
Appeal Decision

Site visit made on 10 August 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 August 2021

Appeal Ref: APP/M5450/C/20/3253032

33 Hamilton Road, Harrow, HA1 2TX and 49 High Mead, Harrow, HA1 2TX

- 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 Celeste Mantock against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 23 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission:
1. The erection of an outbuilding in the rear garden of the Land shown hatched red on the annexed plan (Unauthorised Building) and; 2. The material change of use of the Land from use as a single dwelling house to use as two dwelling houses.
 - The requirements of the notice are 1. Cease the unauthorised use of the dwelling house on the land as two dwelling houses and return to a single dwelling house; 2. Demolish the unauthorised building; 3. Remove the fence located in blue on Plan 2; 4 remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:-

replacing 1 and 2 of the breach of planning control with:-

"1. The extension and alteration of the outbuilding in the rear garden of the Land shown hatched red on the annexed plan (Unauthorised Building Works); and

2. The material change of use of the outbuilding to use as a separate dwelling house (Unauthorised Use).

and varied by:-

replacing 5.1 with "Cease the Unauthorised Use of the outbuilding as a separate dwelling house."; and

replacing 5.2 with "Demolish the extension to the outbuilding constructed in 2017 (Unauthorised Building Works) and restore the building to its condition prior to the works taking place."; and

deleting step 5.3

Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. Since originally lodging the appeal, the appellant has added an appeal on both grounds (d) and (g). However, since the prescribed fees were not paid within the specified period, it was not permissible to add an appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.

The appeal on ground (b)

3. This ground of appeal is that the matters which appear to constitute a breach of planning control have not occurred. However, there has clearly been both the erection of an outbuilding and the material change of use of this outbuilding to a dwelling, whose address is 49 High Mead. The appeal on ground (b) fails.

The appeal on ground (c)

4. The appellant accepts that the use of the outbuilding as a separate dwelling is a breach of planning control. However, a case is advanced on ground (c) solely in respect of the operational development.
5. No.33 Hamilton Road is a semi-detached house, with a rear garden extending to a cul-de-sac, High Mead, at the rear. Planning permission was granted by the Council in December 2006 for a "*Detached outbuilding in the rear garden with part mezzanine floor to provide a garage with gallery over*" (Ref: P/2984/06). Vehicular access to the garage was to be from High Mead.
6. It is not in dispute that an outbuilding was substantially complete in 2008. However, from the submitted plans and photographs, it appears to me that this building was so substantially different from that depicted in the approved plans that it did not represent an implementation of the 2006 permission. It was built without a continuous roof ridge line and the doors and fenestration were significantly different. I also note that the variation of the fenestration would, of itself, have been a breach of condition no.3 of the 2006 planning permission.
7. The Council notified the owner of this breach of planning control by letter of 22 April 2008. I do not accept the appellant's contention that the fact that the Council failed to pursue this breach indicates that the development was in compliance with the 2006 permission. However, once the building had been substantially complete for more than 4 years it became immune from enforcement action.
8. In October 2016, the appellant commissioned a structural survey of the building which found severe structural movement to the back addition external walls. The main recommendations were to seek the removal of the adjacent Eucalyptus tree, to check the drains and to repair the structural damage to the walls, floor and roof areas.
9. The building works carried out in 2017 appear to have addressed the damage but, in addition, an infill extension was erected which changed the building's footprint from an 'L' shape to a rectangle. This also entailed an alteration of the roof line. Such works significantly exceeded what could reasonably be described as works of repair and maintenance. Moreover, the works materially affected the external appearance of the building. Accordingly, they fell within the definition of development in S.55 of The Act.

10. Furthermore, the appellant states that the fence shown in blue on the plan attached to the notice was erected around May 2016 and the rearmost part of the garden, containing the outbuilding, was allocated a separate title number in August 2017. As it appears that this part of the garden was no longer within the curtilage of no.33, the extension to the outbuilding could not have benefitted from permitted development rights within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO]. Planning permission would have been required for this operational development, irrespective of the material change of use to a dwelling which appears to have taken place in 2017, following the completion of these works.
11. For the above reasons, the appeal on ground (c) fails.

The appeal on ground (d)

12. The appellant accepts that the use of the outbuilding as a dwelling did not commence more than four years prior to the date of issue of the notice. The appeal on ground (d) relates solely to the building as it existed in 2008.
13. As indicated above, it appears that a building which purported to comply with the terms of the 2006 planning permission, but in reality did not, was substantially complete by 2008. As such, it became immune from enforcement action four years from the date of its substantial completion.
14. There was then a very significant gap of some 9 years between the building's substantial completion and the commencement of the new development in 2017. During that period, the appellant states it was used for garage, office and storage purposes, incidental to the use of the main house, no.33. In this context, it does not appear to me that the 2017 works could be regarded as being part of a continuing operation commencing in 2007/8. To my mind, the development carried out in 2017 marked the start of a new chapter in the planning history of the site. As such, the situation here does not reflect that in the *Kestrel Hydro*¹ case, referred to by the Council, in that the 2008 building operations were not carried out to support the 2017 material change of use. Instead, I consider it to reflect the *Mansi*² principle of protecting development that was already lawful. In my view, the building illustrated in the "Version 2008" plans as the existing development is lawful and it is too late for enforcement action to be pursued against it.
15. The appeal on ground (d) succeeds to this limited extent. I shall correct the notice to reflect the fact that the unauthorised development was not carried out in respect of no.33 Hamilton Road itself but solely to the rearmost part of the garden containing the outbuilding and applied solely to the development carried out from 2017.

The appeal on ground (f)

16. Although a little unclear in the reasons for the notice, my reading of the requirements of the notice indicate that the Council is seeking to remedy the breach of planning control in line with S.173(4)(a) of The Act. As I have no ground (a) appeal before me, the planning merits of the material change of

¹ *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784

² *Mansi v Elstree RDC* [1964] 16 P&CR 153

use, or of the 2017 operational development, are not matters which I can take into account. I therefore simply have to consider whether the requirements of the notice exceed what is necessary to remedy the breach. On the basis of my conclusion above on ground (d), the requirements of the notice to restore the land to its condition before the breach took place should use the "Version 2008" building as a reference point.

17. Step 5.1 needs only to refer to the outbuilding in question, and its use as a separate dwelling house. The original host dwelling, no.33 Hamilton Road, and its remaining garden, is unaffected by the requirements of the notice.
18. Step 5.2 requires the demolition of the outbuilding. However, I have found that the "Version 2008" building was long established and lawful prior to the unauthorised development carried out in 2017. Therefore, this step is disproportionate and the appropriate requirement should be to return the building to its condition as it existed pre 2017.
19. Step 5.3 requires the removal of the fence which separates the land now owned by the appellant from the remaining garden of no.33 Hamilton Road, which was sold off as a separate entity in February 2020. Whilst it might be considered to have facilitated the formation of a separate planning unit, it does not appear unreasonable for the boundary between land in separate ownerships to be demarcated and secured. The requirement for its removal serves little purpose as a replacement fence of almost similar size could be erected under permitted development rights. I shall delete this step.
20. To the extent described above, the appeal on ground (f) succeeds.

The appeal on ground (g)

21. When the appeal was lodged, the appellant had tenants occupying the unauthorised dwelling and was seeking to gain vacant possession. The ongoing complications caused by the Covid-19 pandemic made it unclear as to how such action might have progressed. However, during my visit, I saw that the building is now vacant. The required building operations should be able to be completed within the 3 month compliance period and the appeal on ground (g) fails.

B.S. Rogers

Inspector