



Appeal Decision

Site visit made on 24 January 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH FEBRUARY 2023

Appeal Ref: APP/R5510/C/21/3280862

19 Gladsdale Drive, Pinner HA5 2PP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Atul Patel against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 13 July 2021.
 - The breach of planning control as alleged in the notice is the development of a non-incidental self-contained residential outbuilding.
 - The requirements of the notice are: (I) Demolish the outbuilding and the adjoined structures hatched purple on the plan attached to the notice. (II) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the demolition works listed above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) 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 have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by at paragraph 3 substituting 'outbuilding' with 'building', varied by at paragraph 5 in step I, substituting 'outbuilding' with 'building' and also varied at paragraph 5 in step I by deleting 'and the adjoined structures'. Subject to this correction and the variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The enforcement notice alleges the 'development of a non-incidental self-contained residential outbuilding'. An outbuilding is commonly understood as a smaller separate structure which is used for a purpose subordinate or secondary to that of a dwelling, rather than something which is a dwelling in its own right. As the notice alleges that the structure is not incidental to the dwelling and is self-contained, it cannot also be an outbuilding. Therefore, I shall correct and also vary the notice to replace the references to an 'outbuilding' with 'building' in the allegation and in step I of the requirements. There would be no injustice to the appellant or the Council by doing so.
3. The notice is sub-headed 'operational development.' Paragraph 4 ('reasons for issuing the notice') refers to matters including the scale of the unauthorised building and its effect on the character and appearance of the area and the living conditions of occupiers of adjoining residential properties. The notice requires the demolition of the unauthorised building. Elsewhere in paragraph 4 a single reference is made to a material change of use, in relation to the time

for taking enforcement action. However, when read fairly and in the context of the notice as a whole the allegation clearly relates to the erection of a building used as self-contained residential accommodation. The sub-heading, reasons and the requirements all relate to the carrying out of building operations, falling within the first limb of the definition of development in s55(1) of the Act. Consequently, the allegation is sufficiently clear and precise and satisfies s173(1) and (2) of the Act.

4. Given the above, I am unclear as to why the allegation might have caused the appellant difficulty in terms of assessing whether there was a reasonable prospect of obtaining planning permission by pursuing a ground (a) appeal. In addition, as the time for taking enforcement action in respect of operational development undertaken without planning permission is the same as where there has been a breach of planning control consisting in the change of use of a building to a dwelling, there has been no adverse effect on the appellant's ability to submit a ground (d) appeal. The appellant made it clear that the building was erected less than four years before the date of the notice. Therefore, how the allegation is described has not prejudiced the appellant's ability to make a wider appeal.
5. In the notice requirements, step I includes reference to the 'demolition of... the adjoined structures ...'. However, there is no reference to adjoined structures in the allegation. The building is a singular structure. Although physically attached, the only relevant remaining adjoined structure is otherwise largely separate from and not integral to or part and parcel of the outbuilding. Therefore, that structure does not form part of what has been alleged. Requiring the removal of development that is not part of the alleged breach is more onerous than requiring the land to be restored to its condition prior to the breach taking place. Consequently, I shall also vary the notice to delete reference to the adjoined structures in step I. There would also be no injustice by varying the notice in this fashion. It would be open to the Council to serve a further notice in respect of the adjoined structure if it were deemed expedient to do so.

Ground (b) and (c) appeals

6. The ground (b) appeal is that the matter alleged in the notice has not occurred. The ground (c) appeal is that the matter alleged does not constitute a breach of planning control. It is for the appellant to show why these grounds of appeal should succeed, the relevant test of the evidence being on the balance of probability.
7. The appeal property contains a semi-detached dwelling. The dwelling is vacant whilst it undergoes works of enlargement. A detached flat roof building has been erected towards the end of the rear garden. Inside this building is a living/sleeping area including two beds, a desk, a computer/monitor and TV. There is a fitted kitchen containing an oven, hob, sink and drainer, worksurfaces and cabinets, together with various household electrical appliances. There is also a WC/shower room. As a result, the building provides all the facilities necessary for independent day-to-day living, this being the distinctive characteristic of a dwelling.
8. There is no dispute that the building is occupied residentially by the appellant and their family during the works to enlarge the vacant dwelling. In the context of a dwelling an incidental use is one which is secondary to the primary

residential use but is not itself a dwellinghouse use. Accordingly, the structure that has been erected cannot be in use for an incidental purpose. Considerations relating to the relevant planning unit make little difference as to whether what has been alleged in the notice has occurred. The notice alleges operational development and is not solely directed at a material change of use.

9. For the above reasons, the available evidence shows that, on the balance of probability, the matter alleged in the notice has occurred and the ground (b) appeal fails.
10. Turning to the ground (c) appeal. Erecting the building has involved 'development' as defined in s55(1) of the Act. Planning permission is required for the development of land, having regard to s57(1) of the Act.
11. According to the appellant, the building was originally erected for storage and leisure uses associated with the dwelling. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) at Article 3, Schedule 2, Part 1 Class E grants planning permission for the provision within the curtilage of a dwelling of a building required for a purpose incidental to the enjoyment of the dwelling as such. There is no dispute that the building meets the relevant dimensional and locational limitations in Class E paragraph E.1; in my own assessment I found nothing which might indicate otherwise.
12. Nevertheless, the Council's evidence casts doubt on whether the building was erected other than for the purpose of providing self-contained residential accommodation. Copies of photographs taken in early and mid-2020, when the building was incomplete having yet to be fitted out internally, were supplied. In those photographs, electrical sockets are clearly visible, including some at a higher level, together with the carcass of an internal partition. The positions of some higher level electrical sockets correspond with some of those in the kitchen area of the building, whilst the partition corresponds with the position of that separating the shower room/WC from the kitchen and living/sleeping area. This points towards the kitchen and shower room/WC as having been installed at or around the time the building was erected. The appellant did not offer any clear and convincing alternative explanation. There is little firm evidence of the building having been used for incidental storage and leisure purposes prior to its use as self-contained residential accommodation.
13. Erection of a building to provide self-contained residential accommodation does not fall within the scope of development permitted by the GPDO at Article 3, Schedule 2, Part 1, Class E. As is made clear in the Government's Technical Guidance¹, a purpose incidental to a dwelling would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. Relevant case law confirms that the erection of a building cannot fall within Class E if itself it is a dwellinghouse or it is for the provision of primary dwellinghouse purposes². Therefore, on the basis of the available evidence, I am not persuaded that the building benefits from the planning permission granted by the GPDO.

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019.

² *Rambridge v Secretary of State for the Environment and East Hertfordshire DC* (QBD 22.11.96 CO-593-96).

14. A breach of planning control includes at s171A(1)(a) of the Act the carrying out of development without the required planning permission. As far as I was made aware, there is no express grant of planning permission for erecting the building for use as self-contained residential accommodation.
15. Accordingly, on the balance of probability the matter alleged in the notice constitutes a breach of planning control. The appellant has been unable to show otherwise. The ground (c) appeal fails.

Ground (f) appeal

16. The ground of appeal is that the notice requirements are excessive.
17. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173(4)(b).
18. The Council did not specify in the notice which of the above purposes it sought to achieve. However, the requirements are to demolish the building, not its modification in some fashion. Therefore, the purpose of the notice must be to remedy the breach. Set in this context, anything which stopped short of requiring demolition of the building-only removing facilities that made the building capable of use as self-contained residential accommodation for example, would sustain part of the breach and so would not achieve the purpose of the notice.
19. As enforcement action is intended to be remedial, it is also necessary to consider whether the planning difficulties could be overcome at less cost and disruption. Erecting a similarly sized incidental outbuilding as permitted development under the GPDO does not represent a realistic 'fallback' position in the event the notice is upheld. There is no clear and convincing explanation as to why a structure of similar scale and footprint would be required for a purpose incidental to the enjoyment of the dwelling as such following compliance with the notice. Therefore, retaining the building for incidental purposes does not represent an obvious alternative to the notice requirements. There are no other alternatives that would also remedy the breach.
20. Consequently, the notice requirements are proportionate being the minimum necessary to remedy the breach. The ground (f) appeal fails.

Ground (g) appeal

21. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
22. The appellant argued that eight months would be required so that the remaining works to the vacant dwelling are completed before the building is demolished. Nevertheless, those works are now well advanced. It should be no more than a few weeks at most before the vacant dwelling is habitable again. Given its reasonably modest size, demolition of the building together with removal of the resulting materials is likely to be a relatively small-scale and straightforward job for an experienced building contractor and is unlikely to take more than a couple of weeks. There are probably a significant number of contractors who would be suitable and available to undertake the works with a

reasonable period of notice. Therefore, it is more than likely that the building could be demolished without the appellant having to find alternative accommodation.

23. In view of the above factors, the three-month period specified in the notice strikes an appropriate balance between affording the appellant a reasonable amount of time to vacate the building and to arrange for and have the remedial works carried out, whilst not perpetuating the planning harm identified in the notice.
24. Accordingly, the period for complying with the notice requirements is not unreasonably short and the ground (g) appeal also fails.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Stephen Hawkins

INSPECTOR