
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2021

Appeal Ref: APP/A5270/C/20/3250759

58 Eastcote Lane, Northolt, Middlesex UB5 5RG

- 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 Kamlesh Sumal against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 9 March 2020.
 - The breach of planning control as alleged in the notice is the material change of use of outbuilding in the garden to self-contained residential use.
 - 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 appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

4. The appeal has been made in respect of a detached outbuilding within the large rear garden of 58 Eastcote Lane, a semi-detached bungalow. Access to it is across the forecourt of the bungalow, through a side gate and along a shared passageway between the host property and the adjacent property at No 60. The Council provide dimensions of the outbuilding (10m long, 3.5m

wide and 2.5m high), which are not disputed by the appellant. Council photographs show that the outbuilding has windows on three sides and a kitchen, a bedroom and a bathroom. The notice attacks the use of the outbuilding as separate from the host property self-contained residential accommodation. It does not allege any operational development.

The appeal on ground (d)

5. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, she needs to show, on the balance of probabilities, that the use of the outbuilding as a self-contained residential unit began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on 9 March 2020 so the appellant needs to show that the material change of use began not later than 9 March 2016 and continued without material interruption.

The appellant's case

6. The appellant has submitted a number of documents and sets out that the periods of occupancy were as follows:

<i>Period of occupancy</i>	<i>Tenant reference</i>
2011-2013	Tenant 1
30 Sept 2013 - 30 Jun 2015	Tenant 2
1 Jul 2015 - 31 Mar 2016	Tenant 3
1 Apr 2016 – 30 Jul 2016	Tenants 4 & 5
2016 - 2019	Tenant 6 & family
3 Dec 2019 – 3 Dec 2020	Tenant 7
31 Jan 2020 – 31 Jul 2020	Tenant 8

- Copy of Tenancy Deposit Protection confirmation for Tenant 1, dated 19 Oct 2012;
- A photocopy of Tenant 3's student visa valid from 7 Jan 2015 to 5 Jun 2016;
- A copy of an email dated 17 Nov 2019 from Tenant 6 stating that he and his family lived in the outbuilding from 2016 till 2019;
- A copy of a GP letter dated 31 Oct 2016 stating that Tenant 6 and his family registered with the practice on 26 Oct 2016 whilst living in the outbuilding;
- A copy of one page of a tenancy agreement signed by Tenant 7 beginning 3 Dec 2019 for a period of 12 months;
- A copy of one page of a tenancy agreement signed by Tenant 8 beginning 31 Jan 2020 for a period of six months;

- A copy of a signed letter dated 23 Apr 2020 from the occupier of No 56 Eastcote Lane stating there have always been tenants in the outbuilding, for the last couple of years there has been one family with three children who left around Jul/Aug 2019, then there was a single woman and now there is another tenant; and
- A copy of a Council Tax agreement to alter the Valuation List dated 12 Feb 2007 in relation to "Flat R/O 58 Eastcote Lane".

The Council's evidence about the use of the outbuilding

7. The Council first knew about the outbuilding in 2006 after the receipt of a complaint that a granny flat was being built. A site visit took place on 15 November 2006 and at the time the Council's Planning Enforcement Officer was advised that the outbuilding would be used for storage purposes and as a gym.
8. On 20 March 2008 a Council Housing Officer visited the outbuilding and reported that it was vacant and on 1 April 2008 a Council Planning Enforcement Officer reported that there were no kitchen facilities or bedding or evidence of use as self-contained accommodation.
9. On 15 May 2012 a Council Building Control Officer visited the main house and noticed that the outbuilding was being used as sleeping accommodation.
10. On 24 October 2013 the Council's Planning Enforcement Officer visited again and was met by the appellant's partner. He stated that the building was being used as self-contained accommodation.
11. On 19 February 2014 the appellant submitted her response to the Council's Planning Contravention Notice. She said that Tenant 2 had lived there since October 2013. As he was a family friend, he did not pay rent and sometimes he cooked in the main house, which was not rented out at that point. The main house was also occupied by family members and a friend.
12. On 23 October 2019 the appellant applied for a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 (the Act) on the basis that the outbuilding had been used as self-contained accommodation since 1 September 2005. A site visit was made on 24 January 2020 on the expectation that the appellant's daughter was living in the outbuilding but there was no sign of occupation.
13. On 11 February 2020 there was another visit by the Council's Planning Enforcement Officer who found the outbuilding was occupied but he was unable to gain entry. He revisited on 24 February 2020 and confirmed that the outbuilding was occupied. On 26 February 2020 the appellant emailed the Council details of the history of the occupation. This differs from the information submitted to support the ground (d) appeal and has been added to as follows:
 - Outbuilding has been there since 2005, appellant's father occupied it until he died in 2007, thereafter it was rented out;
 - Tenant 1 was in receipt of Housing Benefit;
 - Tenant 6 is described as a family friend who lived there from Aug 2016 – Aug 2019, during Sept 2019 decorating took place;

- Tenant 7 was only there for a month 3 Dec 2019 – 30 Dec 2019; and
 - Tenant 8 moved in 31 Jan 2020 and at the date that the information was provided on 26 February 2020 was still there.
14. In addition, the Council have submitted a copy of the appellant's LDC application and accompanying evidence. From this the following information is provided which is either new or different from what has already been stated:
- the outbuilding was refurbished in 2005 for the appellant's father as the Council could not rehouse him;
 - He made use of it from 1 Sept 2005 as a residential annexe;
 - Details of Council benefits paid to Tenant 1 between 1 Oct 2011 - 30 November 2012;
 - Copy of a letter addressed to an individual not mentioned before, dated 2 January 2018 addressed to "Rear 58 Eastcote Lane", from NHS England (the NHS England letter);
 - Copy of appellant's response to the Council's Planning Contravention Notice dated 19 Feb 2014 in which she stated Tenant 2, a family friend, has lived there since October 2013 without paying rent and without a tenancy agreement, that he sometimes uses the main house for cooking, that her father "comes now and then" to live in the main house and that the outbuilding was not used as a self-contained unit.

Assessment

15. From all of this information it is my view that use as a self-contained residential unit began on 1 October 2011 and continued in the first instance until 30 November 2012. This is supported by the Tenancy Deposit Protection document and the Council's benefit records. There is no evidence that use by Tenant 1 continued to 2013. Prior to this, the use of the outbuilding is unclear.
16. Firstly, the appellant stated it was used as an annexe by her father from September 2005 until he died in 2007. Then in November 2006 it was stated that it would be used as a gym and for storage and in 2014 the appellant stated that her father "comes now and then" to live in the main house. The evidence from the Valuation List in 2007 is not evidence of use and as the appellant contradicts herself, I regard October 2011 as the likely starting point for a self-contained residential use as there is some documentary evidence to support that date.
17. It appears there is then a ten month break in the self-contained residential use until the property is occupied seemingly by Tenant 2 from September 2013 until June 2015. He is described as a family friend and a student. The appellant states that no rent was paid and there was no tenancy agreement but the dates of occupation are typical for a student. The appellant stated in 2014 that Tenant 2 sometimes used the main house for cooking, perhaps implying that the residential use was as an annexe but it is more than likely that, if Tenant 2 was in occupation, the use was as a self-contained unit as the outbuilding has all the facilities for such a use.

18. There are three rooms with a shower, basin and toilet in one and a kitchen with a full size fridge, a four ring cooker with a double oven and a washing machine. The third room is large enough for a double bed and furnishings. There is also independent access from the road. Although the appellant's partner stated in 2013 at the site visit that it was being used as a self-contained unit, there is no documentary evidence from the appellant that it was Tenant 2 who lived in the outbuilding. The only information from the Council at this point is from a Building Control Officer. He noted at a site visit in May 2012, to do with a rear extension to the main house, that the outbuilding was being used for sleeping accommodation.
19. Tenant 3 is another student who follows straight on after Tenant 2, beginning his occupation in July 2015. However, the only document relating to this person's existence is a copy of a student visa. There is no documentary evidence from the appellant to link this person to the occupation of the outbuilding. There is no tenancy agreement and no evidence from any rent receipts.
20. Tenants 4 and 5 began their occupation in April 2016 but as with Tenants 2 and 3, no documents have been submitted to link these people with the use of the outbuilding. It appears their tenancy ended in July 2016, although there is no evidence of any rent paid or bank statements to show the receipt of rent.
21. Tenant 6 states in a November 2019 email that he and his family lived in the outbuilding from 2016 until 2019. The only documents that support their use are a letter from a GP surgery setting out that the family registered with the practice in October 2016 and an April 2020 letter from a neighbour at No 56 Eastcote Lane stating that she recalls them living there for the "last couple of years", and that they moved out "July/August 2019". The appellant stated in the LDC application that the occupation was from August 2016 until August 2019.
22. Tenant 6 describes himself as a family friend and the appellant offers no evidence of a tenancy agreement or rent receipts. Whilst I find it is possible that Tenant 6, his partner and three children occupied the outbuilding for a short period, I find it is highly improbable for five people to have lived in an area of 35sqm on a self-contained basis with all their possessions for three years.
23. The Council demonstrate with a copy of the Land Registry title for No 56 that the neighbour only moved in during March 2018 and therefore their knowledge of the outbuilding relates only to the two years prior to the issue of the notice, not from 2016. Whilst neither Tenant 6 nor the appellant can provide documentary evidence to show when the tenancy ended, the neighbour's recollection of it being around July or August 2019 ties in with the appellant's LDC statement that decorating took place in September 2019.
24. Notwithstanding these observations, I find there is some inconsistency with the recall of events around Tenant 6's occupation as the appellant also submits the NHS England letter dated 2 January 2018, which appears to indicate a new person living in the outbuilding during Tenant 6's occupancy. This contradicts previous statements made by the appellant and Tenant 6. The appellant offers no explanation as to who this person is and what this

means in terms of demonstrating a continuous use by Tenant 6 for three years.

25. The appellant states that Tenant 7 began their occupation on 3 December 2019. Even if Tenant 6 continued their occupation until August 2019, there is then a three month gap until Tenant 7 arrives. It has been held that small gaps between the changeover of tenants, such as a week to decorate a small flat, can often be regarded as not interrupting the continuous residential use. However, I find three months is a significant break in the claimed residential use.
26. Although the tenancy agreement for Tenant 7 was for 12 months from December 2019, the appellant states in her LDC application that they were only there for a month. The appellant claimed her daughter lived in the outbuilding in January 2020 but when the Council Officer visited the site on 24 January 2020 there were no signs of occupation. As Tenant 8's tenancy agreement did not begin until 31 January 2020, it is more than likely that there was another gap in the residential use of the outbuilding, this time amounting to about a month.
27. At a site visit on 24 February 2020 the Council confirmed that the outbuilding was occupied by Tenant 8. The notice was issued on 9 March 2020 but there is no evidence from the parties that Tenant 8's occupation did not continue until the issue of the notice.
28. In amongst all the appellant's statements there are numerous references to "Ealing Council has all the records on their system since 2014 as Council Tax was paid"; that Tenant 2 "was also on the Council Tax"; that Tenant 3 "was paying Council Tax"; that Tenants 4 and 5 "were paying Council Tax"; and that she "put the Council Tax in my name since 2016". However, the burden of proof is on the appellant. She needs to demonstrate continuous residential use and, even though she stated that she disposed of some of her paperwork, it is not the Council's duty to provide missing documents, as appears to be intimated in her remarks. It was though open to the appellant to request copies of Council Tax information in the same way as she obtained the 2011/2012 information about the payment of Housing benefit.
29. Having regard to all of the evidence, I am not persuaded that the use of the outbuilding began more than four years before the notice was issued and continued without material interruption for a period of four years thereafter. This is because the appellant's evidence is not sufficiently precise and unambiguous and the evidence shows that there are three significant gaps of one, three and ten months in the self-contained residential use of the outbuilding.
30. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be contradictory and inconsistent with Council records. It is not clear when the self-contained residential use of the appeal outbuilding began or whether it continued without material interruption for the requisite period. The appeal on ground (d) therefore fails.

Conclusion

31. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

D Fleming

INSPECTOR