



Appeal Decisions

Site visit made on 26 July 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2022

Appeal A Ref: APP/A5270/C/20/3265222

52 Thames Avenue, Perivale, Middlesex UB6 8JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kamal Zahab against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 17 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding to a separate, self-contained dwelling ("Unauthorised Development").
 - The requirements of the notice are to:
 1. Cease the use of the outbuilding as a separate, self-contained dwelling
 2. Remove all kitchen facilities (including hob, oven, cabinets, sinks) and drainage connections that facilitate the Unauthorised Development
 3. Remove all bathroom facilities and drainage connections that facilitate the Unauthorised Development
 4. Remove all resultant debris
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/A5270/X/20/3263510

Garden Annexe Rear Of 52 Thames Avenue, Perivale, Middlesex UB6 8JN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kamal Zahab against the decision of the Council of the London Borough of Ealing.
 - The application ref 203034CPE, dated 4 August 2020, was refused by notice dated 19 October 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'existing annexe being used as a separate dwelling'.
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Decision: Appeal A

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

Decision: Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The LDC application was refused on the basis that the evidence does not demonstrate, on the balance of probability, that the outbuilding has been in continuous. The decision notice refers to outbuilding "A" and outbuilding "B" as

shown in drawing 186/RCR/010 Rec C and their use as three self-contained flats.

4. The appellant suggests that the Council used erroneous reasons to refuse the application for a Certificate of Lawful Use, since only one unit was applied for and it referred to drawings which were not submitted. However, section 195(2) and (3) of the Act provide that, on appeal, the Secretary of State shall grant an LDC if the local planning authority's refusal is not 'well-founded' and the Secretary of State shall dismiss the appeal if the refusal is well-founded. This means the local planning authority's decision, not its reasons for the decision.
5. Since the application being appealed is made to ascertain whether the use is lawful, it would be wrong to grant an LDC, even if the local planning authority's reasons for reaching the same conclusion are misplaced. I shall therefore consider whether the local planning authority's refusal was well-founded.

Ground (d) and S195: Reasons

6. An application under S191(1)(b) of the Act seeks to establish whether any operations which have been carried out in, on, over or under land are lawful at the time of the application. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
7. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
8. The main thrust of the appellant's case in both appeals is that the use of the building as a dwelling is immune from enforcement action by virtue of the passage of time.
9. Given the above, the main issue in the ground (d) appeal is whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 17 November 2016¹ and, if so, whether it continued without significant interruption for at least 4 years thereafter.
10. The main issue in the S195 appeal is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 4 August 2016² and, if so, whether it continued without significant interruption for at least 4 years thereafter.
11. Although the dates of the LDC application and enforcement notice are different, given the similarities between the appeal under section 195 and the appeal under ground (d), I shall deal with them together.
12. In an LDC and ground (d) appeal, the burden of proof is on the appellant, on the balance of probabilities. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of

¹ Namely 4 years prior to the date of issue of the notice.

² Namely 4 years prior to the date of the LDC application.

events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

13. The appellant's case under ground (d) is that they began renting out the outbuilding as a self-contained dwelling on 8 February 2014. By contrast, the appellant states in the LDC application that the use was begun on 16 October 2013. Although these dates are some time before 4 August 2016 and 17 November 2016, such inconsistency undermines the appellant's case. Furthermore, occupation from 16 October 2013 is contradicted by the evidence of a site visit made by a housing officer on that date who found the building unoccupied, with no bed and no gas supply.
14. The Council has provided electoral roll information for the property between 2013 and 2021, which show entries for 52 Thames Avenue but no separate entries for the outbuilding. In addition to the appellant, up to two other individuals are identified on the register at any one time. However, the individual asserted to have occupied the outbuilding is not identified on the electoral roll as living at the property.
15. The appellant suggests that the occupant has not been asked to register on the electoral roll. However, individuals are required to register if they meet the conditions for registering. Even if the occupant is from another country, the appellant has not shown that the occupant does not meet the conditions for registering.
16. Although the occupant may have no interest in voting, this in itself is not a valid reason for not registering. Given the penalties for not registering and the fact that the electoral roll information has picked up other occupants at the premises, this points towards the occupant not being resident in the outbuilding at that time.
17. The appellant has provided part of a tenancy agreement, starting on 8 February 2014 for a fixed term of 6 months. However, a tenancy agreement only shows that the tenant has the right to occupy a property, it does not show how that property has been occupied. Furthermore, no further tenancy agreements are provided.
18. The appellant states that the occupant remained as the tenant on an informal rollover tenancy agreement and has provided a document signed by the occupant of the outbuilding, which states they have been living in the annex since February 2014 until the current date. However, the document is undated and does not therefore show which period the occupant is referring to. Moreover, it is brief and does not provide any detail as to how the building has been occupied or show that occupation was continuous. I therefore afford the document very limited weight.
19. The appellant has provided documentation to show that Council Tax liability for the appeal building started from 16 October 2013. The Council has provided guidance published by the Valuation Office Agency, which advises that 'it makes no difference if the occupants of the main house use the unit. If a unit is constructed or adapted for use as separate living accommodation, then it will have a separate council tax band regardless of how it is used.' Liability for Council Tax does not therefore demonstrate how the building has been used or that it has been continuously occupied independently of the main dwelling.

20. The tenancy agreement does not state that bills are included in the rent and given the level of rent being charged for the building, which in my experience is modest, I consider it highly unlikely bills would have been included. Had the appeal building been occupied independently of the main dwelling, I would therefore have expected the occupant to have paid the Council Tax due on it. The fact that the appellant has been the only individual who has been liable for Council Tax on the building undermines their assertion that it has been continuously occupied independently of the main dwelling.
21. While the appellant has provided a series of photos of the appeal building, they are not dated and do not therefore demonstrate continuous use.
22. There is a paucity of documentary evidence regarding the use of the appeal building as a dwelling and the evidence that has been submitted by the appellant is contradictory and imprecise. Furthermore, evidence submitted by the Council contradicts the appellant's assertion that the building has been used independently of the main dwelling.
23. Thus, for the reasons given above, I find the appellant's evidence is not sufficiently precise or unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building began on or before 4 August 2016³ or on or before 17 November 2016⁴ and continued without significant interruption for at least 4 years thereafter.

Conclusion: Appeal A

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

Conclusion: Appeal B

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing annexe being used as a separate dwelling was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR

³ The relevant date for the LDC appeal.

⁴ The relevant date for the ground (d) appeal.