The Planning Inspectorate

# Appeal Decisions

Site visit made on 13 October 2020


**by M Madge DipTP, MA MRTPI**

**an Inspector appointed by the Secretary of State**



**Decision date: 30th November 2020**


**Appeal A: APP/A5270/C/20/3244244**
**Appeal B: APP/A5270/C/20/3244245**
**Appeal C: APP/A5270/C/20/3244246**
**Annexe rear of 76 Scotts Road, Southall, Middlesex UB2 5DE**

- 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 are made by Mr Laimber Johal (Appeal A), Mrs Kulwant Kaur (Appeal B) and Miss Pavendeep Johal (Appeal C) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered 19EN1333(1), was issued on 21 November 2019.
- The breach of planning control as alleged in the notice is without planning permission: Material change of use of detached rear outbuilding to use as a self-contained dwelling.
- The requirements of the notice are:
  1. Cease the use of the outbuilding as a separate self-contained residential dwelling;
  2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling;
  3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential 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) of the Town and Country Planning Act 1990 as amended.

## Decision

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

## Preliminary matters

2. The notice relates to a single storey building and identifies the property as "Annexe rear of 76 Scotts Road". The property is also identified as "R/O 76 Scotts Road" by the Council in respect of Council Tax and as the "Annexe, R/O 76 Scotts Road" by The Valuation Office. For consistency I shall refer to the property as "the Annexe".

3. Planning permission (ref: P/2008/4469) was granted on 23 March 2009 for, amongst other things, retrospective planning permission for a rear single storey extension and outbuilding. There is no disagreement that the Annexe is the outbuilding referred to in that permission.

## Ground (d)

4. For an appeal to succeed on ground (d), the appellant should show that the use had achieved immunity at the time the notice was issued. S171B(2) of the Act[1]

[1] Town and Country Planning Act 1990 as amended

states "where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach". The onus of proof is on the appellants and, while their evidence does not need to be corroborated by independent evidence in order to be accepted, they must provide sufficient precise and unambiguous evidence to justify, on the balance of probability, that the use of the Annexe changed to a separate self-contained dwelling on or before 21 November 2015[2] and that such use then continued without significant interruption for a period of 4 years after the date of change.

5. Appellant A contends that the building was occupied by his daughter as a separate self-contained dwelling from 8 June 2009 until 2014. On this basis, the material date for immunity would be 8 June 2013. Since then the Annexe has been used by various family members, friends and a tenant of the main dwelling for residential purposes.

6. The Council claim that, while the Annexe has been used as a self-contained dwelling, there has been a break in occupation between 2014 and 2017, during which they could not have enforced. As such the start date for the period of immunity would have restarted and the relevant 4 years period has not been achieved.

*Assessment of the evidence*

7. The appellants advise that the Johal family lived at 82 Scotts Road and not No76. When No82 became too small for the Johal family, a daughter moved into the Annexe; on 8 June 2009. This date coincides with a letter from The Valuation Office, which confirms that the property comprises a dwelling for council tax purposes. While it is doubtful that the residential occupation commenced on the exact date of The Valuation Office's letter, an earlier letter from the Council, dated 5 June 2009, refers to the 'un-banded property' and its valuation for registration purposes. This lends credence to the Annexe being occupied as a self-contained residential dwelling by that date.

8. The appellants go on to advise that the daughter continued to live in the Annexe until 2014, at which time the family moved to a larger home that could accommodate all family members. Correspondence in respect of a council tax exemption being applied due to the daughter's student status in 2010 is provided along with council tax bills for 2017/2018, 2018/2019 and 2019/2020. Since the daughter moved out the Annexe has been used by family members, friends and a tenant of No76 as a residential property and a place to 'escape' their respective families.

9. The Council contends that their evidence contradicts the appellants' version of events. The Council's evidence covers the period September 2014 to the date the notice was served. However, there is no evidence to dispute the appellants claim that the breach began in June 2009.

10. The courts have held in Gravesham[3] that a distinctive characteristic of a "dwelling-house" was its ability to afford those who used it the facilities for day to day private domestic existence. Furthermore, not every case was to be determined by having regard only, or even primarily, to the use to which the

[2] Four years prior to the issue of the enforcement notice
[3] *Gravesham Borough Council v Secretary of State for the Environment and Another (1984) 47 P. & C.R.142*

building was put, nor was the duration or frequency of the user always relevant.

11. The Annexe is identified in all correspondence dating back to 11 May 2009 as having an independent postal address. Furthermore, the appellants did not reside at No76 nor is there any suggestion that the daughter's occupation of the Annexe was ancillary to the occupation of No76. While the Annexe may be located at the rear of No76, I find that its occupation and use is unrelated to the residential occupation of that dwelling.

12. I recognise that the appellants' evidence relies heavily on Council Tax records and the registration of a property for Council Tax purposes and exemption correspondence and this does not necessarily confirm the Annexe's occupation as a self-contained dwelling. However, the appellants' own evidence does not need to be corroborated by independent evidence in order to be accepted. I also find it unlikely that someone would register a property for council tax purposes without the intention of that property being occupied as a dwelling. Against this background, it would be reasonable to find that, as a matter of fact and degree, the breach occurred by 8 June 2009 and the relevant 4 years period would therefore expire on 8 June 2013.

13. The Council's evidence may show that a bed was not present during their site visit on 9 February 2014, but this only provides a snapshot in time, and could corroborate that the daughter moved out in 2014. It also does not cover the time period from June 2009 to June 2013. The Annexe has a fully fitted kitchen and bathroom, and while the furniture provided within the central living space may have changed over time, I find it has all the facilities for day to day private domestic existence. The Council has provided no evidence to contradict the appellants version of events for the relevant 4 years period.

14. Having established that the Annexe has been used as a separate self-contained dwelling for the relevant period and thus become lawful by virtue of s191(2)(a) of the 1990 Act, there must have been no significant interruption of that use. It is therefore necessary to consider whether the use has been lost by way of abandonment, the formation of a new planning unit or by way of material change of use.

15. The annexe may not have been used as over-night sleeping accommodation, but it has continued to be used as a place to carryout everyday domestic activities, unrelated to the residential occupation of No76. The planning unit remains the same as it has been since 8 June 2009. Not using the Annexe as a place to sleep or charging a rental income does not materially change its use in planning terms. I therefore find that the use as a self-contained residential dwelling has not been lost through abandonment, formation of a new planning unit or material change of use. There has therefore been no significant interruption of the use as a self-contained residential dwelling.

**Conclusion**

16. For the reasons given above, I conclude that the appellants have provided sufficiently precise and unambiguous evidence to justify, on the balance of probability, success under ground (d). The enforcement notice will be quashed.

*M Madge*

INSPECTOR