



Appeal Decision

Site visit made on 5 December 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/N5660/C/22/3290639

171 Cavendish Road, London SW12 0BW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Kashaf Khan against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 18 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a timber extension to the front elevation of the single storey outbuilding situated at the end of the rear garden and the material change of use of the outbuilding from incidental use to that of the main property, to a self-contained residential flat.
 - The requirements of the notice are:
 - a) Remove the unauthorised wooden extension and reinstate the front elevation of the outbuilding as existed prior to the breach of planning control; and
 - b) Cease the use of the outbuilding as an unauthorised self-contained flat; and
 - c) Remove all kitchen units, kitchen appliances, and associated electrical and plumbing, fixtures and fittings, that facilitate the unauthorised residential use; and
 - d) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is eight months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Preliminary Matter

2. The enforcement notice is directed at two developments, namely operational development consisting of the erection of an extension and a material change of use to a self-contained flat. The appellant's case on ground (b) relates only to the alleged material change of use.

The appeal on ground (b)

3. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
4. The onus is therefore on the appellant to demonstrate that the outbuilding was not in use as a self-contained flat at the relevant date, being the date of issue of the notice, 18 November 2021. Compliance or partial compliance with the enforcement notice, since that date, does not mean that what is alleged did not occur or did not constitute a breach of planning control.

5. Planning permission was granted on 5 August 2019 for the erection of a single storey outbuilding in the rear garden of the house, reference 19/01933/FUL. Condition 2 of the permission specifies that the development shall be carried out in accordance with the listed plans. The plans show the outbuilding to be divided into two rooms, a larger room containing a gym and a smaller room containing a bathroom.
6. The outbuilding, subject of the enforcement notice, contains four rooms, two of which contain primary living accommodation – a kitchen and bathroom.
7. The appellant's case is that the outbuilding has not been used for accommodation, sleeping in or, as a self-contained flat, it has been used as a gym and office with a sports area. They contend that the sink, presumably that in the kitchen, was installed for general use including drinking water, needed during and after exercise and whilst working from home in the office area.
8. The Council took photographs at their visit which show the outbuilding has four rooms, including a kitchen/living area and a bathroom including toilet, basin, and shower. There are no beds or sofas and whilst there is a fridge or freezer, there is no evidence of any cooking facilities. The Council's description and photographs broadly correspond with my observations, although I noted a treadmill in the kitchen/living area.
9. Whilst it is possible that items such as beds could have been removed prior to the Council's pre-arranged visit and my visit for that matter, there is no evidence of that, nor does it seem probable.
10. Nevertheless, the outbuilding is of a sufficient size and has all the facilities necessary for independent day to day living. I do not agree that because there are no beds, sofas, TVs, and no central heating that it could not be so used. However, I did not see any signs, nor do the submissions provide evidence of the outbuilding being used as such.
11. In any case, even if the outbuilding has all the facilities necessary to enable use as a separate dwelling, one cannot necessarily draw a conclusion from that that the use is as a self-contained flat.
12. Whilst it is evident that the outbuilding has not been designed solely for use as a gym, evidence regarding actual use as a self-contained flat is scant.
13. A third party stated that there was a family of four people living in the outbuilding, two adults and two children and that photographs of people going in and out were sent to the Council. Such photographs have not been provided, and in any case would not provide evidence of use as a self-contained flat, particularly since the appellant stated his family use the building daily.
14. As already stated, in an appeal on this ground, the onus of proof is on the appellant. Their evidence is limited to generalised statements however, it does not need to be corroborated by independent evidence to be accepted especially where there is no evidence to contradict it.
15. I conclude from the evidence before me and on the balance of probability that the alleged breach of planning control comprising the material change of use of the outbuilding from incidental use, to use as a self-contained residential flat has not occurred.

16. It appears based on the submissions, that the outbuilding was not first erected as a gym with bathroom, in accordance with the approved plans, and later converted. It seems likely that it was erected in its current form and therefore is not that outbuilding permitted by the 2019 permission.
17. Consequently, it seems that the breach of planning control that has occurred is the erection of a detached outbuilding in the rear garden. In terms of its use, it seems that it is probably used in association with the dwelling for ancillary purposes.
18. I have considered whether I could correct the allegation in the notice to address the breach of planning control that has occurred however, since I do not know what each party's case would be in the face of such a correction, in particular the Council's, I could not do so without causing injustice.
19. In respect of the timber extension, I considered correcting the allegation to delete the material change of use, thereby leaving the notice in respect of the extension. However, it would have been inappropriate for me to have considered whether to grant planning permission for an extension to what appears to be an unauthorised building. This would have caused injustice to the Council.

Conclusion

20. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.
21. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
22. In these circumstances, the appeals on the grounds set out in section 174(2)(c) and (a) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Felicity Thompson

INSPECTOR