



Appeal Decision

Hearing Held on 20 April 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2021

Appeal Ref: APP/N5090/C/20/3247534

Land at 69 Cumbrian Gardens, London NW2 1ED

- 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 Gholam Reza Ghaty Fard against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1509/19, was issued on 20 January 2020.
- The breach of planning control as alleged in the notice is without planning permission the use of outbuilding as a Separate residential unit.
- The requirements of the notice are:
 1. Cease the use of the outbuilding as residential dwelling.
 2. Permanently remove all kitchen units, sinks, cookers and food preparation areas from the outbuilding.
 3. Permanently remove the bathroom from the outbuilding.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (b)

1. An appeal on this ground is that the matters described in the notice (use of the outbuilding as a separate residential unit) have not occurred. The burden of proof is on the appellant, with the relevant test of the evidence being on the balance of probability.
2. The main issue on this ground of appeal is whether the breach had occurred by the date of issue of the enforcement notice. In this case, the date of the notice was 20 January 2020, so that is the relevant date by which the breach needed to have occurred if the enforcement notice is to be upheld.
3. 69 Cumbrian Gardens comprised a semi-detached house. An outbuilding was constructed in the rear garden in accordance with a planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015. There is access to the rear garden via a path to the side of the property and through the ground floor flat. Following construction of the outbuilding, planning permission was granted for the conversion of the house into two flats. That on the ground floor has been owned by the appellant since it was converted and let to tenants who occupied it until shortly after the relevant date. It was subsequently let to other tenants. The Council did not visit the property until after the enforcement notice had been issued and the property was occupied by the later tenants.

4. I understand that the appellant visits the property regularly, but is not there every day. His evidence was that during occupation by the first tenant, the outbuilding was used as a playroom and he referred to use of an Xbox games console in the building. I was told that the outbuilding was not let separately from the flat and had not been sub-let. The declaration supplied by the first tenant reflects that. I consider the evidence supplied was clear.
5. At the hearing, a neighbour disputed that evidence and stated that the outbuilding had been occupied separately by another person from before the date the notice was issued until the present time. Photographs were supplied by the neighbour that show a clear view from their property to the front of the outbuilding. These demonstrate that the neighbour would see comings and goings from the building and see by whom and how it was occupied. I understand that they also occasionally spoke to the occupiers of the flats and outbuilding and received packages on behalf of the occupiers. It seems to me that they would have a reasonable knowledge of what was happening at the property and their evidence at the hearing was clear and precise.
6. In terms of the ability to function as a dwellinghouse, the judgement in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 stated that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. Section 254 of the Housing Act 2004 refers to basic amenities comprising a toilet, personal washing facilities and cooking facilities.
7. In this case, the flat contains three rooms comprising a room, a small area with fitted kitchen style storage cabinets and sink, and a shower room providing toilet and personal washing facilities. The appellant suggests that no cooking facilities were provided within the outbuilding such that it could not be defined as a separate residential unit. However, the Council point out that a microwave could have been within the kitchen area and removed when necessary, such as prior to their visit. I have no evidence to demonstrate that was the case, but it is plausible. For this reason, whilst a lack of cooking facilities would indicate the facilities for day-to-day living were not present, given the ease of providing and removing such facilities, this is not decisive in this case.
8. I note that separate Council Tax has not been paid on the outbuilding and it is not subject of Valuation Office Agency records as a separate dwelling. However, it is possible that it could have been occupied other than in accordance with those records such that this carries limited weight in my decision. The Council suggested they may withdraw the enforcement notice after their site visit. It is unclear why that was suggested or why it wasn't withdrawn, but that would not affect my conclusion.
9. Taking account of the above, I am persuaded on the balance of probability that on the relevant date the outbuilding was in use as a separate dwelling.
10. For these reasons, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anthony M Allen MRTPI	Managing Director, Allen Planning Ltd
Gholam Reza Ghaty Fard	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Sam Amoako-Adofo MRTPI	Senior Planning Officer, London Borough of Barnet
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INTERESTED PARTIES:

Mr Korenko	Neighbouring occupier, 71 Cumbrian Gardens
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