

Conclusion

13. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and I shall vary the enforcement notice prior to upholding it.

Felicity Thompson

INSPECTOR