The Planning Inspectorate

Appeal Decision

A site visit was not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9TH JULY 2024

Appeal Ref: APP/T5720/C/23/3325888
Land at 153A Dorset Road, Merton Park, London, SW19 3EQ

- 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 Fay Hampshire against an enforcement notice issued by the Council of the London Borough of Merton.
- The enforcement notice, numbered 20/E0292, was issued on 19 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the outbuilding on the Land into a self-contained residential unit.
- The requirements of the notice are (a) permanently cease the use of the outbuilding as a self-contained residential unit, (b) permanently remove all fixtures and fittings that facilitate the unauthorised use including cooking facilities, kitchen units, sinks, worktops, appliances, cooker and food preparation areas, and c) permanently remove from the Land all materials, fixtures, fittings, and debris associated with compliance (a) and (b) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. It is directed that the enforcement notice be corrected by deleting all words in section 3 and replacing them with *'without planning permission, the material change of use of the outbuilding on the land into a self-contained residential unit'*. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. The breach of planning control in section 3 of the notice is described as *'without planning permission, the conversion of the outbuilding on the Land into a self-contained residential unit'.* It is clear from the evidence that the main parties are fully aware that the notice is directed at a material change of use of a building. Indeed, this is how the evidence has been put in terms of the ground (d) appeal. Reference to conversion as distinct from a material change of use is not strictly accurate having regard to section 55(1) of the Act. I shall correct the notice, without injustice being caused to the main parties, so that the breach of planning control refers to a material change of use of the outbuilding.

Reasons

3. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

4. The claim made by the appellant is that the former outbuilding associated with 153 Dorset Road has been used as a separate dwellinghouse for more than four years and hence is immune from enforcement action and therefore lawful by virtue of section 171B(2) of the Act. The appellant claims that the building has been used continuously as an independent or separate dwellinghouse since the year 2000. Neither party alleges that the building was not first used for an incidental residential use purpose.

5. The evidence does not support the appellant's claim that between 2000 and 23 August 2001 the building was used as a separate dwellinghouse. Indeed, the appellant does not dispute the Council's evidence that a letter dated 23 August 2021 was sent to the Council from the owners of 153 Dorset Road stating that they *'wish to appeal against the separate valuation band of the existing outbuilding because a. the building belonged to the main house and was not a separate bungalow; that all utilities supplied to the annexe came directly from the main house and the utilities are not separate; c. there is no separate address for the outbuilding'.* This evidence casts doubt about the appellant's claim of use of the outbuilding as a dwellinghouse at this time.

6. Furthermore, there is no objective or precise evidence before me to demonstrate, on the balance of probability, that the appeal building was used as a separate dwellinghouse between 23 August 2001 and 2015. While the appellant's accountants (Brown & Co LLP Accountants) assert that there are self-assessment tax returns *'going back to the 2000's which declared separate rental income'* from the appeal property, no such tax returns have been provided as part of this ground (d) appeal.

7. The information from Brown & Co LLP Accountants is in the form of a letter and not a statutory declaration. This diminishes the weight that I can afford to its evidence, and, in any event, there are no tax returns or any other evidence before me which proves that rental income was paid in respect of the appeal building, or indeed that such a building was being used continuously during this time as a separate dwellinghouse. It is noteworthy that the burden of proving the relevant facts is on the appellant.

8. There is a statutory declaration from Mr Austin Weber where he comments that since 15 March 2015 he has rented *'Room 1, 153a Dorset Road'* and that the property has always been a three-bedroom bungalow. He says that from this time, he rented the property from the appellant. There is a lease submitted as part of the evidence which was made on 15 June 2017. The lease is between the appellant and County Private Client Ltd. While the lease does not prohibit sub-letting, it is noteworthy that such a lease was for ten years. It is not clear if the appellant had to pay bills on the property even if that property was not occupied. In the absence of any clear information to the contrary, that remains a possibility.

9. There is insufficient evidence before me to demonstrate that the building was in use or occupied by Mr Austin Weber on 15 June 2017. I do not find that the lease provides unambiguous proof of his occupation of the building. Conclusive evidence might have been dated letters (e.g., bank statements) sent to Mr Austin Weber at this address at this time and indeed thereafter.

10. The appellant states that she paid utility bills in respect of the appeal property. However, the utility bill evidence details a different address to the appeal property. It does not conclusively prove that Mr Austin Weber was living in the appeal building on the dates specified.

11. The evidence is that the appeal building was officially rated for Council tax as *'153a Dorset Road'* from 18 May 2022. The Council refer to bank statements addressed to Mr Austin Alan Sander dated 18 April to 17 May 2019 and 18 June to 17 July 2019, and electoral register information for Mr Austin Alan Sander and Warrick Day dated 25 August 2022, each with the address of *'153 Dorset Road'*. In respect of this evidence, the position is not clear. It is possible that Mr Austin Alan Sander (and Warrick Day) was living in the 'main' dwellinghouse on the land on these dates. Indeed, the evidence in the form of Mr Austin Sander's statutory declaration is that *'153 Dorset Road, London, SW19 3EQ is managed by County Private Client Ltd'.* The above evidence does not suitably prove continuous residential occupation of the appeal building during this period.

12. When the Council issued a Planning Contravention Notice in respect of the breach of planning control, the appellant attached an image of an electricity bill allegedly relating to supplying 153a Dorset Road and covering 30 November 2021 to 13 April 2022. However, the bill is in the name of the appellant and includes the address of 118 Manor Park Lane, Farnham. An electricity bill can of course indicate occupation of a building. Nonetheless, it could equally be the case that some electricity is used even if a building is not occupied.

13. The evidence is that 153a Dorset Road was separately rated for Council tax on 18 May 2022. This does not necessarily equate to use of the building as a separate dwellinghouse at this time, although I accept that that it does likely indicate an intention to use the building in this way, or that it was already in use for this purpose at this time.

14. Even if I were to accept that the evidence supports use of the appeal building as a separate dwellinghouse on 18 May 2022, I do not find that the above combined evidence is sufficiently precise and unambiguous to demonstrate a continuous four-year use of the appeal building as a separate dwellinghouse. Even if one were to disagree with my judgement on this matter, the period between 30 November 2021 to 19 June 2023 (i.e., when the notice was issued) is not, in any event, four years.

Conclusion

15. For the collective reasons given above, I find, on the balance of probability, that the evidence before me is not sufficiently precise or unambiguous to demonstrate a continuous four-year use of the appeal building as a dwellinghouse. I therefore conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with a correction.

16. I recognise that in upholding the notice, it would mean that any current occupier of the building would lose their home. In this regard, I have considered rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. However, on the evidence that is before me I find that compliance with the requirements of the notice is a necessary and proportionate response to remedying the breach of planning control in the public interest.

D Hartley

INSPECTOR