
Appeal Decisions

Site visit made on 9 March 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

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

Decision date: 28 April 2022

Appeal Refs: APP/Y5420/C/20/3263463 and APP/Y5420/C/20/3263264 10 Grange Road, London N6 4AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Stephen MacCabe and Mrs Andrea Lynagh against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 13 October 2020.
- The breaches of planning control as alleged in the notice are:
 - I. Unauthorised extension to the rear and side of the existing summer house;
 - II. Material change of use of the summer house including the extension to its side and rear to a dwelling.
- The requirements of the notice are:
 1. Remove the summer house together with the extension to the rear and side in its entirety;
 2. Remove any resultant debris.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The appeals on grounds (b) and (c) relate to the alleged material change of use of the summer house including the extension to a dwelling. In addition, the appellants state that given no material change of use has taken place, it is not possible to appeal Part II of the Notice on ground (d). Grounds (f) and (g) relate to both alleged breaches.

The appeal site and case background

2. The appeal site is situated within the subdivided grounds of a former grand manor house which was known as The Grange. 10 The Grange is part of the original large manor. The gardens in the vicinity of the appeal site are spacious and verdant with mature shrubs and trees, some of which are protected. The summerhouse is situated at the rear of the long and spacious garden.
3. In 2006 planning permission was granted for the construction of a summer house in the rear garden of the property. In July/August 2010 the building was extended to the side and rear and a kitchen and bathroom were also installed. It is my understanding that whilst works were carried out to the main property, 10 Grange Road, the appellants and their family moved into the extended summer house. On completion of the works to the main property, the family

moved back in and since then the appellants state that various family and friends have occupied the summer house for different periods of time.

4. However, in early 2019 the appellants began to prepare the summer house for lease to a tenant and with that in mind a lease agreement was drawn up and signed by both parties. The lease was due to start in April 2019 and was on the basis of improvements being carried out to the summerhouse following its vacation by the appellants' son. The improvements were not carried out and the tenant did not actually start occupying the property under the lease agreement.
5. The extended building is irregular in shape and is surrounded by mature trees which form a canopy over it. At my site visit I noted that the remnants of two trees remain within the building; one in the bathroom and the other in a bedroom area. The summerhouse is constructed of timber boarding/timber tile cladding. It contains a fully fitted and furnished kitchen/dining/living room, a bathroom with toilet, sink and shower and two rear rooms which are identified on plans as bedrooms, although at the time of my site visit there were no beds present. There is also circulation and storage space. In addition, I observed at my visit that the summer house has its own patio area and a shed.
6. There are two access routes to the summer house; firstly via the main dwelling through the rear ground floor extension and into the garden and secondly, via a separate pedestrian access door on the front elevation of the main property and down a side passage into the rear garden.

The appeals on grounds (b) and (c)

7. The appeals on ground (b) are that the breach of planning control alleged in the enforcement notice has not occurred and the appeals on ground (c) are that the matter alleged does not constitute a breach of planning control. In this case the appeals relate to the alleged material change of use of the summer house including the extension to the side and rear to a dwelling. Under ground (b) the appellants contend that the building is an annexe to the main dwelling and whilst it provides separate facilities needed for day to day living it is not functionally separated from the main house so as to constitute a material change of use. The appeals on these grounds fall on whether or not the extended summer house is incidental to the enjoyment of the host dwellinghouse or otherwise.
8. There is no statutory definition of "incidental" in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Case law provides guidance on how it should be interpreted by decision-makers and indicates that games rooms and gym areas can be considered to be incidental to the enjoyment of a dwellinghouse. In the *Emin* case¹ it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In the *Emin* case it was held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

more accommodation for secondary activities than the dwellinghouse provides for primary purposes.

9. Nonetheless, the *Wallington* case ² established that it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse. The case of *Holding*³ which concerned what might be regarded as a very large incidental building within the curtilage of a dwellinghouse, confirmed that this is indeed the correct approach. In determining that case the Inspector considered that it is reasonable to suppose that the purpose of the permission granted under Class E is to allow for accommodation for hobbies for which people need space in and around their home to be provided without the need for the formality of a planning application. Nevertheless, the test that should be applied must retain an element of objective reasonableness and should not be based on the unrestrained whim of the occupier. A hard objective test should not be imposed on cases to frustrate the reasonable aspirations of an owner as long as they are sensibly related to the enjoyment of the dwelling.
10. I find that these judgments and their detailed findings illustrate that in cases such as this it is very much a matter of fact and degree based on the specific circumstances of each case. Furthermore, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the *Emin* judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.
11. In order for a building to be considered as permitted development all of it must be required for incidental purposes. A building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. The summer house has a kitchen/dining/living room, two bedrooms and a bathroom. It seems to me that these could reasonably be expected to be accommodated in the main dwelling. As such the layout and use of the space is not something that would normally require accommodation separate to the living space contained within the main dwelling. The use of this space would not materially differ from the use of the existing accommodation in the main dwelling and as such the outbuilding merely replicates the use of the existing accommodation within the house. Therefore, I am not satisfied that as a whole the outbuilding would be required for incidental purposes.
12. The appellants contend that the absence of a washing machine in the property means that it does not fall to be considered as a self-contained dwelling. Self-contained dwelling is not specifically defined in legislation but case law⁴ sets out the characteristics of a dwellinghouse. Those are the ability to afford to its occupants the facilities required for day to day private domestic existence. Therefore, a washing machine is not one of those characteristics.

² *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942 (CoA)

³ *Holding v First Secretary of State* [2003] EWHC 3138 (Admin)

⁴ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

13. Consequently, I conclude that there has been a material change of use of the summer house to a dwelling as a matter of fact and that such a material change of use constitutes a breach of planning control. The appeals on grounds (b) and (c) do not succeed.

The appeals on ground (d)

14. Given the appellants' assertion that no material change of use to a dwelling has occurred, they do not believe it is possible to appeal on ground (d) against that particular allegation. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of Gabbitas⁵ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
15. Under s171B (1) of the Act, no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control consisting of operational development. In other words, no enforcement action may be taken in respect of any unauthorised development after the end of the period of four years beginning on the date on which the operations were substantially completed. The enforcement notice is dated 13 October 2021 and therefore the material date for the extension to the rear and side of the existing summer house is 13 October 2017.
16. There is no dispute between the main parties that the summer house was originally built without an extension, was not self-contained and was used as a home office. The appellants evidence is that it was subsequently altered and extended in July/August 2010, their family moved into the summer house in 2011 whilst works were carried out to the main dwellinghouse, but then moved out in 2013 when refurbishment works were completed.
17. The Council has pointed out some inconsistencies in the appellants' evidence but the key thrust of their argument under ground (d) relates to substantial completion. Having considered the evidence in detail, I concur that this is the case. The phrase 'substantially completed' is taken from the meaning established by Lord Hobhouse in the 'Sage' case⁶ which is that 'in the case of operations what is required is a 'fully detailed building of a certain character'. In Sage, the building had no glazing, guttering, ground floor, access to the first floor, service fittings or internal finishes. The holistic approach to the matter of substantial completion has also been applied in other legal cases.
18. Applying case law, the Council contends that substantial completion has not taken place with respect to the extensions for reasons relating to building control and trees. Firstly, it is argued that the kitchen installation and drainage/ventilation/electrics would have required Building Regulations consent and that no such consent has been obtained. Furthermore, since the building exceeds 30 square metres in size and contains sleeping accommodation it is not exempt from such consent. The summer house also appears to require further action to bring it in accordance with the Regulations, including providing natural ventilation to one of the bedrooms, providing ventilation to, and

⁵ Gabbitas v SSE & Newham LBC [1985] JPL 630

⁶ Sage v SSETR & Maidstone BC [2003] UKHL 22 '

resolving dampness in, the shower room. In my judgement these do not constitute operations that are required to substantially complete the building but instead are either technical legislative requirements or repairs.

19. At the time the Notice was served, there were two protected trees in the extension to the summerhouse, but by the time I visited the site these had been removed. The Council contends that the trees formed part of the extension's structure and until the two trees have been removed completely and replacement trees provided elsewhere, or the trees retained permanently as part of the summerhouse, the works to the building are not substantially completed.
20. The two trees formed part of the structure of the extension, including part of its roof. Most of each of the trees has been removed, but the base of the trunks and small sections constituting part of the roof of the extension, have been retained. Because the base of one of the trees is actually in the shower and forms part of the ceiling of the shower and the other tree is situated in the middle of a room, forming part of its ceiling, they are more than design features but are structural elements of the building. Therefore, it cannot be said that the extensions to the rear and side of the summerhouse were substantially completed at the time the enforcement notice was served because, in my judgement, the structure of the development cannot be completed until the trees have been removed. Since the removal of most of the trees has occurred within the past four years the appellant has not demonstrated on the balance of probabilities that the extensions were substantially completed on or before 13 October 2017.
21. Therefore, taking account of the range of evidence submitted by the main parties, the appeals on ground (d) fail.

The appeals on ground (f)

22. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of the summer house together with the extension to the rear and side in its entirety, the purpose is to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose.
23. The appellant considers the steps required are excessive given the fact that the Council granted planning permission for the original summer house in 2006 when it was considered to be acceptable in planning terms. Therefore, it is suggested that the requirements are amended to require the removal of the extensions erected without planning permission, restoring the site to the arrangement accepted previously.
24. Since there is no ground (a) under which planning merits may be considered, and the purpose of the Notice is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The 1990 Act cannot be interpreted as allowing a submission that the requirements exceed what is necessary to remedy any injury to amenity where, as in this case, the purpose of the requirements is to be found wholly within s173(4)(a). Consequently, the appeals on ground (f) cannot succeed.

The appeals on ground (g)

25. The ground of appeal is that the time given to comply with the requirements is too short. The three months given would be sufficient to demolish the building and to remove any resultant debris from the site. The six month period suggested by the appellant would allow alternative living arrangements to be made for the current occupant of the property and may be required to make suitable arrangements for the work to be carried out. However, I consider that the period given is sufficient given the ongoing harm caused by the unauthorised development. The appeals on ground (g) do not succeed.

Formal Decision

26. The appeals are dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR