
Appeal Decisions

Site visit made on 3 December 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 January 2021

Appeal A Ref: APP/D5120/C/20/3250021

Appeal B Ref: APP/D5120/C/20/3250022

Appeal C Ref: APP/D5120/C/20/3250023

Appeal D Ref: APP/D5120/C20/3250023

156 Park Crescent, Erith DA8 3DY

- 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 Mr Jianguo Li against an enforcement notice issued by the Council of the London Borough of Bexley. Appeal B is made by David Elikwu, Appeal C is made by Ligali Ajibola Ayorinde and Appeal D is made by Xiang Li all against the same notice.
- The enforcement notice was issued on 12 March 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a building shown in the approximate location outlined and filled in blue on the attached plan for use as a self-contained unit of accommodation.*
- The notice requires the recipient to:
 - 1) Cease the use of the building shown in the approximate location outlined and filled in blue on the attached plan as a self-contained unit of accommodation.
 - 2) Demolish the single storey rear building shown in the approximate location outlined and filled in blue on the attached plan.
 - 3) Removal of all resultant materials from the land.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeals are dismissed and the enforcement notice is upheld with a variation.

Main Issues

1. The first main issue is whether the development alleged in the notice constitutes a breach of planning control. If so then further issues concern whether the requirements of the notice are excessive and whether the period given to comply with those (or any varied) requirements falls short of what should reasonably be allowed.

Reasons

The appeals on ground (c)

2. The Council alleges the erection of a building for use as a self-contained unit of accommodation. Such a use may be consistent with the maintenance of a single planning unit¹ and the Council does not specifically allege the erection of a separate independent dwellinghouse. The crux of the dispute between the

¹ *Uttlesford DC v SSE and White* [1992] JPL 171

- main parties is whether the building that has been constructed benefits from permitted development rights or has been constructed without planning permission.
3. The background to the matter is that a number of planning or lawful development certificate applications have been made at the site concerning the proposed construction of a building in the rear garden. In early 2019 a certificate was granted, confirming that the construction of a particular outbuilding, identified by the accompanying plans, would have been lawful on the date of the application (10 December 2018). Its lawfulness was certified by reason of it constituting the provision within the curtilage of the dwellinghouse of a building incidental to the enjoyment of the dwellinghouse as such. Such development may be permitted by reason of article 3 and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the 2015 Order").
 4. The accompanying plans to the lawful development certificate application showed a single-storey building with a pitched roof, and consisting of 3 internal rooms comprising a shower room, a study, and a gym/family area.
 5. Whatever the merits of that certificate, the building as constructed does not reflect the plans to which the certificate (hereafter "the LDC") applies. Externally this is principally because it is not in quite the same location, and because it has a flat rather than a pitched roof. However, although departing from the LDC plans, these elements alone do not mean that the building could not have amounted to permitted development under Class E of the 2015 Order. The Council do not allege that the building as now constructed breaches any particular tolerances set out in the Order. Instead, the appeal on ground (c) raises the preliminary question whether the building was provided 'for a purpose incidental to the enjoyment of the dwellinghouse as such' (and if it was, whether it was required for that purpose). If not, it will not have been permitted by the 2015 Order irrespective of its size or location.
 6. No party to the appeal has stated exactly when the building was substantially completed, but the Council refers to receiving complaints as to its use at the end of September 2019, some eight months following the grant of the LDC. There is no suggestion of any intervening use following completion of the building works but prior to the use witnessed by the Council's officer at their visit of 7 October 2019. At that stage the building was furnished with sofas, a dining table and a fridge freezer, which the Council considered to result in use as a self-contained unit. Those items, said by the appellant in Appeal A to have been in the building not as furnishings but by reason of temporary storage, were soon removed, but further complaints were received by the Council by the end of November 2019 that the building was being lived in. The Council's visit in March 2020 revealed the building to be inhabited, containing (among other items) sofas, bedclothes, a refrigerator, microwaves, a kettle, evidence of food consumption, a television, and personal effects including toiletries.
 7. At the time of my site visit the building was largely empty, as was the principal dwellinghouse, the tenants having vacated. I saw that the building had its own 'front door' and electricity box, a separate toilet and shower room, a curtain rail above the extensive front picture window/doors, and the frame of a double bed in the rear room. The building can be accessed without entering the principal dwellinghouse. A separate doorbell is sited on the garage wall to the side of the

- principal dwellinghouse, with double doors replacing the previous 'up and over' garage door. The building is accessible on foot, either through the principal dwellinghouse or through its side garage and then (either way) through the principal dwellinghouse's rear garden.
8. The Council describe the building as having contained domestic effects reflective of its use as primary residential accommodation, and the description by the appellant in Appeal A of its intended use as family entertainment and leisure space is at least commensurate with this. It has the appearance of a 'granny annexe' and the appellant's intention to use it as entertainment and leisure space does not reveal a purpose incidental to the use of the principal dwellinghouse rather than, at the least, purposes that would ordinarily be found in the principal living accommodation of a family dwellinghouse. Class E does not permit the provision of buildings for primary residential purposes. The appellant in Appeal A does not identify any incidental purpose.
 9. Notwithstanding his intentions for the building to be used as family space, the appellant in Appeal A (whose case is partly adopted by the appellant in Appeal D) has described the building as having been used for temporary storage at the time of the Council's visit in October 2019, made shortly before he parted with possession of the property. A storage use could potentially amount to a purpose incidental to the enjoyment of the dwellinghouse as such. However even if the appellant is correct I do not consider it to result in a building permitted by Class E here, for two reasons.
 10. First, on the evidence of my site visit, the building is plainly not designed for storage purposes. The standard of facilities and construction, and the various window openings and layout do not have the functional design or appearance of a storage building. The configuration of the building and its fenestration is designed to be occupied or used in some form as living accommodation by people, rather than say as a shed, garage or greenhouse. Secondly, the temporary storage use referred to by the appellant is not said to have been for the purpose of the enjoyment of the principal dwellinghouse, but for the purpose of its redecoration (the replacement of a carpet in the main property). Even if it were to amount to an incidental purpose, I would be unprepared to find that it were permitted by Class E, because the quality and scale of what has been built exceeds what could be said to be 'required' for a temporary storage purpose.
 11. Apart from that temporary storage purpose, on the Appeal A appellant's case, the building has not been put to any other purpose authorised by him, and his instructions to letting agents have been to prohibit entry to the building by the property's tenants. Although as a matter of fact those instructions appear not to have been followed, nothing in the Appeal A appellant's own case leads me to a conclusion that the building is or has been required for any purpose incidental to the enjoyment of the dwellinghouse as such.
 12. As to the other appellants, the letter appearing to be from the former tenants contends that the building is used for professional purposes. If correct it is not explained how or why these purposes are incidental to the enjoyment of the dwellinghouse as such. The letter's contention that there is no bedding in the building is anyway contradicted by the findings of the Council's site visit. The letter is undated, but it appears also to be contradicted by the 'AirBnB' excerpts provided by the Council, showing that the building has been rented out as

sleeping accommodation to paying visitors between approximately November 2019 and February 2020 by a host known as "AJ".

13. Having regard to all these factors and the matters raised in correspondence on the appeal, I find that the building was not constructed for a purpose incidental to the enjoyment of the principal dwellinghouse as such, and hence was not permitted development under Class E of the 2015 Order. Therefore the appeals on ground (c) cannot succeed. The fact of the separate doorbell and separate entrance through the garage, and the more recent "AirBnB" letting arrangements, do not affect my overall conclusions on this ground of appeal, which does not require me to make findings beyond whether the provision of the building has constituted a breach of planning control by reference to whether it amounts to permitted development.

The appeals on ground (f)

14. There are no related applications for planning permission (or appeals on ground (a)) and my consideration on the appeals on ground (f) is limited to whether the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity which has been caused by any such breach.
15. It follows from my findings on the appeals on ground (c) that the recent unauthorised occupation and/or letting out of the property by tenants is not determinative of whether the building requires permission. The Appeal A and D appellants express frustration that the Council had supervised and approved the works only then to cite the structure and physical appearance of the building as reasons to require its demolition. However, the Council's actions prior to issuing the notice are not matters for my consideration on this appeal, and the question on ground (f) is limited to the matters set out in the previous paragraph.
16. Although the Council's reasons for issuing the notice cite the impacts on amenity of the occupiers of this and neighbouring buildings, the steps imposed are directed at remedying the breach of planning control. As the breach amounts to the unauthorised construction of a building, it is not excessive to require its removal in order to remedy the breach where no lesser steps exist that could achieve the same purpose. The appeals on ground (f) do not succeed.

The appeals on ground (g)

17. As to the time specified for compliance with the notice, the Appeal A and D appellants are presently abroad and point out that travel restrictions make it extremely difficult for them to organise compliance with the notice within the required period. Although the property is presently vacant, meaning there is no need for a delay to enable possession to be taken, I consider it would be reasonable to allow further time to enable the appellants to appoint contractors to carry out the works required and I shall vary the notice to allow for six months.

Conclusion

18. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a varied time for compliance with its requirements.

Formal Decision

19. It is directed that the enforcement notice be varied by substituting "six (6) months" for "three (3) months" in paragraph 6 of the notice. Subject to that variation the appeals are dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR