



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/T5150/C/22/3297979

19 Christchurch Avenue, London, NW6 7QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Qasim Gulamhusein against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 21 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the building in rear garden of the premises from an incidental use of the flats involving the use as a pool/snooker, Jacuzzi, swimming pool and gym room to a non-incidental office/business use.
 - The requirements of the notice are to: Step 1 Cease the use of the building in the rear garden as a non-incidental office/business use. Step 2 Remove all items, materials and debris, arising from that demolition, and remove all the materials associated with the unauthorised change of use from the premises. Step 3 Restore the internal configuration of the building so that it restored to the condition before the breach took place. For the avoidance of doubt this layout involves pool/snooker, jacuzzi, swimming pool and gym rooms, as shown in "Plan A" attached to the enforcement notice.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - The deletion of the allegation in its entirety and its replacement with the text: 'Without planning permission, the material change of use of the building in rear garden of the premises from an incidental use of the flats to a non-incidental office/business use.'; and
 - The deletion in its entirety of the text: 'Step 3 Restore the internal configuration of the building so that it restored to the condition before the breach took place. For the avoidance of doubt this layout involves pool/snooker, jacuzzi, swimming pool and gym rooms, as shown in "Plan A" attached to the enforcement notice.' from the requirements paragraph.
2. The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Costs decision

3. The appellant's application for an award of costs against the Council is dealt with by a separate decision.

Preliminary Matters

4. The appeal is brought on the legal grounds (b) and (c), and (f) which is a ground of mitigation. On that basis, the written evidence alone has been sufficient for the consideration of the appeal, 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. I have taken note of the comments from the parties over the lawfulness of the physical form of the outbuilding. However, because this matter is not included within the notice, I have not considered it any further below.

The appeal on grounds (b) and (c)

6. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. Ground (c) is that there has not been a breach of planning control. These grounds often overlap, and in this case, I have dealt with them together in order to avoid any unnecessary repetition. I note the appellant's stance that it is for the Council to prove that an unauthorised material change of use has occurred. However, that it not the case. Under grounds (b) and (c), the onus of proof lies on the appellant, who must produce sufficient precise and unambiguous evidence to make out his case to the standard of the balance of probabilities.
7. The Council have provided a screenshot from the ABTA website showing that the address is listed for Major Travel is 19 Christchurch Avenue. The appellant does not contradict this evidence, but states that this address was listed for the sole purpose of receiving post. He states that the company's registered address is Nucleus House in Richmond, but it is not unusual for companies to work from different addresses to those registered with Company House.
8. Turning to the substance of the allegation, the appellant does not dispute that the travel company Major Travel used the outbuilding in some capacity for a time from October 2020. Due to the travel restrictions imposed during the coronavirus pandemic, the company was badly hit. As a result, they decided not to renew the lease at their previous office in October 2020, with most of the employees on furlough at that time. Those who continued in active employment worked from their homes. The equipment and furniture were divided between the company's other office in Peterborough and the outbuilding at No 19.
9. As many of the tenants at No 19 found themselves working from home, the freeholders of the property decided to offer them the use of the outbuilding for their work. This would not only benefit the residents in the short term, but might also achieve higher future rents for the flats if an office environment could be offered as a permanent feature. The appellant states that five desks were made available for the use of the tenants. Furthermore, a small kitchenette was provided for them to make hot drinks and light meals whilst utilising the premises.
10. In terms of the staff at Major Travel, the appellant states that employees in every department must access the Concorde reservations and back office system. He says that Concorde Travel Solutions have provided IP address records showing all the staff login data into the system for February 2022 which evidences that the company's employees were all working from their own homes and not from No 19. However, this evidence has not been provided, and so I cannot take it into account.

11. The appellant confirms that he hosted a barbeque on 16 July 2021 in the communal garden at No 19 for all staff at Major Travel. This event was to reunite team members who had not met since the start of the coronavirus pandemic in March 2020. To assist employees to find the venue, the appellant put up a sign with the words 'Major Travel' and an arrow pointing to the side gate of the property. However, he reiterates that Major Travel did not occupy the building for office use.
12. The appellant goes on to say that he has moved to Dubai, but keeps on one of the flats at No 19, and uses one of the desks for work for 4-5 days when he returns to the UK every 6-8 weeks. He has provided a series of utility bills which are addressed to No 19, and do not seem to relate to the outbuilding.

Assessment

13. The gist of the appellant's argument is that the outbuilding was used for the storage of equipment, but that it was not brought into use as the offices of Major Travel. It is his case that the occupants of the flats at No 19 used the building for work during the pandemic, and that he himself uses it intermittently in his role as company director when he is in the UK. On that basis, he argues that no material change of use occurred, and that the building remained in a use that was incidental to the enjoyment of the domestic premises at No 19.
14. The use of a home office can be and often is incidental to the enjoyment of a dwellinghouse. It is a matter of fact and degree as to whether such a use changes and intensifies to the point where it becomes a material change of use of the land amounting to development requiring planning permission.
15. From the Council's site photographs, the building was fitted out in a notably commercial style. The appellant states that five desks were made available for residents of No 19. This in itself would not be unreasonable in a situation where many people were forced to work at home during the pandemic restrictions. However, the appellant offers no evidence to support this stance.
16. For example, it would be expected that he could have acquired statements from the residents to confirm how and when they used the outbuilding for work. Furthermore, there would be likely to be insurance implications for residents using an outbuilding for work, or perhaps a need for changes to their leases to reflect these new circumstances. However, the appellant makes no reference to such matters. I have also had regard to the information made available in 2022 when some of the flats were put up for rent. However, the particulars make no mention of the availability of work spaces for residents.
17. The storage element is evident from the photographs, corroborating the appellant's case that the building was used to keep the effects of Major Travel. However, from the evidence before me, this amounts to commercial storage which cannot reasonably be said to be incidental to the enjoyment of any of the residents on No 19, who seem to have no connection to that business.
18. I note references within the evidence to two further companies associated with the appeal site. On 10 February 2021, Experienced Travellers Ltd was incorporated with its registered office at 19A Christchurch Avenue, which appears to be the postal address of the outbuilding. In addition, the Council state that 19a Christchurch Ave is the address of allmyholidays.com. The appellant gives little

explanation for these circumstances, which further point to a commercial use of the outbuilding.

19. In conclusion then, there can be little doubt that the outbuilding was in use in some capacity by Major Travel at the time the enforcement notice was issued. The appeal on ground (b) therefore fails.
20. The nature of that use is somewhat more nuanced. However, it is clear that the outbuilding was used for the storage of office equipment, and that a number of useable work stations were set up. Although the appellant claims that these desks and the other facilities were used by residents of No 19 on an ancillary basis, his evidence falls far short of establishing this as fact. The lack of complaints over a breach of Covid regulations is not strong enough evidence for me to find in the appellant's favour over the specific use of the building.
21. The weight of the evidence points, on balance of probabilities, to a commercial office use of the outbuilding that could not reasonably be considered as ancillary or incidental to the residential use of No 19. The appellant has not produced sufficient precise or ambiguous evidence to show that this did not amount to a material change of use of the building.
22. The appeal on ground (c) therefore fails.

The appeal on ground (f)

23. Ground (f) is that steps required to comply with the requirements of the notice are excessive.
24. The allegation refers to the use of the outbuilding for incidental activities including pool/snooker facilities, a jacuzzi, a swimming pool and a gym room. The appellant explains that he had intended to provide such facilities to residents but that none of these materialised due to the onset of the pandemic. In other words, the building has never contained a swimming pool or jacuzzi. He also refers to a sauna, but this is not included in the wording of the allegation.
25. Through the course of the appeal, the Council have agreed that the building did not contain those facilities. That being the case, it follows that these activities should not be referred to in the requirements paragraph. In any event, an enforcement notice should go no further than is necessary to remedy the breach. In this case, the cessation of the use and the removal of any physical items that were introduced with the purpose of enabling that use is sufficient.
26. The notice cannot positively require the resumption of the previous lawful use of the building. That is a matter for the appellant, once the notice has been complied with, and is outside the scope of this appeal. Should the appellant wish to establish that the outbuilding may be used as an ancillary home office, it is open to him to apply for a certificate of lawfulness. Ground (f) therefore succeeds, and I direct that the enforcement notice be corrected accordingly.

Conclusion

27. For the reasons above, the appeal is dismissed and the enforcement notice, as corrected, is upheld.

Elaine Gray INSPECTOR