



Appeal Decision

Site visit made on 22 June 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Appeal Ref: APP/N5090/C/21/3274214

99 HILLSIDE GARDENS, EDGWARE, Middlesex, HA8 8HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR AJITKUMAR MAJITHIA against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/1416/20, was issued on 31 March 2021.
 - The breach of planning control as alleged in the notice is the erection of an outbuilding in rear garden for use as a separate residential dwelling.
 - The requirements of the notice are: 1 Cease the use of the rear garden outbuilding as self-contained residential dwelling 2 Demolish rear outbuilding 3 Permanently remove all constituent materials resulting from the works in 1 and 2 from the property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Ground (b)

2. An appeal on this ground is on the basis that the breach of planning control constituted by the matters stated in the notice have not occurred.
3. The alleged breach is the erection of an outbuilding for use as a separate residential dwelling. During the site visit the building appeared as shown in the photos provided by the Council from the Zoopla website in March 2021. The outbuilding has a dual pitched roof, living area with kitchen, bathroom and two rooms which could be used as bedrooms. The building contains all the facilities necessary for independent day to day living in the Gravesham sense, and in addition has its own parking area and access onto the highway, and could therefore be used as a separate residential dwelling. The appellant confirmed in his appeal statement that he intends to apply for a residential use for the outbuilding so that he can live there himself and let out the host dwelling. As such, the building constructed is not incidental to the host building but is a self-contained dwelling.
4. The matters stated in the notice have therefore occurred and the appeal on ground (b) does not succeed.

Ground (c)

5. This ground of appeal is that the matters stated in the notice do not constitute a breach of planning control.

6. The appellant argues that he received confirmation from the Council by way of a certificate of lawful development (Ref:17/4177/192) that the development benefitted from permitted development rights pursuant to Schedule 2, Part 1, Class E of Town and Country Planning (General Permitted Development) (England) Regulations 2015. However, the building constructed is materially different from the plans that were attached to the LDC application in that the roof has a dual pitch which has significantly altered its height, and also in terms of the windows and doors, the internal layout and proposed use. The outbuilding is therefore materially different to that which was previously proposed and which was the subject of the LDC application.
7. The appellant has not proven on balance that the outbuilding benefits from permitted development rights as he has not shown that all of the limitations and conditions set out in Class E, Schedule 2, Part 1 of the GPDO have been met in terms of its dimensions. In addition, the outbuilding has been built to allow for independent day to day living and has therefore been constructed for a separate residential use, and not for a purpose incidental to the enjoyment of the original dwellinghouse as required by Class E.
8. The appeal under this ground cannot therefore succeed.

Ground (f)

9. An appeal under ground (f) is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As there is no ground (a) appeal, a deemed application for permission has not been made and it is not possible to consider the planning merits of the development. The purpose of the notice is to remedy the breach of planning control.
10. The requirements of the notice to restore the land to its condition before the breach took place do not exceed what is necessary to remedy the breach, and do not prevent future development being implemented pursuant to permitted development rights. The ground (f) appeal therefore fails.

Zoë Franks

INSPECTOR