The Planning Inspectorate

Appeal Decisions

Inquiry held on 28 February 2024

Site visit made on 29 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th April 2024

Appeal A Ref: APP/A5270/C/23/3323826
73 Lee Road, Perivale, Middlesex UB6 7DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mousa Abid Mousa against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 2 May 2023.
- The breach of planning control as alleged in the notice is 'Without planning permission the material change of use of the rear outbuilding to a separate self-contained dwelling.'
- The requirement of the notice is to cease the use of the outbuilding as a separate self-contained dwelling.
- The period for compliance with the requirement is 3 months.
- 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)('the Act').

Appeal B Ref: APP/A5270/X/23/3314685
73 Lee Road, Perivale, Middlesex UB6 7DA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mousa Abid Mousa against the decision of the Council of the London Borough of Ealing.
- The application ref 22467CPE, dated 15 September 2022, was refused by notice dated 12 December 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is 'continue to use as separate self-contained flat'

Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Applications for costs

3. An application for costs was made by the Council of the London Borough of Ealing against Mr Mousa Abid Mousa. This application for costs is the subject of a separate decision.

Preliminary Matters

4. All the evidence was given by way of affirmation at the Inquiry.

5. The appeals against an enforcement notice and refusal of an LDC both relate to self-contained use of an outbuilding or annexe which is in the rear garden of 73 Lee Road. There is a third appeal for an LDC relating to the use of an extended part of the main dwelling which is referred to as No 73A which is the subject of a separate Decision Letter.

Appeal A under ground (d) and Appeal B

Reasons

6. Although the dates of the LDC application and the enforcement notice are different, given the similarities between the appeal under section 195 and the appeal under ground (d) and an appeal under section 195, I shall deal with them together.

7. An appeal under ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. The relevant period where the allegation relates to a material change of use to a dwelling house is four years.[1]

8. it is for the appellant to show on the balance of probabilities that the material change of use of the building began on or before 2 May 2019 and, if so, whether it continued without significant interruption for at least 4 years thereafter.

9. In the Section 195 appeal, the issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 15 September 2018 and, if so, whether it continued without significant interruption for at least 4 years thereafter.

10. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 and the Planning Practice Guidance (PPG) an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

11. To determine the date of a change of use of a building dwellinghouse, caselaw has established that regard should be had to two factors, neither of which is decisive: when the building provided viable facilities for living, with regard to the Gravesham[2] characteristics of a dwellinghouse and when the use actually commenced.

12. 73 Lee Road is a semi – detached dwelling which has been extended and the extended part is now referred to as 73A. Both appeals relate to the same single storey detached building located in the rear garden of No 73 Lee Road.

13. The appellant stated that he had very limited knowledge of the property as he left all management and dealings with the property to his brother Mr Majid Mousa. Both the appellant and his brother live in Middlesborough. The appellant accepted that he signed documents such as tenancy agreements and replies to Planning Contravention Notices as the owner of the appeal property. However, he could not comment upon any of the contents of those documents

[1] Section 171B (2) of the Act
[2] Gravesham BC v SSE & O'Brien [1983] JPL 306

as he trusted his brother completely and had no direct knowledge of events at the property.

14. The evidence provided for these appeals include four separate tenancy agreements for the outbuilding with dates ranging from 25 December 2009 to 11 March 2016 and various bills for utilities and council tax. All four agreements have the same wording, are two pages long, have no end date or notice period and refer to the same rental amount of £400 per month. The two earlier agreements were with Mr Virdi and the other two agreements are with Mr Ibrahim.

15. Whilst the appellant's appeals were lodged on the basis that the outbuilding had been in continuous use since 2009 that position changed in the appellant's opening statement. The appellant still maintains that between 2009 until 2012 the outbuilding was occupied by Mr Virdi. However, the appellant now states that Mr Ibrahim rented the property from 12 April 2012 on the understanding that it was used by family members of the main house at 73 Lee Road. Mr Ibrahim is related to an existing occupier of 73 Lee Road. Occupation by Mr Virdi was for less than 4 years, followed by a period when the outbuilding was not being used as a self-contained dwelling. The appellant is therefore no longer relying upon the first three tenancy agreements for the outbuilding previously submitted to show self-contained use.

16. The appellant is now arguing that that the nature of the use of the outbuilding changed from 2015 and a new tenancy agreement was signed by Mr Ibrahim on the 11 March to reflect that change. The reason given for the proposed change relates to a change in occupation of 73A. However, it is not clear how the actual use of the outbuilding changed around that time when extended family members of Mr Ibrahim remained in the main house at 73 Lee Road after that date. The appellant subsequently discovered that Mr Ibrahim had been subletting without his knowledge and this was the basis on which he submitted the application for an LDC.

17. Council tax bills for Mr Ibrahim cover the period from 11 March 2016 to 31 March 2022. The guidance published by the valuation office agency advises that council tax is payable where separate living accommodation exists regardless of how that accommodation is used. A series of electricity bills were provided in the name of Mr Ibrahim for the period from 11 December 2014 to 7 March 2019. However, the appellant's case is that Mr Ibrahim was subletting rather than occupying the outbuilding although there is no date provided of when the subletting began. The bills are evidence of payment but not of the nature of the use or the identity of the occupier or continuous use.

18. Mr Majid Mousa indicated that he only became aware of Mr Ibrahim subletting the outbuilding in 2022. He did not know if there had been any breaks in occupation at any stage although he thought it was unlikely. Mr Mousa assumes that the outbuilding has been occupied as he has received rent from Mr Ibrahim. He was unable to name any occupants of the outbuilding apart from Mr Ibrahim and Mr Virdi and no date has been provided for when subletting took place. Mr Mousa was not present at any of the site visits by the Council. At visits on the 28 April 2015 and the 22 February 2018, the explanations provided on site of the nature of the occupation taking place did not support continuous self-contained use.

19. The witnesses have no information about the current occupation. They do not know how long the current occupier has lived at the property and significantly whether there have been any breaks in use. The parties do not dispute that the outbuilding contains facilities required for day to day private domestic existence, including a kitchen and shower facilities which are the characteristics of a dwellinghouse[3]. However, it is not clear when self-contained use actually commenced and subsequently that it occurred over a 4 year period without significant interruption.

20. I found the evidence that was presented by the appellant to be imprecise and ambiguous. The witnesses had limited knowledge as to when self-contained use commenced or the nature of the occupation and use of the outbuilding to support the argument of 4 years continuous use at any stage.

21. The appellant's evidence is not sufficiently precise or unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building began on or before 15 September 2018 or on or before 2 May 2019 and continued without significant interruption for at least 4 years thereafter. The appeal under ground (d) therefore fails and the Council's decision to refuse to grant the LDC was well-founded.

Appeal A under ground (g)

22. An appeal under ground (g) is that the time for compliance is too short. The period for compliance is 3 months. The appellant is asking for 6 months and refers to the need to serve notice on the current occupier and their need to look for suitable accommodation.

23. Whilst I appreciate that any occupier will have to look for alternative accommodation, no discussions have taken place with the occupier about their circumstances or plans. Should information become available, the Council indicated that it may choose to exercise its discretionary powers[3] to extend the period if they consider that there are reasonable grounds to do so. However, as there is very limited evidence before me as to why 3 months to comply is unreasonable, the appeal under ground (g) fails.

Conclusion: Appeal A

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Conclusion: Appeal B

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development to continue to use as separate self-contained flat was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

E Griffin

INSPECTOR

[3]Section 173A(1) (b) of the Act

APPEARANCES

FOR THE APPELLANT:

Dalraj Bancil	Bancil Partnership
Mousa Abid Mousa	Appellant
Majid Mousa	Appellant’s brother

FOR THE LOCAL PLANNING AUTHORITY:

Roderick Moreton (Ivy Legal)	Solicitor instructed by the Council of the London Borough of Ealing
Ingrid Smith	Planning Enforcement Officer