



Appeal Decision

Site visit made on 15 November 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal Ref: APP/A5270/C/21/3285004

Land at Outbuilding at the rear of, 55 Mount Avenue, Ealing, London W5 1PN

- 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 1990 Act as amended).
 - The appeal is made by Mr Sopholces Taylor against an enforcement notice issued by London Borough of Ealing.
 - The notice, numbered 21EN0365(2), was issued on 11 October 2021.
 - The breach of planning control as alleged in the notice is, without planning permission: The construction of a dwelling at the rear of 55 Mount Avenue.
 - The requirements of the notice are to: a. Demolish the dwelling; and b. Remove all debris.
 - The period for compliance with the requirements is: six months.
 - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Procedural Matters

1. It is the convention in enforcement notices to identify the address to which the notice relates with the prefix 'Land at'. The Enforcement Notice (the notice) in this case does not follow that convention and, in deference to the normal convention, I will correct the notice to refer to 'Land at'. Additionally, in relation to 'the land affected' as stated in the notice, the words 'At The Rear Of' include upper case letters. I will correct the notice to refer to 'at the rear of'.
2. The power under section 176(1)(a) of the 1990 Act as amended provides that a notice may be corrected provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting the notice in the above respects.
3. The requirement at sub-paragraph 5(b) of the notice is to 'remove all debris'. The wording does not specify that it is the debris to which the notice relates resulting from step 5(a). In this respect, the notice, as worded, is somewhat unclear. Accordingly, I will vary the wording of the requirement at sub-paragraph 5(b) to make that clear. Having regard to section 176(1)(b) of the 1990 Act as amended, I am satisfied that no injustice would be caused by varying the notice in this respect.
4. The appeal was submitted on grounds (f) and (g). Following this, the appellant confirmed that they considered the stated period for compliance with the

requirements of the notice of six months to be reasonable and that they wished to withdraw their appeal on ground (g)¹. I have therefore considered the appeal as not proceeding on ground (g) and only proceeding on ground (f).

5. The alleged breach of planning control concerns the construction of a dwelling at the rear of 55 Mount Avenue (No 55). The appellant submits that planning permission was granted conditionally for the building in question in 2017² (the granted permission); that the kitchenette and shower/toilet/sink were added after the building's construction; and that any residential use is by their relatives and ancillary to Flats 1A and 1B of No 55³.
6. On this basis, I consider that there are hidden grounds of appeal on grounds (b) and (c) with a degree of overlap between the two, namely, that those matters stated in the notice have not occurred and that those matters stated in the notice (if they occurred) do not constitute a breach of planning control. Both main parties have addressed these matters in their evidence. I am therefore satisfied that no injustice would be caused by me taking the approach that the appeal is also proceeding on grounds (b) and (c).
7. The granted permission was for a 'single-storey detached garden outbuilding for domestic use', at 55 1A Mount Avenue and dated 13 February 2017. Conditions were attached to the permission. Conditions 1 to 3 were a standard time limit condition, a plans condition and an external materials condition. Condition 4 concerned the use of the building, stating that, 'The development permitted shall only be used for domestic purposes incidental to the enjoyment of the dwelling and shall not be used for any separate residential, industrial, commercial, business or other use.'
8. Following complaints made to the Council regarding the use of the building and an investigation by Council officers, including site visits and the issue of a Planning Contravention Notice (PCN)⁴, the Council issued the notice on 11 October 2021. The notice was issued because it appeared to the Council that there had been a breach of planning control under section 171A(1)(a) of the 1990 Act as amended, namely, carrying out development without the required planning permission. This is rather than it being issued under section 171A(1)(b) of the 1990 Act as amended, namely, failing to comply with any condition or limitation subject to which planning permission has been granted. On the basis of the above, the notice was correctly served under paragraph (a) of section 171A(1) of the 1990 Act as amended, and this has informed my conclusions on the appeal on ground (f).
9. Representations both for and against the building include reference to its effect on the character and appearance of the area, the living conditions of neighbours and the living conditions of occupants in relation to the standard of the accommodation, have been submitted by interested parties. The appellant's evidence also refers to these matters. Nevertheless, in the absence of an appeal on ground (a), I am not able to consider the planning merits of the development. However, where relevant, I have had regard to them in my determination of the appeal on ground (f).

¹ Email from appellant dated 18 October 2021.

² Application Ref: 163133HH.

³ Email from appellant dated 26 February 2022.

⁴ PCN Issued 19 May 2021. Responded to 28 June 2021.

10. During the course of the appeal, the appellant raised concerns regarding the validity of the enforcement action by the Council. The Planning Practice Guidance confirms that local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest⁵. The Council's Statement sets out why, in a response to complaints and following an investigation, they considered it expedient to undertake the enforcement action that they did. Having regard to the evidence before me, the Council was entitled to take enforcement action.
11. I note the appellant's point regarding, what they assert to be, omission of information in the appeal notification letter which the Council sent out to interested parties. Nonetheless, this is not a matter that is before me in the context of this appeal.

Background

12. The building, which is the subject of the appeal, is located in the rear garden of No 55. It is a single-storey, rectangular-shaped structure with a shallow pitched roof. It is constructed of brick with a felt roof and uPVC doors and fenestration. Access to the building is gained via a route at the side of No 55 and through the rear garden.
13. On my site visit I noted that the outbuilding possessed a main room with a sofa, table, chairs and storage equipment. An adjoining area, included a sink, cooking facilities, fridge and a washing machine. Next to this was a separate room that contained a shower, toilet and sink.

Appeals on grounds (b) and (c)

14. The appeal on ground (b) is that those matters stated in the notice have not occurred. The appeal on ground (c) is that those matters stated in the notice (if they occurred) do not constitute a breach of planning control. On both of these grounds of appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
15. The appellant highlights that the building that is the subject of the appeal was conditionally granted planning permission on 13 February 2017. They assert that its construction started in January 2020 and was completed in approximately November / December 2020, the delay being due to the Covid 19 Pandemic. Furthermore, that the kitchenette and shower/toilet/sink were added later, and that the building is used for residential purposes by relatives of the appellant in association with Flats 1A and 1B of No 55.
16. Conversely, whilst the Council acknowledge the 2017 permission, they contest that the granted permission was not commenced within the three year time limit and that it had lapsed. Additionally, that what was built, was not an implementation of the granted permission, but a separate dwelling incorporating a kitchenette and shower/toilet/sink and with its own postbox.
17. In relation to whether the development was begun within the statutory period of three years, namely on or before 13 February 2020, the information submitted by both parties on this matter is limited. The appellant's response in the PCN and appeal evidence states that work on the building commenced in January 2020, and that substantial progress had been made by 13 February

⁵ Planning Practice Guidance, Paragraph: 002 Reference ID: 17b-002-20140306.

- 2020, including excavation and construction of foundations and preliminary work on laying of pipes and drains. This is supported by a signed letter from the builder who constructed the building.
18. In contrast, the Council have submitted aerial photographs dated 8 April 2017, 29 June 2018, 5 April 2020 and 30 March 2021 which, they assert, show the differences of the land at the rear of No 55 and specifically that 'no construction work' had taken place on 5 April 2020. They also refer to the complaints received which indicate a construction date of November / December 2020.
 19. Sections 56(2) and (3) of the 1990 Act as amended provide that development shall be taken to be begun for the purposes of sections 91 and 92 on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) sets out what constitutes a 'material operation'. This includes, (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building; and (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b).
 20. In my view, the evidence submitted by either party does not robustly demonstrate exactly when 'material operations' in relation to the granted permission began on site. The aerial photographs show that there was a change in the appearance of the land between 29 June 2018 and 5 April 2020. However, it is difficult to decipher from this evidence alone what those changes were and whether they constituted a 'material operation'. Even if I accepted that 'material operations' had commenced on site at this date, there is nothing before me which confirms that they had started on or before 13 February 2020. Additionally, whilst I note the builder's letter, there is no detail of the works started or carried out during this time and there is no additional evidence such as dated invoices or dated photographs to corroborate the builder's or the appellant's assertions.
 21. On the basis of the above, as a matter of fact and degree, it has not been satisfactorily demonstrated that 'material operations' commenced on the site, on or prior to 13 February 2020. As such, I consider that, on the balance of probabilities, the granted permission had expired.
 22. Following on from this, in terms of the matters stated in the notice, an additional matter is whether the building which is the subject of the appeal has been 'constructed as a dwelling'.
 23. There is no definition of the term 'dwellinghouse' in the 1990 Act as amended, but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306, that a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The inclusion of a kitchenette and shower/toilet/sink within the building provides facilities which allow for day-to-day private domestic existence. Consequently, to my mind, the building meets the Gravesham test as a dwellinghouse.
 24. The appellant asserts that the building was constructed as an outbuilding as per the existing permission, and that the facilities of a kitchenette and shower were added later. Whilst the appellant states that the later date of their

installation has been confirmed by the builder, I cannot find any reference to this in the submitted evidence.

25. The Council challenge the appellant's claims by referencing the response in the PCN which confirms that the kitchenette and shower/toilet/sink were installed at the same time as the construction of the building.
26. I note the appellant's contention that they did not appreciate that these works could be classed as part of a refurbishment, leading to the discrepancy in the PCN. However, I am also mindful of their reference to the preliminary work of 'laying pipes and drains' in terms of the commencement of the permission. These facilities are not shown on the approved plans, and it would be reasonable to conclude that they would not be required for a 'shed and storage outbuilding', but would be necessary for a kitchenette and shower/toilet/sink. This suggests that the kitchenette and shower/toilet/sink were installed at the time of the building's construction.
27. In any event, the Council's evidence confirms that on site visits during 2021, Council officers observed the installed kitchenette and the appellant has not claimed that the shower/toilet/sink were not installed at the same time. Therefore, I am satisfied that this demonstrates that, at the date of the issue of the notice, the building met the Gravesham test as a dwellinghouse.
28. The Council highlights that the building is not an implementation of the granted permission, both in relation to its construction which is not in accordance with the approved plans and that it is not solely ancillary to Flat 1A as stated in the permission. The appellant recognises that the installation of the kitchenette and shower/toilet/sink is not part of the granted permission and states that the building is in use ancillary to Flats 1A and 1B of No 55. On the basis of the above, I agree with the Council that planning permission Application Ref: 163133HH has not been implemented.
29. I therefore conclude that, on the balance of probabilities, the matters stated in the notice have occurred and that they do constitute a breach of planning control. Accordingly, the appeals on grounds (b) and (c) fail.

Appeal on ground (f)

30. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
31. When an appeal is made on ground (f), the starting point is to identify the purposes of the notice. Section 173(4) of the 1990 Act as amended sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
32. In this case and having regard to the variation set out above, the requirements of the notice are to: 5(a) Demolish the dwelling and 5(b) Remove all debris

resulting from step 5(a). The purpose of the notice must therefore be to remedy the breach of planning control that has occurred by restoring the land to its condition before the breach took place.

33. The appellant stresses that it is manifestly excessive to require the removal of the building itself, as it is the use to which the building has been put that contravenes the granted permission. As such, they state that the requirements of the notice conflict with the authorised use of the outbuilding for domestic purposes incidental to the enjoyment of the dwelling. They submit that the removal of the kitchenette and even the shower, if necessary, will ensure the building cannot be used as an independent dwelling and that the alleged breach of planning control would cease.
34. However, the notice clearly states that the alleged breach is the construction of a dwelling at the rear of No 55. Given my findings above and the purpose of the notice, the removal of the kitchenette and shower/toilet/sink, would result in the cessation of the building's use as a dwelling, but it would not remedy the breach as stated in the notice. Moreover, as I have found that, on the balance of probabilities, the granted permission had expired when material operations commenced, there is no option to adopt the lesser steps of removing the kitchenette and shower/toilet/sink to make the development comply with the conditions of the planning permission which has been granted in respect of the land. On this basis, anything less than removing the building from the land would not remedy the breach and achieve the purpose of the notice.
35. Taking the above into account, I conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control, but are proportionate given the purpose of the notice. Accordingly, the appeal on ground (f) fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decision

37. It is directed that the enforcement notice is corrected by:
- In paragraph 2 of the notice, deletion of the words 'Premises known as' and 'At The Rear Of', and insertion of the words 'Land at' before the word 'Outbuilding' and 'at the rear of' before the words, '55 Mount Avenue, Ealing, London W5 1PN'.
38. It is directed that the enforcement notice is varied by:
- In sub-paragraph 5(b), insertion of the words 'resulting from step 5(a)' after the words 'Remove all debris'.
39. Subject to the corrections and the variation, the appeal is dismissed and the enforcement notice is upheld.

F Cullen

INSPECTOR