



Appeal Decision

Site visit made on 20 June 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2022

Appeal Ref: APP/Y5420/C/20/3262772

Land to the rear of 34 Downhills Way, London N17 6BA

- 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 Damian Grigorov against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 6 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the outbuilding at the rear of the back garden to a self-contained dwellinghouse.
 - The requirements of the notice are: 1. Remove all fixtures and fittings that facilitate the use of the outbuilding as a self-contained dwellinghouse, this includes the kitchen and bathroom/shower room in its entirety (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards); 2. Remove from the site all materials and debris arising from compliance with the steps above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Summary of Decision

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

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, and do not consider that injustice would arise.
3. The appellant, or a representative on his behalf, did not attend my scheduled site visit. On his appeal form, the appellant did not consider it essential for me to enter the site, and given the ground of appeal pleaded, there are not matters in dispute that are determinative to my assessment where a site visit assists. There are also internal photographs already before me. Injustice to the parties therefore does not arise from an internal site inspection having not been undertaken.

The ground (d) appeal

4. This ground of appeal is that at the date when the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to demonstrate, on the balance of probabilities, that the use of the outbuilding as a self-contained dwellinghouse (a dwelling) began more than four years before the notice was issued. That use will need to have subsisted so that at any time during a continuous four-year period the Council could have taken enforcement action against the use.
5. The appellant asserts that he informed the Council the outbuilding was not designed as a self-contained dwellinghouse or to be used as such when they visited the site in April 2019. He however then states that the outbuilding was substantially completed in 2012/13 and its use changed then, and provides a series of aerial photographs, some of which show the inclusion of skylights. The appellant concludes that, at the time the notice was issued, more than 4 years has passed since the outbuilding was substantially completed and the use of the outbuilding changed.
6. The appellant therefore makes a contradictory statement concerning the use of the outbuilding as a dwelling. Moreover, in his response to a Planning Contravention Notice issued in July 2019, he states the outbuilding was to be used as a business premises and so it was not applicable to provide any tenancy agreements.
7. This therefore casts considerable doubt in my mind as to any assertion made concerning the continuity of any use of the outbuilding as a dwelling. There is also no ground (b) or (c) appeal before me, and so the appellant now accepts the matters have occurred, namely the use of the outbuilding as a dwelling, and that this is a breach of planning control.
8. In its enforcement notice, the Council has not taken enforcement action against building works, only the use of the outbuilding as a dwelling. Whilst the appellant asserts that works were undertaken in 2012/13, and which may then have subsequently facilitated the outbuildings use as a dwelling, to assert immunity from the enforcement action taken it is necessary for the appellant to demonstrate on the balance of probabilities that the outbuilding has been in continuous use as a dwelling for a period of 4 or more years prior to the issue of the notice¹, not merely equipped to do so.
9. The appellant then provides no documentary evidence to demonstrate on the balance of probabilities a 4-year period of continuous use of the outbuilding as a dwelling. He has therefore not discharged the necessary burden of proof.
10. Accordingly, as a matter of fact and degree, the appellant has not demonstrated on the balance of probabilities that at the time the notice was issued it was too late to take enforcement action against the matters stated in the notice, namely the use of the outbuilding as a dwelling. The Council can therefore take enforcement action against the use, as it has done so.
11. The appeal on ground (d) therefore fails.

¹ SSETR v Thurrock BC [2002] EWCA Civ 226 & Swale BC v FSS [2005] EWCA Civ 1568

Overall Conclusion

12. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice.

Formal Decision

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

Paul T Hocking

INSPECTOR