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# Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2024

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**Appeal Ref: APP/R5510/C/22/3299152**

**101 Waltham Avenue, Hayes UB3 1TD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Mr Jaswinder Chahal against an enforcement notice issued by the Council of the London Borough of Hillingdon.
  - The notice was issued on 7 April 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the development of a self-contained residential outbuilding.
  - The requirements of the notice are to:
    - (i) Demolish and remove outbuilding as shown in the approximate position hatched in blue on the plan attached to the enforcement notice.
    - (ii) Remove from the Land all debris, waste, building materials, fixtures and fittings, plant equipment and machinery resulting from the demolition works listed above.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the ground set out in section 174(2)(c) 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 by:
  - (1) The deletion of the word *development* and the substitution with the word *erection* in section 3 of the enforcement notice (the breach of planning control alleged).
2. Subject to this correction the appeal is dismissed, and the enforcement notice is upheld.

## Preliminary Matters

3. The appellant stated that the outbuilding was constructed for a purpose incidental to the enjoyment of the dwellinghouse, serving as an office/games room for his family and an extra reception area for entertaining guests and family. This is an argument more pertinent to an appeal on ground (b) albeit no substantive case under that ground was made out. In any case, since this was raised in the appellant's initial submission on which the Council has had the opportunity to comment, I shall address this as though that ground had been pleaded.
4. The appellant failed to attend or send a representative to two previously arranged site visits, the last being arranged for 11.45 on 16 January 2024. On both occasions I was met at the site by a representative from the Council, but since the appellant was not present, I was unable to gain access to the site and the visits were aborted.

5. However, since the appropriate time period for the consideration of an appeal on grounds (b) and (c) is at the time when the notice was issued, I can determine the appeal based on the submissions, as there is sufficient evidence to understand the nature of the site given the points in dispute.

### **The Enforcement Notice**

6. The allegation as set out in section three of the enforcement notice refers to the development of a self-contained residential outbuilding, and in the reasons for issuing the notice the four-year period is referenced. The enforcement notice should distinguish between operations and a material change of use, which it does not.
7. It is evident from the main parties' submissions, that the outbuilding was erected and completed with a kitchen, toilet, and bathroom, and that the act of development was the erection of a self-contained residential outbuilding. I shall correct the allegation accordingly.
8. Since such a correction does not enlarge the scope of the breach or requirements, there would be no injustice to either party.

### **The appeal on grounds (b) and (c)**

9. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact, and ground (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof on both grounds is on the appellant.
10. The outbuilding is located at the end of the garden, a relatively short distance from the house and can be accessed from the garden or from a private access lane to the rear. At the time of the Council's visit, as evidenced by photographs, the outbuilding included a modest kitchen area with cupboards, sink, hob and extractor, and a separate seating (lounge) area. There is also a shower room with a toilet and basin as stated by the Council and shown on the floor plan submitted by the appellant. Whilst there are no beds shown in the Council's photographs, the outbuilding has all the facilities necessary for self-contained living.
11. Following reports from a third party that two people were living in the outbuilding, the Council conducted an unannounced site visit on 18 October 2021, where they were told by residents of the house, that the outbuilding was occupied.
12. Whilst the Council's evidence regarding actual use is limited, as already stated the onus of proof is on the appellant, and they have provided no substantive evidence to demonstrate that the outbuilding was erected and used for incidental purposes.
13. Since it is evident that the outbuilding has all the facilities necessary for self-contained living, the appellant has failed to demonstrate on the balance of probabilities that the breach, as alleged, has not occurred. The appeal on ground (b) therefore fails.
14. Under ground (c) the appellant's case is that there has been no breach of planning control because the outbuilding benefits from the planning permission

granted by Article 3 and Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), for the provision of any building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse.

15. The Government's Technical Guidance<sup>1</sup> states that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
16. In this case the seating area can be equated to a lounge or living room. It is not an incidental use. Similarly, the small kitchen area and shower room are primary residential uses, rather than being required for any incidental purpose. As a matter of fact and degree, the whole of the outbuilding has not been shown as having been required for an incidental purpose and, the outbuilding is not permitted by way of Class E.
17. Since the outbuilding is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) therefore fails.

### **Conclusion**

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

*Felicity Thompson*

INSPECTOR

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<sup>1</sup> Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019