



Appeal Decision

Site visit made on 20 November 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal Ref: APP/Z5060/C/23/3326623

Land and premises at 204 Longbridge Road, Barking IG11 8SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Iqbal Alam against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 28 June 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, an unauthorised residential outbuilding at the rear of the property.
- The requirements of the notice are to:
 - Cease the use of the outbuilding as a residential unit.
 - Remove all alterations and fixtures enabling the creation of the self-contained unit of accommodation.
 - Remove the kitchen facilities.
 - Remove all consequent waste material from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed and the enforcement notice is corrected and quashed.

Application for costs

1. An application for costs was made by Mr Iqbal Alam against the Council of the London Borough of Barking and Dagenham. This application is the subject of a separate decision.

The Notice

2. Before considering the ground of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
3. I consider first the appellant's suggestion that the notice is a nullity. He refers to the signatory of the enforcement notice and says that this person did not have the necessary authority to issue the notice. He has also provided two appeal decisions in which similar matters were considered by other Inspectors.
4. Whilst the appellant's evidence is noted, I am mindful of the settled caselaw that informs that an enforcement notice is only a nullity if the defect of the

notice is evident on the face of the document. For this reason, I am unable to assess the background to the issue of the notice. There is a channel for such matters to be considered and that is through the Courts. I do not, therefore, find the notice to be a nullity for the reason suggested. Whilst I have had regard to the approach of other Inspectors, I consider my approach to the appellant's claims to be correct in this case.

5. Notwithstanding this, I am concerned that the allegation in the notice is not entirely consistent with its requirements or the reasons for its issue. The allegation is of 'an unauthorised residential outbuilding'. There is no reference in the allegation to a material change of use, which is fundamental to an allegation of a breach of planning control relating to a use. The allegation could, therefore, easily be interpreted as relating to the erection of a residential outbuilding, rather than to a material change of use of an existing outbuilding.
6. However, the reasons for the issue of the notice refer to the harm caused by a use, rather than that caused by operational development. The requirements also relate to a use. The notice is, therefore, targeted at a material change of use, rather than at operational development comprising the erection of a residential building.
7. In considering whether or not I am able to correct the notice, I have had regard to the appellant's grounds of appeal. As these respond to a material change of use of the building, I am satisfied that, in correcting the notice, injustice would not be caused. I will, therefore, correct both the allegation and requirements to make reference to a material change of use of the outbuilding to a self-contained unit of residential accommodation.

Ground (b)

8. An appeal on ground (b) is that the matters alleged in the enforcement notice, as I intend to correct it, have not occurred. In order to succeed on this ground, the appellant must demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred.
9. The appellant's case is that the outbuilding is used as a games room and gym by him and that he is the occupier of the ground floor flat at the appeal site.
10. I have been provided with the plans, the officer's report and the decision notice relating to the planning application for the 'extension and rebuilding of outbuilding in rear garden including construction of pitched roof' at the appeal site (application reference 16/00469/FUL).
11. At the site visit I saw the outbuilding that is the subject of the notice, which is to the rear of the two-storey semi-detached building also occupying the appeal site. The outbuilding comprised a large open plan room, with kitchen facilities and a smaller room accommodating a w.c. and shower. Although the footprint compares to that permitted in 2016, there are some differences, including the internal layout and the window and door arrangement in the elevation facing into the site. Nevertheless, aside from the limited kitchen facilities, the outbuilding compares to the permitted development in terms of the large open room and small shower and w.c. facilities.
12. Whilst the appellant's case is briefly put, it is precise and unambiguous. My observations on the site visit are also consistent with the appellant's claims. In particular, I observed an office desk, gym equipment and a pool table. I did

not, however, observe a bed or bedroom furniture. Neither did I observe any living room furniture that might be used for relaxing or for sleeping.

13. I note the Council's reference to comments received from neighbours. These have not, however, been provided and the Council does not elaborate on what the neighbours had said. Accordingly, I cannot be satisfied that any third party representations regarding a residential use of the site relate to the outbuilding in question and not to the accommodation I observed within the two-storey semi-detached building.
14. I acknowledge that the building has most of the facilities that might be required for day-to-day private domestic existence. The evidence before me demonstrates that the building is not, however, residential accommodation that is used in a way that is separate to the remainder of the appeal site.
15. It might well be the case that the building has in the past been used in a self-contained manner and that its use has only recently changed to the incidental use I observed. There is not, however, any evidence before me to demonstrate that this is the case.
16. For the reasons given above, it is less than probable that a material change of use of the building to a use as a self-contained unit of residential accommodation has occurred. On this basis, the ground (b) appeal succeeds.
17. In the absence of evidence of any other breach of planning control in respect of the use of the outbuilding, such that I could consider whether I am able to correct the notice, the notice will be quashed.

Conclusion

18. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice, once corrected as I intend, is incorrect. The appeal succeeds on ground (b).
19. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (c) and (f) do not need to be considered.

Formal Decision

20. It is directed that the enforcement notice is corrected by the deletion of the words 'an unauthorised residential outbuilding at the rear of the property' from part 2 and their substitution with the words 'the material change of use of the outbuilding at the rear of the land and premises to a use as a self-contained unit of residential accommodation'.
21. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

J Moss

INSPECTOR