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# Appeal Decision

Site visit made on 24 April 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> May 2023**

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**Appeal Ref: APP/B5480/C/22/3299488**

**60 Brooklands Road, Romford, RM7 7EB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Linus Nwanemuogh against an enforcement notice issued by London Borough of Havering.
- The notice was issued on 22 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, the use of the outbuilding for non-incidental purposes (including residential functions).
- The requirements of the notice are
  - (1) Cease the use of the outbuilding situated in the approximate location hatched RED on the attached plan for non-incidental purposes to the main dwelling of 60 Brooklands Road Romford RM7 7EB (including for residential purposes and primary residential functions). This includes
    - (a) Ceasing the use of the outbuilding for residential purposes;
    - (b) Ensuring that ensuring at there is sufficient clear and unobstructed access between the outbuilding and No 60 Brooklands Road (such as removal of the fence between the outbuilding and the garden of No 60 Brooklands Road Romford RM7 7EB);
  - AND
  - (2) Remove all residential paraphernalia and facilities from the outbuilding situated in the approximate location hatched RED on the attached plan. This includes any and all cooking, washing and sleeping facilities. This also includes removal of any showers toilets and sinks in the bathroom and kitchen areas
  - AND
  - (3) Stop up all services going separately into the outbuilding situation in approximate location hatched RED on the attached plan is includes any gas, electric and/ or sewage facilities in or to the outbuilding situated in the approximate location hatched RED on the attached plan
  - AND
  - (4) Remove all materials, rubble and debris from the site as a result of taking steps (1) (2) and (3) above
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

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## Decision

1. It is directed that the enforcement notice is corrected and varied by;
  - 1) deleting the allegation and replacing it with "without planning permission, the unauthorised use of the outbuilding as a self-contained residential unit."
  - 2) deleting the requirements contained in Section 5 of the notice and replacing them with the following:

1. Cease the use of the outbuilding as a self-contained residential unit
  2. Remove all kitchen, shower, toilet and sleeping facilities including sinks, and all residential paraphernalia associated with use of the outbuilding as a self-contained residential unit.
  3. Remove all materials, rubble and debris from the site as a result of taking step 2.
- 3) Deleting the period for compliance and replacing it with
- i) the period for compliance with requirement 1 is 2 months.
  - ii) the period for compliance with requirements 2 and 3 is 3 months.
2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

### **Application for costs**

3. An application for costs was made by the Council of the London Borough of Havering against Linus Nwanemuogh. This application is the subject of a Separate Decision.

### **The Notice**

4. The allegation and the requirements should flow from each other. The allegation lacks clarity when the notice is attacking the use of the outbuilding as a self-contained residential unit which is not disputed by the appellant. The Council has not referred to any other kind of non-incidental use taking place in the notice or in its evidence. I will therefore amend the allegation to "without planning permission, the unauthorised use of the outbuilding as a self-contained residential unit."
5. The requirements include ceasing use of the outbuilding for residential purposes. An amended requirement to cease the use of the outbuilding as a self-contained residential unit would match the allegation and provide clarity. Requirement 2 can be reworded to focus on what has to be removed in the event of the notice being upheld. This requirement will be amended to "Remove all kitchen, shower, toilet and sleeping facilities including sinks and all residential paraphernalia associated with use of the outbuilding as a self-contained residential unit." I will address the other requirements under ground (f). The amendments do not cause any injustice to any party and I will amend the allegation and the requirements accordingly.

### **Preliminary Matters**

6. Whilst an accompanied site visit took place, access to the interior of the outbuilding was not possible as the appellant does not have keys and the current occupier of the building was not present to allow access. However, the facilities and layout of the building could be seen through windows and photographs have been provided as part of the evidence.

### **An appeal under ground (f)**

7. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control or as the case may be, any injury to amenity caused by the breach. In this case, where requirements include cessation and removal, the purpose of the notice is clearly to remedy the breach of planning control rather than any injury to amenity which determines the scope of ground (f). The appellant considers that the requirements other than ceasing the unauthorised residential use are ambiguous and excessive.
8. The amended requirements include removal of all residential paraphernalia including kitchen, shower, toilet and sleeping facilities. Other requirements include the stopping up of all services and removal of the fence between the outbuilding and the garden of No 60.

#### *Fixtures and Fittings*

9. The Courts<sup>1</sup> have held that where works were carried out to facilitate an unauthorised material change of use of a building and have thereby facilitated that change of use then those works can also properly be required by an enforcement notice to be removed in remedying the breach of planning control.
10. Photographs show kitchen units which include a sink as well as a cooker along the back wall of the living area. There is a separate shower room with a shower, toilet and sink in a corner of the appeal building. The appellant has not provided any evidence to indicate that these facilities which are integral to separate residential use of the outbuilding were installed before the unauthorised use commenced in 2020. The appellant states that incidental uses such as a home office, gym or hobby use could contain cooking or washing facilities which appears to refer to future use. However, the Courts<sup>2</sup> have also held that a notice can still require the removal of works even if those works could serve the reversion to lawful use if the works were installed to enable the unauthorised use. I have no information or evidence to indicate that the cooking, shower, toilet and sleeping facilities were installed and used prior to the unauthorised use taking place. I do not therefore consider that the amended requirement (2) is excessive.

#### *The fence*

11. Requirement (1) (b) refers to "ensuring that there is sufficient clear and unobstructed access between the outbuilding and No 60 (such as removal of the fence between the outbuilding and No 60). The Council states that the purpose of including this step is to ensure sufficient access and spatial cohesion between the property and the outbuilding.
12. The appellant states that the fence has been in existence for a number of years although neither party has provided any evidence as to when the fence was erected. The Council considers that the removal of the fence means that it is less likely that a future breach would occur. However, the likelihood of a future breach does not justify this requirement and achieving unobstructed access is not a purpose of the notice.

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<sup>1</sup> *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

<sup>2</sup> *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784

13. The Council had suggested alternative wording for this requirement to make it less ambiguous. However, changing the wording to require alteration of the existing fence and gate does not bring this requirement within the purpose of the notice and ceasing the self-contained residential use and removing the facilities will remedy the breach.

#### *Services*

14. This requirement is to stop up all services going separately into the outbuilding which includes gas, electricity and sewage. There does not appear to be a gas connection to the appeal building. The Council states that a failure to stop up services would be likely to result in non-incidental uses occurring at some point in the future and that it cannot monitor the site continually to prevent unauthorised use. However, reducing the need for future monitoring is not a purpose of the notice. Stopping up of the services is excessive when the other requirements will remedy the breach which is the purpose of the notice.

#### *Conclusion on ground (f)*

15. The amended requirement to remove kitchen, shower, toilet and sleeping facilities is not excessive. However, I do find that the requirements relating to the removal of the fence and the stopping up of services exceed what is necessary to remedy the breach. The ground (f) appeal therefore succeeds to that extent and I will amend the requirements accordingly.

#### **An appeal under ground (g)**

16. An appeal under ground (g) is that the time allowed for compliance is too short. The period for compliance is 2 months and the appellant has asked for 12 months to be able to engage a builder and to serve notice on the party living in the outbuilding. Whilst reference was made to the ongoing Covid 19 pandemic, availability of trade persons is likely to have improved since that statement was made. The nature of the work which includes the removal of the fittings is not extensive and allowing the breach to continue for a further 12 months is not appropriate.
17. The building was unoccupied when the notice was served as the previous tenant had left. I have no details of when further occupation then took place other than that there was an occupier when the appellant's statement was made in July 2022. No reasons are provided as to why a longer period to vacate is necessary. The appellant was aware that any new occupation could only be temporary until this appeal under the limited grounds (f) and (g) was determined. No details are provided of the occupier's circumstances or on what basis he took up occupation. There is no evidence of a tenancy agreement or its terms including any notice period.
18. However, there is a practical difficulty with the same compliance period for the requirements. I accept that the building was unoccupied when the notice was served but nevertheless the works cannot be carried out whilst the occupier is still present as that will leave the occupier without basic facilities. I will therefore amend the period for compliance for requirements 2 and 3 which relate to the removal of facilities and debris and materials to 3 months so that there is a period of 1 month after the occupier vacates to carry out the works. The appeal under ground (g) therefore succeeds to that extent.

## **Conclusion**

19. For the reasons given above, I conclude that the appeals under ground (f) and ground (g) succeed in part. I shall vary the enforcement notice prior to upholding it.

*E Griffin*

INSPECTOR