



Appeal Decision

Site visit made on 17 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2023

Appeal Ref: APP/T5150/C/22/3305309

30 Imperial Way, Harrow HA3 9SW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sharon Clarice Khan against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/19/0657, was issued on 11 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the building in the rear garden to a separate residential use ("the unauthorised change of use").
- The requirements of the notice are:
 - Step 1 – Cease the use of the building in the rear garden as a separate residential use.
 - Step 2 – Remove all fixtures and fittings, associated with the unauthorised change of use, including the kitchen and bathroom, from the building in the rear garden the premises [*sic.*].
 - Step 3 – Remove all associated waste, debris and materials, arising from compliance with the above steps, from the premises.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: Subject to corrections and variations, the enforcement notice is upheld.

Preliminary Matters

1. The appeal is made on ground (d), that at the time that the enforcement notice (the Notice) was issued, it was not possible to take enforcement action. The appellant has also made suggestions that the allegation of a separate use may not be correct. Whether or not the matters alleged in the Notice have occurred falls under a ground (b) appeal, so I will consider those arguments as such. There are also submissions about whether it is necessary to remove the shower and kitchen from the building and the length of time that should be afforded to do so. These are, in effect, appeals on grounds (f) and (g) respectively. The Council has responded specifically to those submissions and, therefore, no injustice would occur if I were to also consider the appeal on those grounds.
2. Various submissions have been made suggesting that the use would have little effect on the surrounding area and that the conversion works were appropriately constructed for residential use. However, these matters relating to the planning merits of the case are not relevant to the grounds of appeal before me.

The Notice

3. The alleged breach of planning control and steps required to be taken to remedy it refer to a separate residential use. The reasons for issuing the

Notice, and the evidence from both parties, are clear that the unauthorised use in dispute is that of a separate dwellinghouse. That is a clearly understood use of land. In the interests of clarity and consistency, I shall, therefore, correct the allegation and vary the requirements to refer to a separate dwellinghouse. As the evidence has been prepared on this basis, no injustice would arise from this approach.

4. The plan attached to the Notice shows multiple buildings in the rear garden. It is not immediately clear within the 4 corners of the Notice which of these buildings is the target of the Notice. Examination of the evidence makes clear it was a former garage, this is also shown on one of the appellant's plans and I was able to confirm it at the site visit. For clarity, I shall substitute the plan attached to the Notice for one that clearly identifies the building in question, and make consequential alterations to the allegation and requirements.

Ground (b)

5. The appellant's evidence suggests that the allegation set out in the Notice is incorrect because the building is not being used independently, nor was it originally intended to be used in that way, having first been converted to accessible accommodation incidental to the enjoyment of the main dwelling. It indicates that a shower was installed to facilitate such incidental use and there is no dispute that it was once occupied in this way.
6. However, when no longer required for that original purpose, it appears that cooking facilities were installed whereafter the building contained all the necessary facilities and characteristics to function as a separate dwelling. Moreover, while services and utility metering have remained shared with the main dwelling, details have been supplied in support of the overall appeal confirming use of the building independently to the main house. Therefore, I am satisfied that the allegation, once corrected as I intend, is correct and that the matter has occurred. For this reason, the ground (b) appeal should fail.

Ground (d)

7. For success on ground (d) it must be shown that, on the balance of probabilities, the use as a separate dwellinghouse continued substantially uninterrupted for 4 years prior to issue of the Notice, measured from the date that the use began. The building itself has existed for a considerable time and was originally converted to provide accommodation incidental to the main dwelling as an 'annex'.
8. However, the undisputed evidence indicates that, following installation of the cooking facilities, the building was then let as a separate dwellinghouse. It is the commencement of that separate dwellinghouse use, being the matter alleged in the Notice, rather than the date of the original conversion works, that is critical in this case.
9. In support of the appeal, the appellant has confirmed that the use as a separate dwellinghouse continued for 3 years and 11 months. This is not disputed by the Council. The use ceased quickly when the appellant was informed by the Council that the building should not be used in this way. While it may be laudable for the appellant to have responded so quickly to the Council's request, cessation of the use occurred before four years had passed.

10. I acknowledge that, after the tenant vacated the building, the facilities that rendered it capable of use as a separate dwellinghouse remained, but there is no suggestion that the building was put to this purpose. The use as a separate dwellinghouse cannot, therefore be said to have persisted following the date that the tenant moved out.
11. I understand that the appellant has limited knowledge of the legal processes surrounding planning control and looked to the Council for advice. However, no matter how close the appellant came to a point where enforcement action could not be taken, the requisite time was not reached. Therefore, the appeal on ground (d) must fail.

Ground (f)

12. Ground (f) is that the steps required to be taken are excessive and lesser steps would remedy the breach. The evidence indicates that the cooking facilities were brought into the building in order to facilitate the unauthorised use. The appellant indicates that the kitchen area, which includes a sink, washing machine and fridge/freezers, could also function as a utility area to the main house. At the site visit, I saw that there was a fully functioning kitchen including washing machine in the main house. It does not, therefore, appear to be a facility necessary to support the use of the main house, rather it is a central part of what makes the accommodation in the garage a separate dwellinghouse. It is, therefore, necessary for these features to be removed in order to remedy the breach of planning control.
13. Conversely, the bathroom appears to have been installed to facilitate the incidental use, long before the separate dwellinghouse use began. Given the detached nature of the building, the presence of a bathroom within the building would not be unreasonable or an unusual facility alongside an incidental use of such a building. Moreover, without the kitchen, the building would not have all the necessary characteristics of a separate dwellinghouse and it would be returned to the apparent position before the breach of planning control occurred.
14. I have already indicated that the Notice should be corrected to allege and require the cessation of use as a separate dwellinghouse. As a clearly understood land use in planning terms such a breach would remain detectable, whether or not there was a small bathroom in the building. For these reasons, I find that the removal of the bathroom is unnecessary to remedy the breach of planning control.
15. As drafted, the Notice also requires the removal of fixtures and fittings, but other than an armchair and free-standing cupboard, which do not necessarily relate to a use as a separate dwellinghouse, I did not see anything else indicative of a separate residential use in the building. They do not, therefore, need to be removed in order to remedy the breach.
16. The appeal on ground (f) should, therefore, succeed in part and I shall vary the requirements of the Notice to only require the removal of the kitchen and associated appliances.

Ground (g)

17. Ground (g) is that the time for compliance specified in the notice falls short of what should reasonably be allowed. In this regard, the appellant is concerned

about the cost implications of the remedial work specified in the Notice. However, following my decision in respect of ground (f) the remaining remedial work is relatively small and there is no substantive evidence that it would be of great cost. Therefore, the time specified for compliance is reasonable and the ground (g) appeal should fail.

Conclusion

18. For the reasons given above, and having regard to the corrections I intend to make to the Notice, I conclude that some of the requirements of the Notice are excessive to remedy the breach of planning control. I shall vary the Notice prior to upholding it and the appeal on ground (f) succeeds in part to that extent. Otherwise, the appeal fails and I will uphold the Notice with corrections and variations.

Formal Decision

19. I direct that the Notice is corrected and varied by:

- In Schedule 2, delete the words "Without planning permission, the material change of use of the building in the rear garden to a separate residential use" and substitute with "Without planning permission, the material change of use of the building marked A on the attached plan to a separate dwellinghouse".
- In Schedule 4, delete the words "STEP 1 Cease the use of the building in the rear garden as a separate residential use" and substitute with "STEP 1 Cease the use of the building marked A on the attached plan as a separate dwellinghouse".
- In Schedule 4, delete STEP 2 Remove all fixtures and fittings, associated with the unauthorised change of use, including the kitchen and bathroom, from the building in the rear garden the premises" and substitute with "STEP 2 Remove the kitchen and associated appliances from the building marked A on the attached plan".
- Delete the plan attached to the Notice and substitute with Plan 1 annexed to this Decision.

20. Subject to the above corrections and variations, the Notice is upheld.

M Bale

INSPECTOR

Annex – Plan 1

