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# Appeal Decisions

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 March 2023**

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**Appeal Ref: APP/A5270/C/21/3289062 (Appeal A) &  
APP/A5270/C/21/3289063 (Appeal B)  
50 Huxley Gardens, Park Royal, London NW10 7DX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (TCPA90) as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mrs Urszula Chadzynska (Appeal A) and Mr Tadeusz Chadzynski (Appeal B) against an enforcement notice issued by the London Borough of Ealing Council.
  - The enforcement notice is dated 4 November 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of the outbuilding to use as a single dwellinghouse.
  - The requirements of the notice are: A. Cease the use of the outbuilding as a dwellinghouse; B. Remove from the outbuilding all kitchen and bathroom facilities and cap off water connections.
  - The period for compliance with the requirements is six months.
  - The appeals are proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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## Decisions

1. It is directed that the enforcement notice be corrected by the deletion of the text 'B. Remove from the outbuilding all kitchen and bathroom facilities and cap off water connections.' from the requirements paragraph and its substitution with the text: 'B. Remove from the outbuilding all kitchen and showering facilities.'
2. The enforcement notice, as corrected, is upheld and the appeals are dismissed.

## Preliminary Matters

3. The determination of the appeals turns on consideration of ground (d), which is a legal ground, and ground (f), which is a ground of mitigation relating to the requirements of the enforcement notice. The written evidence alone was sufficient for the consideration of the appeals, and so it was not necessary for me to carry out a site inspection. The main parties were consulted and made no objection to this approach.

## The appeals on ground (d)

4. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
5. In order for the appeal to succeed, the appellant needs to submit sufficient precise and unambiguous evidence to show that the outbuilding has been in continuous use as a self-contained residential unit for four years or more prior

- to 4 November 2021, which is the date of the enforcement notice. The outbuilding therefore needs to have been in occupation on 4 November 2017 or before.
6. The outbuilding that is the subject of the appeals was built in the spring of 2003. The appellants submit a letter from the Council, dated 1 September 2003, which advised that, in their opinion, the outbuilding fell within the permitted development limits available at the property. The annotation at the top of the letter refers to the structure as a 'garden building'. The appellants confirm that it was at first used for storage and as a laundry room. They go on to say that, in 2007, the outbuilding was adapted for use as a dwellinghouse.
  7. They state that the outbuilding was let out to Mr Grzegorz Duda from 2007 until February 2011, and then from March 2011 to September 2015 to Ms Karolina Szostak and Mr Maciej Taudul. In August 2015, the building was put up for sale, and the tenants moved out. Part 1 of the sales particulars of 2015 from Northfields describe the outbuilding as a 'separate studio building', and I note that the kitchen was omitted by accident. Part 2 of the sale brochure refers to the outbuilding as 'a separate office studio'.
  8. The property was withdrawn from sale in February 2016, and the appellants eventually began to renovate the outbuilding at the beginning of 2019. Following the completion of the works, Ms Magda Wojcik and Mr Miroslaw Ziolkowski moved into the building in September 2019 and they continue to reside there.
  9. The appellants say that they have tried to contact the previous tenants to ask them to confirm their residency at the appeal site, but did not have contact details for Mr Duda, and did not hear from Mr Taudul and Ms Szostak. However, they provide a statement dated 14 December 2021 from Mr Roman Demkowicz. In it, he says that he has lived at 50 Huxley Gardens from October 2002 until August 2015, and then from March 2016 until the date of writing.
  10. He reiterates that the outbuilding was renovated and turned into a studio flat in 2007, and repeats the names of the tenants who are said to have occupied the building since 2007. As Mr Demkowicz produces no additional information or corroborating evidence, his statement adds little to the appellants' case.
  11. Turning then to the Council's evidence, they say that on 28 December 2018, Mr Chadzynski made an application for an HMO licence for the main house, which was granted on 12 March 2019. In answer to the question 'Does the property currently have the use of an outbuilding for residential purposes?', Mr Chadzynski answered 'no'.
  12. Mr Chadzynski listed the occupiers of the house at the time. In room 4, first floor front, the occupiers are listed as Mr Miroslaw Ziolkowski and Ms Magda Wojcik. They are said to occupy the room on an assured shorthold tenancy commencing 1 September 2018. A Mr Roman Demkowicz and a Mr Krzysztof Nicewicz are said to occupy the loft accommodation on an assured shorthold tenancy dated 1 April 2018.
  13. The Council received a complaint in October 2021 about the poor accommodation standards in the outbuilding and visited on 19 October 2021. They found Mr Miroslav Ziolkowki and Ms Magda Wojcik in residence, saying

that they had been living in the outbuilding and paying rent for three years, but had no tenancy agreement in place. For council tax purposes, the Valuation Office Agency banded the loft flat and the outbuilding as separate flats on 11 October 2021. Prior to that date, the Council confirm that there was no separate banding for the outbuilding.

14. In summation, then, the evidence points to the occupation of the outbuilding from approximately October 2018, which would amount to around three years of occupation by Mr Miroslav Ziolkowki and Ms Magda Wojcik. The appellants offer no documentary evidence to support their case or contradict that of the Council. Although they were not able to obtain statements from the previous tenants, it would be expected that they would be able to provide some evidence of the presence of tenants in the outbuilding.
15. Even if no tenancy agreements had been signed, it would be expected that some evidence of rent being paid could be provided, for example, bank statements showing transfers of the rent money. Furthermore, it is usual for tenants and landlords to agree the readings of electricity and gas meters when they move in and out, but the appellants have not produced any such evidence.
16. Taking all these factors into account, I am satisfied that the evidence submitted by the appellants falls far short of demonstrating, on the balance of probability, that the outbuilding was continuously used as a self-contained residential unit for four years or more preceding the date of the enforcement notice.
17. The appeals on ground (d) therefore fail.

### **The appeals on ground (f)**

18. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
19. The appellants argue that the requirement to remove the bathroom facilities and to cap off the water connection is disproportionate and exceeds what is necessary to remedy any breach of planning control. This is on the basis that the outbuilding already had a water connection in 2003, which allowed it to be used for laundry.
20. They say that, by keeping the bathroom and water connection, the outbuilding could be used by residents of the main house as a gym and/or a laundry room. Without the water connection, the building could not be heated, which would lead to its deterioration. They contend that the removal of the kitchen alone would be sufficient to prevent the use of the building as a self-contained dwelling.
21. The Council argue that there is no evidence that the alleged separate use for which the bathroom was installed became lawful before the unauthorised use occurred. They state that gyms are seldom implemented as ancillary uses within outbuildings, and that a laundry room does not need a shower. For that reason, they raise no further objection to the wash basin and toilet remaining, but wish the requirement to remove the shower to remain.
22. I agree that the removal of the kitchen and the shower would be the minimum necessary to ensure the cessation of the use of the building as a self-contained

dwelling. The retention of the basin and toilet in themselves would not reasonably allow the building to be inhabited as a primary residence.

23. The Council further confirm that they remove their objection to the retention of the water connection. I have no basis on which to take a different view, and I have directed that the enforcement notice be corrected accordingly.

24. The appeals on ground (f) therefore succeed to that limited extent, and I have directed that the notice be corrected accordingly.

### **Conclusion**

25. For the reasons above, the enforcement notice, as corrected, is upheld and the appeals are dismissed.

*Elaine Gray*

INSPECTOR