



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 05th May 2022

Appeal Ref: APP/N5090/C/20/3263386

Land at 52 Wolsey Grove, Edgware HA8 0PJ

- 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 Sudha Seshadri against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0779/20, was issued on 7 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of land in the rear garden of 52 Wolsey Grove to a use for/as a dwellinghouse and operational development in the form of the construction of the building in which the dwelling is situated carried out incidental to making of the change of the use.
 - The requirements of the notice are to: 1 Restore the land to the state in which it was prior to the breach by demolishing the building. 2 Cease the use of the building as self-contained dwelling. 3 Permanently remove all bathroom facilities from the building including the removal of all toilets, basins, and showers. 4 Permanently remove all kitchen facilities from the building including all kitchen units, sinks, cookers and food preparation areas. 5 Permanently remove all constituent materials resulting from the works in 3. and 4. above from the property
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be varied by:
 - Removing step 1, section 5;
 - Removing step 3, section 5; and
 - Removing "3. and" From step 5, section 5.
2. Subject to these variations, due to the appeal succeeding to this extent under ground (f), the appeal is otherwise dismissed and the enforcement notice is upheld.

Procedural Matter

3. I do not consider a site visit necessary to determine the appeal, and I note from the appeal form and questionnaire that the main parties agree.

Ground (d)

4. For an appeal to succeed under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that no enforcement action could be taken in respect to the breach of planning control on the date the notice was issued.

5. The allegation is that a change of use of the land has occurred; in essence that part of the rear garden of the original dwellinghouse has become a new planning unit through the erection of a new, separate dwellinghouse.
6. There does not seem to be a disagreement between the parties on this point, since the appellant has stated on the appeal form that the outbuilding has been used as a dwelling since it was built. It is not therefore a matter of a pre-existing ancillary building being converted to a new dwelling.
7. In these circumstances, Section 171B(3) of the Act provides that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. As the notice was issued on 7 October 2020, it is therefore necessary for success under this ground for the appellant to demonstrate to the required standard of proof that the change of use occurred before 7 October 2010 (the relevant date) and that the use has been continuous since.
8. The appellant has not been able to say exactly when the new dwelling was erected, facilitating the change of use of the land, but that it was 2010 and that she "had Mrs Sandra Nadarajah stay in the outhouse". However, that is not sufficiently precise in the circumstances and I place significant weight on the sworn statement from Mrs Nadarajah which says "I was living in the outbuilding at 52 Wolsey Grove HA8 0PJ since 2011". This date is clearly after the relevant date for immunity purposes.
9. Further, none of the bank statements submitted show rental payments being made earlier than 2013 and there are no other documents submitted which precisely and unambiguously demonstrate on the balance of probabilities that the change of use occurred before the relevant date (there are undated letters from a neighbour saying that the "outbuilding at the rear of the property has been used as a self-contained dwelling since it was built 10 years ago" but that is not sufficiently precise in the circumstances).
10. Accordingly, the ground (d) appeal does not succeed.

Ground (f)

11. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
12. From the way the notice is drafted, it appears that its purpose is to discontinue the unauthorised use of the land for a separate dwelling and to restore the land to its condition before the breach took place.
13. While I am accepting of the Council's position that the erection of the building facilitates the breach of planning of control constituted by the unauthorised material change of use, and accordingly that there might be legal basis for the removal of all operational development works forming part and parcel of the breach, in my judgement to do so would be excessive when all that is required to remedy the breach would be to require the removal of a facility required for day-to-day private domestic existence. That would ensure that the land containing the outbuilding (which the Council could not otherwise enforce against as operational development alone, since it is clear that it was substantially completed in excess of 4 years) was not used for the purposes of a separate dwellinghouse.

14. Accordingly, to this effect, I am varying the notice so that kitchen facilities are removed. To require more would be onerous. Therefore the ground (f) appeal succeeds to this extent.

Ground (g)

15. For an appeal to succeed under this ground, I must be satisfied that the compliance period of the notice falls short of what is reasonable.
16. The appellant has raised concern that the occupier(s) of the outbuilding may not have sufficient time to look for new accommodation. However, I find that 9 months is a reasonable time for this to occur and for the other requirements of the varied notice to be undertaken.
17. Accordingly, the ground (g) appeal does not succeed.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed except under ground (f) since the notice requirements are excessive. I shall uphold the enforcement notice with variations.

Andrew Walker

INSPECTOR