
Appeal Decision

Site visit made on 2 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/A5270/C/20/3255960

44 Villiers Road, Southall UB1 3BS

- 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 Sarbjit Heer against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 2 June 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission the material change of use of the rear outbuilding to use as a separate self-contained dwelling.*
 - The requirements of the notice are:-
 1. Cease the use of the 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; and
 3. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended (the 'Act').
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Decision

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

The Appeal on Ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. To determine this, it is essential to first understand the purpose of the notice. Section 173(4) of the Act provides that the purpose of the notice shall be either to remedy the breach of planning control or to remedy any injury to amenity.
3. The notice requires the use as a self-contained residential dwelling to cease and the removal of the kitchen and drainage connections that facilitate the use. The purpose of the notice is therefore to remedy the breach of planning control.
4. For an appeal on ground (f) to succeed the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end.
5. Once the use ceases, the appellant suggests that removal of the kitchen is excessive because the outbuilding would be used as a home gym, children's play room and storage of long-life groceries. Furthermore when having celebrations/parties/BBQs, the kitchen in the outbuilding would be used

instead of the kitchen in the main dwelling, no more than 12 times a year. When using the outbuilding for ancillary uses the appellant states it would be nice to make a cup of tea or sandwich.

6. On my visit I saw that the brick outbuilding comprised an entrance door leading to a hallway, off which were two rooms to the left and right, annotated on the plans as a dining/living room and bedroom. At the end of the hallway there was a sizeable galley kitchen and a separate bathroom comprising a shower, wash basin and toilet. The outbuilding had been internally partitioned with stud plaster boarding, skirting boards and ceramic floor tiles throughout. The kitchen was fitted with base and wall units, integrated cooker with hob and oven, sink, wall-mounted boiler and washing machine. There was also a tall free-standing fridge/freezer.
7. The notice does not require the removal of the partition walls within the outbuilding and so the separate rooms would remain. Leaving the kitchen in place would not remove the elements that are facilitating the residential use. It is settled law in *Murfitt*¹ as confirmed by *Somak*² that where an enforcement notice is issued in respect of a material change of use, it can be directed at works that may not amount to development at all, but are being used as part and parcel of the unauthorised use enforced against. Leaving the kitchen and drainage connections would not remedy the breach.
8. Removal of the kitchen does not prevent the outbuilding being used as a home gym, children's play room and storage of long-life groceries. I saw on my site visit that the rear outside garden area is modest in size such that the outbuilding is not far from the main property for catering purposes. The appellant has not presented any substantive evidence to demonstrate why she herself has need for the kitchen and drainage connections in the outbuilding when she lives at a different property i.e. next door at 43 Villiers Road according to the appeal form. Nor is there evidence submitted to show which flat or occupiers of the main property have need for the outbuilding facilities.
9. I find that no lesser steps have been put forward that would remedy the breach. Therefore, the appeal on ground (f) must fail.

The Appeal on Ground (g)

10. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice requires that within 6 months the residential use of the outbuilding should cease, the kitchen and drainage connections be removed and all resultant debris removed.
11. The appellant wants to extend the compliance period to about one year, or until the Covid-19 virus has been eradicated or when a vaccine has been developed. The appellant highlights two knock-on effects resulting from the Covid-19 pandemic. First the occupiers should have more time to find an alternative place to live as they will be made homeless. The second is finding builders to remove the kitchen and drainage connections.

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

² *Somak Travel v SSE & Brent LBC* [1987] JPL 630

12. In all cases the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose.
13. With regard to removing the tenants, the notice would cause the loss of someone's home or other accommodation. However, during my site visit I observed the outbuilding was empty of furniture and possessions, save for a bed and wardrobe in the bedroom. This would indicate to me that no one is currently living in or occupying the outbuilding and that any tenants have already vacated. Consequently, the appellant's concerns about the tenants needing more than 6 months with which to comply with the notice, in order to find alternative accommodation, no longer exists.
14. Clearly there is an ongoing Covid-19 pandemic which has prompted the government to legislate over the minimum required notice period to terminate residential tenancies, but that would not exceed the six months provided in this case.
15. With regard to the difficulty of finding a builder to undertake the removal of the kitchen and drainage connections, I appreciate that at the time the appeal was lodged in July 2020 the country was tentatively coming out of lockdown. However, since then restrictions are gradually being eased further and many businesses have now found ways to work in a Covid-safe manner.
16. The works to remove the kitchen and the drainage connections would not appear to be particularly difficult or complex or to require a large team of workers. Access to the outbuilding can be achieved without going inside or through the main property, as it is accessed by the passageway running along the side of the property and from the rear outside garden area. Apart from the appellant's say-so, I have not been presented with any evidence that shows the appellant has contacted builders and that they have declined to undertake the works for Covid-related reasons.
17. The notice must specify a time period date for compliance. Waiting for the vaccine for Covid-19 to be rolled out to everyone is too vague and uncertain. Furthermore, waiting for Covid-19 to be eradicated would result in an indefinite compliance period, which cannot be imposed.
18. I find the 6 month compliance period is a reasonable time with which to comply with the notice. I have also had due regard to the reasons for issuing the notice. In addition, effective enforcement is important to maintain public confidence in the planning system.
19. The appeal on ground (g) therefore fails.

Conclusion

20. For the reasons given above I consider that the appeal should not succeed.

K Stephens
INSPECTOR