
Appeal Decision

Site visit made on 19 October 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2020

Appeal Ref: APP/A5270/C/20/3245388

4 Longhook Gardens, Northolt, Middlesex, UB5 6PE

- 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 Mazhgan Dildar against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 19EN1538, was issued on 19 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the rear outbuilding to use as a separate self-contained residential dwelling.
 - The requirements of the notice are 1. Cease the use of the outbuilding as a separate self-contained dwelling; 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential unit; 3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; 4. Remove the fence line separating the rear outbuilding from the garden of the main dwelling; and 5. Remove the resulting 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)(d), (f) and (g) 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.

Ground (d)

2. An appeal on this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters on the notice. The appellant's case is that the outbuilding has been used continuously as a separate self-contained dwelling since 1 October 2013 which is more than the necessary 4 years prior to the service of the notice to make it immune from enforcement action.
3. It is not disputed that the outbuilding was at some point in a use ancillary to the host dwelling or that it has been used as a separate self-contained residential dwelling. The disagreement in this appeal is regarding when the continuous use began.
4. The burden of proof is on the appellant who must prove the four year period of continuous use as a separate self-contained residential dwelling on the balance of probabilities. The appellant has not provided sworn evidence of her own despite living at No. 4 with her husband (Mr Masoud Dildar, the registered

owner) and presumably being in the best position to give evidence as to the use of the outbuilding. Neither has the appellant provided sworn statements, or indeed any kind of direct evidence from any of the alleged tenants regarding the actual use or occupation of the outbuilding. Mr Dildar has also not provided a statement during the course of this appeal. The Council received a response to a Planning Contravention Notice dated 5 November 2019 submitted in Mr Dildar's name which stated that the outbuilding had been let out to rent to paying tenants since 25 October 2019 and had been used as a summer house and garden store prior to 1 September 2019. Mr Dildar has since stated in interview under caution that he did not complete the PCN response or provide the information in it. The appellant did not provide a response to the PCN although it was also served on her.

5. The appellant has provided rent books for B Ahmad between October 2013 and September 2017, for M Gammon between October 2017 and September 2019 and for L Baciú from October and December 2019. These documents were produced and filled in by the appellant and are not corroborated in any way. The appellant has provided also copies of tenancy agreements to cover the period from 1 October 2013 to September 2019 which refer to 4A Longhook Gardens but the agreements do not include any further description of the demised property or an attached plan. The tenancy agreements are not supported by statements from the tenants or the appellant regarding the use and are not proof when taken alone of actual or continuous occupation. Bank letters addressed to B Ahmad at 4A Longhook Gardens have been provided from various dates between October 2013 and May 2018, although according to the rent books provided, he was not living in the outbuilding after September 2017. There is no evidence of rental payments or a security deposit actually being made e.g. bank records showing receipt of monies, or details of rent received as part of the appellant's tax returns.
6. The tenancy agreements state that the tenant is responsible for the payment of all utilities but no evidence of any separate utility accounts has been provided. In addition, no other evidence of a separate residential unit such as building regulations, council tax accounts or electoral roll records have been produced in support of the appellant's case. A separate council tax account for the outbuilding was registered in June 2020 (backdated to 23 September 2019 which was the date of the visit by the Council's housing officer) and only the appellant and her husband registered on the electoral roll between 2013 and 2019. The electoral records from February 2020 also show Elisabete D O Pires at 4 Longhook Gardens but the tenancy agreement and rent book provided from 7 October 2019 is with Lulian Baciú and does not accord with this additional name on the electoral roll.
7. It appears from the aerial photographs submitted by the Council that the fence allowing a private access from the side entrance to No.4 from the front street to the outbuilding at the rear of the garden was erected between 2016 and 2019, and this has not been disputed by the appellants during the course of this appeal. Whilst the fence creates a self-contained access to the outbuilding, it does not help to prove that the separate use began prior to 19 December 2015 (i.e. more than 4 years prior to the service of the notice) as the earliest date that it appears to have been erected is during 2016.

8. The appellant has provided statements described as sworn evidence from four different people who live in the area ("Appendix 2 Sworn Statements 1"). These statements do not contain the correct statutory declaration, and it is unclear as to whether they have been witnessed by an authorised person, and do not therefore meet with the necessary requirements to make them sworn evidence. Irrespective of whether this evidence is sworn, it does not prove or corroborate the continuous use of the outbuilding as a separate dwellinghouse for a 4 year period prior to the issue of the notice. The individuals giving the evidence could only have at best an obstructed view of the outbuilding at the rear of No. 4 behind three wooden gates and high solid fencing, and would not have been able to clearly see whether it was occupied continuously during the relevant time period. Furthermore, the statements of the named individuals are clearly not in their own words as they consist of identical wording. I therefore give these statements little weight in my consideration of the use of the outbuilding. The appellant's Appeal Statement also refers to "Sworn Statements 2 and 3" but these were not received as part of the appeal.
9. I do not find that the appellant has provided sufficient evidence on the balance of probabilities to prove the continuous use of the outbuilding as a separate dwelling for the four year period. The appeal on ground (d) cannot therefore succeed.

Ground (f)

10. The basis of an appeal on this ground is that the steps required exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the breach. The purpose of the notice in this case is the remedy the breach of planning control which is the material change of use of the outbuilding to a separate residential unit.
11. The appellant has argued that the shower room would be appropriate in the use of the outbuilding as ancillary to the dwellinghouse. However, no particular reason has been provided as to why the future use of the outbuilding ancillary to the dwellinghouse would require an additional shower room and the appellant has not provided a strong argument for its retention, notwithstanding that other properties may have a lawful ancillary use with bathroom facilities. In any case, allowing such facilities to remain would make the building easily adapted for use as a separate dwelling in the future.
12. The appellant also seeks to retain the fence and gate that separates the rest of the garden from the outbuilding and creates the enclosed access. It divides the property into two units as part of the unauthorised material change of use and I am satisfied that it should also be removed to remedy the breach.
13. For the reasons set out above, the lesser steps suggested would not effectively remedy the breach, which is the purpose of the notice. The appeal on this ground fails accordingly.

Ground (g)

14. The appellant has requested 6 months in which to comply with the terms of the notice if upheld. The appellant has not substantiated why the additional time would be required and I am satisfied that 3 months is a reasonable time period in this case. However, the Council does have power under section 173A(1)(b)

of the 1990 Act to extend the period for compliance if necessary, particularly in light of the ongoing implications of the Pandemic.

Zoë Franks

INSPECTOR