



Appeal Decision

Hearing held on 8 June 2021

Site visit made on 10 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/M5450/C/19/3238654

Land at 12 Felbridge Avenue, Stanmore HA7 2BH

- 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 Ehidiamen Irabor against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 12 September 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of the detached outbuilding to use as a guest rental unit ("the Unauthorised Use").
 - The requirements of the notice are:
 1. Cease the Unauthorised Use
 2. Remove bathroom / shower facilities from the outbuilding
 3. Remove internal partition walls and door that facilitate the unauthorised use
 4. Remove from the Land all materials and debris arising from compliance with the above requirements
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

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

Applications for Costs

2. At the Hearing an application for costs was made by the Council of the London Borough of Harrow against Mr Ehidiamen Irabor. An application for costs was also made by Mr Ehidiamen Irabor against the Council of the London Borough of Harrow. These applications are the subject of separate decisions.

Preliminary Matters

3. I have recently dealt with another appeal¹, lodged by the appellant's brother, on a neighbouring site, concerning an enforcement notice drafted in identical terms. This is the subject of a separate decision.

¹ APP/M5450/C/19/3239613

Reasons

Ground (c)

4. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged in the notice is not “development”, as defined by section 55 of the 1990 Act, or because planning permission exists for what is alleged in the notice, granted by, for example, a development order² or by the local planning authority following receipt of an application for planning permission.
5. In an appeal on ground (c), the onus is on the appellant to make out their case to the standard of the balance of probabilities. The appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. In summary, section 55 of the 1990 Act states that “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any **material** change in the use of any buildings or other land, (my emphasis).
7. The appellant’s ground (c) case is that the use alleged is not a material change of use and remains ancillary to the main dwelling. There is no statutory definition of what constitutes a material change of use. Whether there has been a material change of use in terms of section 55 depends upon whether there has been a change in the character of the use of the land from what has gone on previously, as a matter of fact and degree.
8. The appeal site contains a 4 bedroom semi-detached dwellinghouse. Its rear garden contains an outbuilding sited close to the rear of the dwellinghouse. The outbuilding may be accessed via a driveway to the side of the dwellinghouse, or through the dwellinghouse via an external door from the kitchen in the rear part of the dwellinghouse.
9. The outbuilding contains a storage room, a room with a shower, toilet and wash-handbasin and 2 other rooms. Photographs provided by the Council show the smaller of these rooms laid out as a single bedroom and the larger room laid out as a double bedroom. This is consistent with my observations at my site visit.
10. Whilst the lawful use of the land is not stated in the enforcement notice, there is nothing to indicate that its use as a dwellinghouse is not the lawful primary use of the land and I have determined the appeal on this basis.
11. According to the evidence provided, the outbuilding was constructed sometime between 2012 and 2014. The appellant states it has been used as part of his family home and, in response to a planning contravention notice served by the Council, he states that it is used for the storage of household items (which is consistent with my observations at my site visit), the hosting of occasional guests and for quiet reading space for his son.
12. At the Hearing I asked how much the outbuilding has been used to host guests and with what turnover. In this regard, the appellant said the outbuilding is

² Such as The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO)

- primarily sleeping accommodation for his mother when she is visiting from overseas, as she is unable to climb the stairs in the main dwelling. In respect of other guests, I heard that in 2018 it was used no more than 3 months a year and that since March 2020 it was not being used at all. No evidence to contradict the appellant's version of events in this regard has been drawn to my attention and so I have based my understanding of the characterisation of the use on the above information.
13. Whilst the outbuilding may have occasionally been rented to persons unrelated to the main dwelling, in practical terms it would seem in this case that this is not materially different to renting out en-suite sleeping accommodation in the main dwelling, and, the use of the outbuilding has remained subsidiary to the primary use of the appeal site as a dwelling.
 14. There is no physical separation between the outbuilding and the main dwelling, apart from the lockable external doors on each, which are a few paces apart across the rear garden. In terms of a functional connection, no cooking facilities have been provided in the outbuilding. The appellant states that guests have access to the kitchen in the main dwelling for cooking and washing/drying clothes (for which there is no additional fee), although the Council says there is no evidence of this.
 15. But the appellant's explanation is consistent with his advertisement (included in the Council's evidence) which offers the microwaving of food and which states: "We only accept bookings when we will be available to respond to you throughout your stay." This is consistent with the appellant's explanation that the use which has been carried out is the "hosting" of guests (who sleep in the outbuilding) by him and his family, rather than independent occupation of the outbuilding.
 16. According to the appellant, his "hosting" has extended to guests watching Netflix in the main house and cooking for the whole household and that as such guests have effectively functioned as members of his household, albeit with their own private suite in the outbuilding. I have no evidence to contradict or make less than probable the appellant's version of events in this regard.
 17. So taking into account the above points, I am satisfied there is a physical and functional connection between the use of the outbuilding and the main dwelling. For this reason, I consider the planning unit to be the whole appeal site, rather than just the outbuilding, and that in this case the use of the outbuilding by paying guests, hosted by the appellant and his family, to the degree described, is ancillary to the overall site's main use as a dwellinghouse, ie it is in addition to but not as important as the main use.
 18. The outbuilding may be accessed independently of the main dwelling. So the Council is concerned the outbuilding may be independently occupied, with no access to the main dwelling, and with pre-cooked food (including takeaways) consumed within the outbuilding. I accept some guests may have occupied the outbuilding in this way. But this is not determinative in deciding whether a separate planning unit has been formed and a material change of use has occurred, particularly in light of the aforementioned physical and functional connections that exist between the main dwelling and the outbuilding.
 19. In terms of specific changes in the character of the use of the land, the Council points to the timing and frequency of arrivals and departures by guests, noise

- and disturbance resulting from this and a lower level of respect and consideration for neighbours by guests. But there is no specific evidence of these effects. Moreover, in my judgement, such effects would be significantly modified by the close proximity of the outbuilding to the main dwelling and guests' reliance on the main dwelling for at least some facilities.
20. In other words, bad behaviour by guests would directly affect the appellant and his family as hosts, as well as any neighbours, meaning bad behaviour is not likely in this case and there is no evidence to suggest otherwise. So from the information available, I am satisfied that the character of the use of the land is not significantly different to what has gone on previously, as a matter of fact and degree.
21. My attention has been drawn to a previous appeal decision³ for the appeal property, relating to a lawful development certificate (LDC). The Council has indicated that the enforcement notice before me was issued as a result of the receipt of that previous appeal decision and that the previous Inspector concluded the decision with a "recommendation" that an enforcement notice may be served for the unauthorised use. But no such recommendation is included in that decision.
22. Of that previous appeal decision the Council also states: "The Inspector makes it clear that the use of the outbuilding for short term letting is not permitted development and requires planning permission" (and the Council has made specific reference to Schedule 2, Part 1, Class E of the GPDO in this regard). But this is not what is said in the previous appeal decision. Moreover, the appellant's position is that the use is not a material change of use, ie it is not development at all. So in this context, permitted development rights are not relevant.
23. Furthermore, the Inspector in the previous appeal decision found that the use of the outbuilding at the date the LDC application was made was as an independent, self-contained dwelling. As there is no evidence before me that cooking facilities have ever existed in the outbuilding, it is not a dwelling in its own right and so I have reached a different conclusion to the previous Inspector and his decision does not change my conclusion in this case.
24. Based on all the evidence submitted (and heard at the Hearing), which is sufficiently precise and unambiguous, I conclude on the balance of probabilities that the change of use which has occurred is not a material change of use and so is not "development" for the purposes of section 55 of the 1990 Act. So the matter stated in the notice does not constitute a breach of planning control.
25. However, if the level of usage of the outbuilding by persons unrelated to the main household were to increase or intensify, or if the functional and/or physical links between the main dwelling and outbuilding were other than has been stated by the appellant, the situation may be different. Accordingly, it would remain open to the Council to take further action, under section 172 of the 1990 Act, if it were expedient to do so, having regard to the provisions of the development plan and to any other material considerations.

³ APP/M5450/X/18/3210523 dated 8 August 2019

Conclusion

26. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (d) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ehidiامن Irabor	Appellant
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Olding	Senior Planning Enforcement Officer
Mr Muhammad Sheikh	Planning Enforcement Officer