The Planning Inspectorate

Appeal Decisions

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 04 April 2023

Appeal Ref: APP/A5270/C/21/3287051 (Appeal A)
Garden Annexe, 171 Twyford Abbey Road, London NW10 7DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ken Tajalli against an enforcement notice issued by the London Borough of Ealing Council.
- The enforcement notice is dated 11 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission: The material change of use of a rear outbuilding to a separate self-contained residential dwelling.
- The requirements of the notice are: 1. Cease the use of the outbuilding as a separate self-contained residential dwelling.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/A5270/X/21/3284201 (Appeal B)
Garden Annexe, 171 Twyford Abbey Road, London NW10 7DG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ken Tajalli against the decision of the London Borough of Ealing Council.
- The application Ref 214661CPE, dated 8 July 2021, was refused by notice dated 4 October 2021.
- 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 described as 'C3 – Dwellinghouses'.

Decisions

1. Appeal A is dismissed and the enforcement notice is upheld.

2. Appeal B is dismissed.

Preliminary Matters

3. 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. Ground (d) is equivalent to an LDC application. Because the LDC appeal in this case is for the same development as that attacked by the notice, I have considered the two appeals as one to avoid any unnecessary duplication.

4. 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.

5. In both appeals, the onus of proof lies on the appellant, who is responsible for providing sufficiently precise and unambiguous information to demonstrate their case to the standard of the balance of probability

Appeal A on ground (d) and Appeal B

6. For the appeals to succeed, the appellant needs to submit enough evidence to show that the appeal site has been in continuous use as a self-contained residential unit for four years or more prior to 8 July 2021, which is the date of the LDC application. The outbuilding therefore needs to have been in occupation from 8 July 2017 or before.

7. If this can be established, then lawfulness would have accrued, and Appeal A would succeed on ground (d) as it would have been too late for the Council to have served the enforcement notice on 11 November 2021.

8. According to the Council's records, the outbuilding in question was completed in 2008 under the permitted development rights available at No 171. Council tax officers visited the appeal site on 14 September 2016 and found it to be occupied by Marjon Tajalli, the appellant's daughter. It was recorded that Ms Tajalli was ill with cancer and that the appellant and his wife, who lived in the main house, were carers for Ms Tajalli. April 2015 was given as the date of Ms Tajalli's first occupation of the outbuilding, and council tax was charged on the property from that date.

9. The case was referred to the planning enforcement team as no planning permission was evident for the residential use of the outbuilding. However, the Council confirm that no action was taken as it appeared that the outbuilding was not in separate use.

10. I have been provided with a copy of the council tax bill dating from 2 April 2015 until 31 March 2018. It is addressed to Mr Tajalli in respect of the Garden Annexe. Between the dates of 2 April 2015 and 31 March 2017, an annexe discount and a single person occupation discount are applied to the bill. Annexe discounts are applied when the relative of the billpayer occupies the unit in question, and when the unit forms part of a single property.

11. In other words, this circumstance indicates that the outbuilding still formed part of the planning unit at No 171 and did not amount to a separate dwelling house for planning purposes. The appellant states that the discounts were applied without his requesting them, but by the same token, there is no evidence that he disputed them.

12. The annexe discount is removed for the period from 1 April 2017 to 31 March 2018. The next council tax bill names Mr Saviani as liable for payment, and is dated 1 March 2018 to 31 March 2019. Mr and Mrs Saviani are then billed for the period of 1 April 2019 to 31 March 2020. The next two council tax bills are addressed to Mr Brown-Williams covering the period from 1 December 2020 to 31 March 2022.

13. As a result, there is a substantial gap in the records from April 2020 to November 2020, a period of eight months. The appellant states that there was

a short gap of occupation in November 2020 for repairs to the building. He goes on to explain that he cannot find the council tax bill for this period, when he says that the Savianis lived in the outbuilding. He indicates that the Council will be able to find the bill in their own records.

14. I have also taken into account the written statements from the tenants in question. These letters are very brief and give no information beyond the evidence of the council tax bills. The periods of occupation given are vague, expressed in years rather than precise dates. In particular, I note that Ms Saviani says she occupied the outbuilding during the 'years 2018 – 2020', which does little to assist the appellant in relation to the eight month gap.

15. I have had regard to the letter from Dr Al-Nakeeb, dated 6 November 2021. He reiterates that the building has been in constant occupation on the basis that he has been friends with at least two occupants and been inside the accommodation on occasions which are not specified. Similarly, Mr Iskandarani states in his letter of 8 November 2021 that the outbuilding has been used as a separate flat with different occupiers. He is aware of at least two occupants. However, the information given in these statements is too vague and imprecise to assist the appellant's case.

16. In summation then, the appellant's evidence falls short of demonstrating that the outbuilding has been continuously occupied as a separate residential unit for four years or more, so that a material change of use has been established. Council tax bills are not in themselves evidence of occupation, and it would be expected that further evidence would be adduced, for example, tenancy agreements or perhaps copies of utility bills from the tenants.

17. The council tax bills themselves indicate that the outbuilding was not independently occupied until March 2018, when the annexe discount was lifted. Even if I accept that the outbuilding was renovated in November 2020, the evidential gap between April 2020 and October 2020 is insurmountable. Even if the council tax bill was not available, the appellant needs to have produced some evidence of its occupation. However, as it stands, this amounts to a material break of occupation for planning purposes, and the appellant provides insufficient evidence to the contrary.

Conclusion

18. For the reasons above, Appeal A on ground (d) fails because it has not been shown that it was too late for the Council to take enforcement action on the date of the notice. Appeal A is dismissed and the enforcement notice is upheld.

19. I further conclude that the Council's decision to refuse to issue an LDC for the use of the outbuilding as a self-contained residential unit was well-founded. As a result, Appeal B should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR