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# Appeal Decision

**by E Griffin LLB Hons**

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

**Decision date: 16 December 2020**

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**Appeal A Ref: APP/A5270/C/20/3250013**

**Appeal B Ref: APP/A5270/C/20/3250014**

**2 Balfour Road, Acton, London W3 0DQ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Florence Kerim and Appeal B is made by Ibrahim Kerim against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 4 March 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of outbuilding to the rear of the garden as a self-contained residential unit.
  - The requirements of the notice are
    1. Cease the use of the rear 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 three months.
  - The appeals are 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 corrected and varied by:
  - Adding the word " the" before the word "outbuilding" in the breach.
  - Adding the words " to use" after the word" garden" in the breach.
  - Deleting the word "dwelling" from requirement 1 in the notice and replacing it with the word "unit".
  - Deleting the requirements numbered 2- 4 inclusive that relate to the kitchen and bathroom and drainage connections and the removal of resultant debris.
2. Subject to these corrections and variations, the enforcement notice is upheld.

## Procedural Matters

3. The words " the" and " the use" are missing from the breach and can be added. The breach in the notice also refers to a self-contained residential unit whereas the requirements refer to a self- contained residential dwelling. The

Council has suggested that requirement 1 be amended so that it matches the breach in referring to " unit " rather than " dwelling" and I agree to that amendment to requirement 1. The breach then reads " Without planning permission, the material change of use of *the* outbuilding to the rear of the garden *to use* as a self-contained unit. I am satisfied that no injustice is caused to any party by these amendments.

4. I considered that the appeal can be determined without a physical site visit due to the nature of the grounds of appeal and the evidence before me. The Council and the appellants did not object to the appeal proceeding on this basis.

### **The appeal under ground (f)**

5. Section 173 of the Town and Country Planning Act 1990 as amended (the Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
6. The notice requires the use of the rear outbuilding as a separate self- contained dwelling to cease. Further to remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling, remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling and remove all resultant debris. The purpose of the notice is therefore to remedy the breach and with regard to ground (f) whether the steps exceed what is necessary to restore the land to its condition before the use took place.
7. The appellants consider that the requirements other than to cease the use are excessive in requiring the kitchen and bathroom to be removed. The bathroom is made up of a sink, toilet and shower area. It has been established<sup>1</sup> 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, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place. The issue therefore is whether the bathroom and kitchen facilities were integral to and solely for the purpose of facilitating the unauthorised use.
8. Planning permission<sup>2</sup> was granted for "a single storey detached garden outbuilding for use as a garden room" on the 27 November 2012 and the approved plan shows a bathroom. The appellants consider that this permission was implemented. However, the photographs and plans provided do support the Council's view that the design with a partially gabled front and pillars and dimensions of the existing outbuilding are different to the garden room outbuilding that received planning permission. I therefore agree with the Council that the planning permission approved in 2012 was not implemented. Nevertheless, it is the use of the appeal building which is being attacked under the notice rather than the building itself as the Council considers the building to be immune from enforcement action.

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<sup>1</sup> Murfitt v SSE (1980) 40 P & CR 254

<sup>2</sup> P/2012/4022

9. The unauthorised use as a self-contained dwelling appears to have commenced in 2018 after the dwelling was re-assessed by the Council which resulted in a 50% increase in council tax. Although the appellants subsequently applied for a Certificate of Lawful Use based upon separate self-contained use, in the absence of any evidence of any separate use pre -2018, the application was refused. The application for the Certificate did however state that the building was initially used as a garden room. There is therefore no evidence of separate use before 2018 although the building was constructed around 2014.
10. The Council states that council tax is payable on a building which is capable of separate occupation whether or not separate occupation takes place and that commonly, this will mean the presence of a kitchen, bathroom and bed. Further, that the separate rating for council tax in 2014 "means that these items were seen and assessed shortly after completion".
11. Evidence has also been provided by the appellants with regard to when the existing facilities were installed. They include a building control certificate dated November 2014 and an email about the description of work being amended although there are no plans, the description clearly refers to WC/shower room.
12. From the photographs and evidence provided, the kitchen consists of a separate area with kitchen cupboards, plug sockets, a sink, kettle and drainage unit. The Council observed a microwave in the living room when they visited the property. A fridge in the kitchen area can also be seen on the photographs. The building control information refers to utility room (no kitchen) and it is agreed that a cooker and cooker points have not been installed. The appellants indicated at the Council's site visit that they intended to install a cooker but were advised not to. The Council refers to no precise and unambiguous evidence that the kitchen and bathroom played a part in the previous lawful use of the outbuilding. However, the presence of the existing features since 2014 together with a bed in a building which the Council accepts has a previous lawful use does indicate to me that the facilities were not installed solely to facilitate the unlawful use which took place around 4 years after the facilities were installed.
13. I agree that what ancillary uses of the building the appellants propose for the future are not defined but the notice clearly requires the cessation of any self-contained use. Any future ancillary uses of the building are not part of my consideration as to whether the existing facilities pre- date and were integral to the unauthorised use.
14. Since the purpose of the notice is to remedy the breach, it is in my view excessive for the reasons given, to require the removal of the kitchen and bathroom that currently exist together with drainage connections. The appeal under ground (f) therefore succeeds.

### **An appeal under ground (g)**

15. Whilst no appeal was lodged under ground (g) which relates to the period for compliance with the terms of the notice, I do have power to vary the period for compliance should I consider it appropriate to do so. In view of the ongoing Covid 19 crisis, I have asked the parties for their views. The period for compliance with the notice is 3 months.

16. The appellant has referred to the Coronavirus Act 2020 and has asked for the period to be extended to 7 months. The appellants' statement dated May 2020 did state that the tenant "will be vacating shortly in order to comply with the notice." However, the appellants have subsequently indicated that it was not the case that the notice had already been served although it is unclear as to why the tenant was leaving shortly if notice had not already been served. A period of 3 months was in force under the Coronavirus Act 2020 for notices served up until the 29 August 2020. The Coronavirus Act 2020 does currently require 6 months' notice to be served for any notices served after 29 August 2020 until March 2021.
17. However, I have no details as to the type of agreement that the tenant has or when notice can be served under that agreement or whether the tenant intends to leave out of choice without notice being served. No details have been provided of the tenant's current circumstances. Given the limited information about the tenant and the indication that he was previously leaving, I do think that the compliance period is reasonable. The Council has referred to its powers under Section 173A of the Act 1990 as amended which allows it to extend the compliance period should there be justifiable reasons to do so. Those powers would include consideration of any relevant legislation. The appeal under ground (g) therefore fails.

### **Conclusion**

18. For the reasons given, I conclude that the requirements which refer to removal of the bathroom and kitchen facilities and drainage connections together with the removal of all resultant debris are excessive to remedy the breach of planning control and to that extent the appeals succeed on ground (f). The appeals on ground (g) fails. I shall vary and correct the enforcement notice prior to upholding it.

*E. Griffin*

INSPECTOR