Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2021

Appeal Ref: APP/F5540/C/19/3237657
Premises known as 195 Brabazon Road, Hounslow TW5 9LW

- 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 Bavita Kumar against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice, numbered OUTR/2018/000144, was issued on 29 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the use of outbuilding as a separate self-contained residential unit.
- The requirements of the notice are: (1) Cease the use of the outbuilding as a separate self-contained residential unit; (2) Remove the bathroom and bathroom associated facilities (i.e.shower/ bathing facilities, WC, wash basin and pedestal. In addition to the above items all water piping and all waste connections); (3) Remove the kitchen and associated kitchen facilities (i.e. all kitchen facilities to include the following items:- kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood. In addition to the above items all water and gas supply piping and all waste connections); and (4) Remove all the resultant debris from the Land.
- The period for compliance with the requirements is 3 months after the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. Given that the sole ground of appeal was ground (d), it appeared that the appeal could be determined on the basis of the written submissions and there was no need for a site visit to be undertaken. The parties were asked for their view on this matter. Neither responded and, as neither party would be prejudiced, I did not visit the site.

Reasons

3. The case to be made under ground (d) is at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is on the appellant to prove her case on the balance of probability.

4. To prove her case, the appellant has to show that the alleged use has been undertaken continuously for a period of 4 years prior to the issuing of the notice. That is to say, she must show that this was the case for the four years from 29 August 2015 ('the relevant date').

5. From the information before me, 195 Brabazon Road is a two-storey semi-detached house with gardens to its front and rear. At the end of its rear garden is a fairly large single storey outbuilding with a pitched roof. It is this building that is the subject of the appeal.

6. In support of her case, the appellant has submitted a selection of documents. Included in the title page and page 1 of Assured Shorthold Tenancy Agreements (AST). These refer to parties agreeing to lease the property, (referred to variously as the 'Rear Flat' and 'The Annexe', at 195 Brabazon Road) for varying periods.

7. Portions of ASTs, relating to the periods from: 16 April 2014 to 14 April 2016, 16 April 2015 to 14 April 2016, and 15 April 2016 to 15 October 2016 have been submitted. All name the appellant and lessee, Waheed Syed. The same portion of an AST covering 12 months from 5 October 2016 that was submitted refers to the appellant as well as Mehfooz Khan and Mrs Naaz Raft Husain.

8. Lastly, the same portions of ASTs covering the periods 25 December 2016 to 24 December 2017; 25 December 2017 to "December 2018"; and 25 December 2018 to 24 December 2019 have been submitted. These refer to the appellant as well as Mr Mohamed Zahrav Mohamed and Mrs Fathimar Mohamed Rizvie.

9. In addition, two Gas Safety Inspection Certificates ('certificates'), dated 26 September 2015 and 22 November 2016, have been submitted. Both refer to the annexe at 195 Brabazon Road.

10. The Council's statement points to shortcomings in this evidence. It states that as there are no signatures on the ASTS, they are "not verifiable". With reference to the certificates, it points to their reference to the Blue Estate Agency and that this agency was not referred to on the previous two ASTs. In any event, it says, the certificates pre-date the relevant date. Further, it questions whether a management agency would use such poor quality ASTs. It also points to a lack of Council Tax records for the outbuilding.

11. These points are drawn together in paragraph 4.6 of its statement with the statement' "It is my opinion that in the absence of any other corroborating evidence, including independent verifiable documentary evidence from external sources to verify their authenticity, the above documents are considered to be of little value".

12. The appellants' submissions, taken as a group, give an indication of the use of the outbuilding from the relevant date to the date the notice was issued. Although the ASTs are incomplete, I have no good reason to find that they are not actually parts of ASTs related to the use of the outbuilding as a dwelling during the periods claimed.

13. Their lack of signatures and dates undermines their value to a degree, but I do not, however, find that their quality does so. Given their shortcomings, of themselves they do not carry sufficient weight to prove the case on the balance of probability. Notwithstanding this, I cannot totally discount them for the reasons given by the Council. I can, however, discount the certificates as they pre-date the relevant date.

14. Although it refers to it in the list of documents that were submitted by the appellant, the Council makes no reference to the statutory declaration made by

the appellant, dated 23 September 2019 in its statement of case. This statutory declaration sets out the history of the use of the outbuilding.

15. In it, the appellant states that, following redecoration, from April 2014 the outbuilding was let in the uninterrupted manner shown in the ASTs, and that the current tenants have lived there since 24 December 2016. She concludes her statutory declaration by stating "Finally, I confirm that property rear of 195 Brabazon Road has been let and used as a self-contained residential unit continuously and uninterrupted since 14 April 2014".

16. A statutory declaration such as this should be afforded significant weight. Without it, the aforementioned evidence before me would not have reached the required threshold of proof. The statutory declaration refers to this other evidence and draws it together. It provides corroboration for it and tips the balance of probability in favour of the appellant's case.

17. I am aware that the onus is on the appellant to prove her case rather than the Council to disprove it. However, there is no evidence before me to show that what has been claimed is factually incorrect. The lack of Council Tax records should be seen as a failure to follow other legislation, rather than as evidence of a lack of use of the outbuilding for residential purposes.

18. I therefore find that, on the balance of probability, the outbuilding to the rear of 195 Brabazon Road had been continuously used as a separate self-contained residential unit for a period in excess of four years prior to the enforcement notice being issued.

Other matters

19. I note that the Council states that it was told that the appellant was going to make an application for a certificate of lawful development. However, that it did not receive this does not detract from the evidence in favour of allowing the appeal. The comments made in an anonymous third-party submission that relate to the planning merits of the case are not relevant to this ground of appeal. I give little weight to the reference of the author at the end of the letter to "the fact that the enforcement notice was issued late". There are no dates ion the letter, therefore I cannot be sure if this assertion is correct.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

Roy Curnow

INSPECTOR