The Planning Inspectorate

Appeal Decision

Site visit made on 17 November 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2020

Appeal Ref: APP/A5270/C/20/3250253
10 Beauvais Terrace, Northolt, Middlesex UB5 6JT

- 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 Sarwan Nahar against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 26 February 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the front of the property to a separate self-contained flat.
- The requirements of the notice are:
  1. Cease the use of the self-contained flat;
  2. Remove the kitchen and drainage connections from the self-contained flat;
  3. Remove the bathroom and drainage connections from the self-contained flat;
  4. Remove the internal partitions that facilitates the use of the front of the property as a self-contained flat;
  5. Remove the external door that facilitate access to the self-contained flat; and
  6. Remove all resultant debris.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by replacing "facilitates" with "facilitate" in requirement 4 and replacing "facilitate" with "facilitates" in requirement 5; and varied by deleting requirement 3. Subject to these corrections and this variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. I have corrected a typographical error in requirements 4 and 5 of the notice, as set out in my Decision above.

Reasons

The ground (c) appeal

3. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because, for example, the alleged breach is not development, or that planning permission has been granted, or that the development is 'permitted development'. The burden of proof in a ground (c) appeal falls on the appellant to make out their case.

4. There is no doubt that the breach alleged in the notice is development, as is declared in section 55(3)(a) of the Town and Country Planning Act 1990 (as amended), (the 1990 Act). Moreover, the breach is not permitted development.

5. The appellant acknowledges that no planning permission exists for the creation of the self-contained unit. Whilst the appellant states that planning permission is not required for the installation of a kitchen or a bathroom, these are not the breach alleged by the notice and are matters for the ground (f) appeal which I deal with below. Taking into account all the above points, the appeal on ground (c) fails.

The ground (d) appeal

6. In an enforcement appeal on ground (d) the burden of proof is on the appellant, the decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities. I must consider whether, prior to the issue of the notice, there had been continuous use of the front of the property as a self-contained flat for 4 years beginning with the date the breach began.

7. The appellant states that his previous tenant, who was in the property for more than 5 years, sublet the front part of the house as a studio/bedsit and that it was occupied by an independent party continuously 'pretty much' since he moved into the house, ie for more than 5 years. The suggestion therefore is that the front part of the property is a separate dwellinghouse that has become immune from planning control under section 171B(2) of the 1990 Act. But the appellant states that there is little evidence that he can provide to demonstrate this and that it is difficult to pinpoint the exact date the subletting commenced.

8. The appellant says, at that time, the unit was internally accessed and separated from the rest of the house by a lockable door. Be that as it may, this does not mean the front of the property was a self-contained flat for the purposes of section 55(3)(a) of the 1990 Act. In other words, there is no evidence that at that time the front of the property afforded those who used it all the facilities required for day-to-day private domestic existence. So I cannot be certain there has been continuous use of the front of the property as a self-contained flat for 4 years beginning with the date of the breach.

9. I have considered Documents 2, 3 and 4 provided by the appellant. But none of these help the appellant's case as they do not prove the front of the property had all the facilities required for day-to-day private domestic existence at the time of those documents, despite the choice of language used by the appellant in Document 2, where occupants were described as 'living in the front room'. Based on the information provided, it seems more likely that the occupants at the time were simply renting a room.

10. The appellant states they wish to be given the opportunity to compile evidence and make an application for a certificate of lawful use. But no significant evidence in respect of ground (d) has been forthcoming since that statement was made in April 2020 and there is no evidence of any progress on such an application. Considering all of the above points the appeal on ground (d) fails.

The ground (f) appeal

11. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by discontinuing any use of the

land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is explicitly stated in section 4 of the notice. As such, requiring the alleged use to cease is not excessive.

12. The appellant states it is not reasonable to require the removal of the kitchen, bathroom and drainage connections as planning permission is not required for their installation. The appellant has made a similar comment in respect of internal partitions that the notice requires are removed. But 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, even if such works on their own might not constitute development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place. So the requirements to remove the kitchen and drainage connections and the internal partitions are not excessive, given it is clear these items have sustained the unlawful use.

13. Whilst the estate agent's brochure I have been provided with carries no date, it describes the appeal property as a single 4 bedroom home, where bedroom 4, downstairs has an en-suite shower room. I have no reason to believe this document does not reflect the condition of the appeal property prior to the breach. So the bathroom and its drainage connections attacked by the notice, referred to in requirement 3, pre-date the breach meaning it is excessive to require their removal. The stated purpose of the notice would be achieved without requirement 3 so it should be deleted. The appeal on ground (f) succeeds to this limited extent.

Other Matters

14. The appellant states that if the use is forced to cease Ealing Council will have to find somewhere else for the tenant to live and that there have never been any complaints from local residents indicating that the appeal development is not harmful to local amenity. But these are planning merits arguments which, as there is no ground (a) appeal before me, I am unable to consider.

Conclusion

15. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice with corrections and a variation.

L Perkins

INSPECTOR