



Appeal Decision

Site visit made on 7 February 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/A5270/C/22/3310642
75 Kings Avenue, Greenford, UB6 9DD

- 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 appeal is made by Mr Javaid Akhtar against an enforcement notice issued by the London Borough of Ealing.
 - The enforcement notice was issued on 11 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of outbuilding to a separate self-contained dwelling.
 - The requirement of the notice is to:
 - a) Cease the use of the outbuilding as a separate self-contained dwelling.
 - The period for compliance with the requirement is within three months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Background and Preliminary Matters

2. The outbuilding at issue is a single-storey brick-built structure which was built in no 75's rear garden. Council Building Control records indicate that construction of the outbuilding at issue commenced in July 2014. A completion certificate was issued in August 2017.
3. In my determination, in the absence of any ground (a) appeal and, thereby, no deemed planning application to decide, I am unable to take into account the planning merits and/or impacts of the development. The decision must instead be based strictly on the evidential facts and on relevant planning law.
4. The evidence to support the claim that the development is immune from planning control and therefore lawful should, as far as is possible, be precise and unambiguous. Proof needs to be established on the balance of probability, and the onus in establishing that a period of immunity has accrued falls on the appellant.

Matters concerning the enforcement notice

5. As the enforcement notice specifically alleges a material change of use of the outbuilding to a separate self-contained dwelling, rather than instead merely alleging the use of the outbuilding as a self-contained dwelling, means that the unit is subject to the four year immunity bar, rather than the lengthier ten year

period. The latter would apply had the outbuilding been specifically built with the intention of it being used as a dwellinghouse.

6. The Council, though, contradicts itself as the final sentence in paragraph 6.9 of its Written Statement states:

'There is no material change of use.'

7. This matter takes on a particular importance as, following completion in August 2017, the appellant, in his statutory declaration, says that up until April 2018 (when residential occupation is understood to have begun) the outbuilding was used as a games room, incidental to the enjoyment of the main dwelling at no 75. This is a claim which the Council is unable to rebut. That said, there is no direct evidence adduced by the appellant to back up this claim.
8. On the face of it, by reason of the enforcement notice being the particular document at issue, I must accept that the Council considers the breach to be one of a material change of use. This would have come about either as a result of the outbuilding having been used for a different purpose prior to the residential use commencing (such as that of a games room), or that it is the case that the outbuilding, having been originally built within the curtilage of no 75, now falls outside of this and, as such, has resulted in the creation of a new planning unit.
9. Under the provisions of section 176(1) of the 1990 Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, the allegation as stated in this enforcement notice, and the corresponding period of immunity, goes to the very heart of the case. Accordingly, if I was to attempt to make the significant correction necessary injustice would be caused to the appellant.
10. In other words I find that this notice, as issued, is incapable of correction and the alleged unauthorised development targeted must remain as stated on the notice, irrespective of my findings. In the circumstances, the four year immunity period must here apply.

The appeal on ground (d)

11. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced four years before the date of the issue of the enforcement notice, ie prior to 11 October 2018 (hereinafter referred to as "*the material date*") and has continued since.
12. There is no definition of "dwellinghouse" in the Act, but in *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to the occupants the facilities required for day-to-day private domestic existence. Here, I am satisfied that the internal accommodation present within the outbuilding provides the facilities consistent with a self-contained habitable, residential unit.

13. Statutory declarations from the appellant, Javaid Akhtar, his son, Abrar Bhatti, and the current occupiers, Mazher Ali and Iqra Komal have been produced, along with a series of tenancy agreements, amongst other paperwork.
14. The Council, for its part, has submitted the site visit notes of both planning enforcement and building control officers, the completion certificate issued by the latter team, and also photographs previously taken.
15. Council officials made a series of visits to the property. Initially visited in November 2014 (some four months after construction began), an extract from the case notes says:
16. *"It is blatantly going to be a dwelling. It is divided into three rooms. There is going to be a bathroom at the rear and towards the front of the building is where the kitchen is going to go. No facilities have yet to be installed but all the connections for the bathroom and kitchen are in place."*
17. It was, though, indicated by the owner during the above site visit that the building would be used as a gym and store.
18. Turning to the current appeal, although the Certificate of Completion of Works issued under the Building Regulations describes the works as a 'non-habitable detached building' – it would appear that the application had initially been termed an 'insulated detached building' - the Building Control officer's site notes makes mention of there being a lot of socket points at work surface height and refers also to a 'Domestic Electrical Installation Certificate'.
19. In his written response to a planning contravention notice (PCN) served in January 2015, the appellant says that bathroom and shower facilities were installed within the outbuilding in December 2014, and five persons live in the main dwelling at no 75, one of which is Abrar Bhatti. He is the son of Javaid Akhtar, who is both the owner and the appellant. Subsequently, in response to a second PCN served in December 2022, Mr Akhtar says that the outbuilding was now used as living accommodation, with its previous use having been as a games room.
20. Abrar Bhatti says that he lived "in the self-contained residential unit between April 2018 and October 2019; a period of some eighteen months. Subsequently, Mazher Ali and Iqra Komal took occupation and have lived there since November 2019. Importantly, the appellant says, in paragraph 5.3 of his Statement:

"It should be noted that immediately after the outbuilding was completed on 29th August 2017, it was first used for purposes incidental to the enjoyment of the dwellinghouse as a games room".
21. In the judgement of *Uttlesford District Council v SSE and White* [1991], it was held that the use of an outbuilding in the curtilage of an existing dwellinghouse for primary residential purposes does not involve a material change of use where it is used in conjunction with the dwelling.
22. In this particular instance the building was erected in no 75's rear garden, so that it would fall within the parameters of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and thereby not require the benefit of planning permission. However, the Council indicates that its height, as built, exceeds

the maximum allowed under Class E, and it would also appear to me from my site visit that the outbuilding has effectively been severed from no 75's curtilage and likely sits outside of this, off the alleyway, and is accessed therefrom. However, paragraph 6.9 of the Council's Written Statement says that the planning unit has not been sub-divided.

23. At my site visit I also noted that the development at issue is a sizeable, brick-built outbuilding, with a tiled, dual-pitched roof. The impression gained is that the building has the appearance of a bungalow rather than an outbuilding built for purposes incidental to the use of the main dwellinghouse.
24. In this connection the appellant says in paragraph 5.4 of his Statement:

"....An internal inspection will illustrate that the unit has its own lockable front door and has an open plan living room/kitchen, bedroom and bathroom that is required and necessary for an independent residential use. Further to this, the internal facilities include a hob, washing machine, fridge, shower and toilet. The access to the separate unit is also via the alleyway and not the dwelling at 75 Kings Hill."
25. The final sentence of the above quote is particularly important, especially as this was mentioned in a Council enforcement officer's notes arising from a site visit carried out on 4 April 2016.
26. As mentioned, in January 2015, Mr Bhatti was said to have been living in the main house and, once he took occupation in April 2018 it would reasonably be expected that a degree of interaction might have taken place between him and the occupiers of the main dwelling. However, when he took residence the building was already registered for Council tax and his statutory declaration also refers to the separate access to that of the main dwelling.
27. Mr Bhatti would have been resident in the outbuilding for some six months at the time of the material date and, subsequent to him vacating the outbuilding in October 2019, it has been used as a self-contained dwelling unit by persons unconnected to, and independent from, the main dwelling. From the evidence, though, there is no direct evidence to suggest that Mr Bhatti's tenure and that of the current occupants has differed materially in planning terms.
28. In the judgement of *Swale BC v FSS & Lee* [2005] it was confirmed that there needs to be an assessment made as to whether there was any period during the critical four years when the building was not physically occupied, even though still available and suitable for occupation, when the Council could *not* have taken enforcement action against the use. If that is the case then the use would not satisfy the provisions of s171(B)(2).
29. In this instance I am satisfied that the time between Mr Bhatti vacating the building and the current occupants moving in was de minimis in planning terms and, as such, the outbuilding's residential use has continued without break throughout the relevant four year period.
30. Both the main parties refer to the judgement of *Gabbitts v SSE & Newham LBC* [1995] JPL 630 where it was held that the appellant's evidence should not be rejected simply because it is not corroborated, and if there is no evidence to contradict the particular version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.

31. In this appeal, whilst I acknowledge that the evidence provided by the appellant is, on the face of it, not so substantial as to be compelling, I do find the Council's evidence to be somewhat muddled and contradictory. It may be that it was always the appellant's intention to use the outbuilding as a dwelling. However, the Council set out its stall by alleging that the building's use as a separate dwelling came about by way of a material change of use. I am, though, satisfied from the evidence taken as a whole that no such material change of use occurred during the relevant four year period.
32. In the absence of any evidence to the contrary, I find the appellant's case to be sufficiently persuasive to the point where the appellant, on the balance of probabilities, has discharged the burden of proof.
33. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed.
34. In such circumstances the ground (g) appeal does not fall to be considered.

Timothy C King

INSPECTOR