



Appeal Decision

Site visit made on 26 June 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2024

Appeal Ref: APP/W1905/C/23/3320886

Land at 11 Park Lane, Cheshunt, Hertfordshire, EN7 6LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Cetin Kana against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice was issued on 4 April 2023.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 07/20/0431/HF granted on 20 July 2020.
 - The development to which the permission relates is *proposed two storey side extension, single storey front extension, demolition of existing garages and proposed detached building with pitched roof for use as garage/storage*.
 - The conditions in question are Nos 2 and 7 which state that:
Condition 2 - *The development hereby permitted shall be carried out and completed in accordance with the proposals contained in the application and drawing number MAY10_102MGR_01B submitted therewith. Reason – To ensure the development is carried out as permitted.*
Condition 7: *The detached garage/workshop development hereby permitted shall be used solely as additional living accommodation in connection with the existing dwelling unit, and shall not be used as a separate unit of accommodation. Reason: The establishment of an independent unit of accommodation would give rise to an over-intensive and unsatisfactory use of the site and lead to an unsatisfactory relationship between independent dwellings.*
 - The notice alleges that Conditions 2 and 7 have been breached.
 - The requirements of the notice are to:
 - (i) Permanently cease the use of the garage, as shown marked with an A on the attached plan (Enforcement Plan Number 1) as an independent dwelling.
 - (ii) Carry out works to bring the external building in compliance with approved plan, MAY10_102MGR_01B, attached.
 - (iii) Carry out works to bring the internal building in compliance with approved plan, MAY10_102MGR_01B, attached, including the removal of the kitchen, all integrated appliances, counter kitchen appliances, bedroom and bedroom appliances.
 - (iv) Remove any resultant debris from the land.
 - The period for compliance with the requirements is two months for requirement (i) and four months for requirements (ii), (iii) and (iv).
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (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:

- Deleting the breach of planning control in section 3 and substituting it with 'Breach of Condition 2 and Condition 7 of planning permission

07/20/0431/HF for a "Proposed two storey side extension, single storey front extension, demolition of existing garages and proposed detached building with pitched roof for use as garage/storage", in that the building, both internally and externally, does not match the approved plans and is being used to provide a separate unit of residential accommodation.'

2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant explains that the resident of the annex is the property owner's mother, who is registered as disabled and requires the annex as she is unable to climb the stairs at the front entrance (presumably to the main house). However, 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. Consequently, I am unable to consider personal circumstances insofar as they relate to the planning merits of the case.
4. Although the appeal form cited only ground (c), the appellant has raised issues which amount to a hidden appeal on ground (b). The Council has had sight of the same and had opportunity to comment. I will therefore determine the appeal with the additional ground.
5. I note that an interested party has raised concern over damage to his property but that is a civil matter beyond the scope of this appeal.

The Enforcement Notice

6. The breach of planning control as alleged is the breach of Condition 2 and Condition 7 of planning permission 07/20/0431/HF for a "Proposed two storey side extension single storey front extension demolition of existing garages and proposed detached building with pitched roof for use as garage/storage".
7. Although the reasons for issuing the enforcement notice state that the building, both internally and externally, does not match the approved plans and is being used to provide a separate unit of residential accommodation, that explanation as to why the Council consider Conditions 2 and 7 to have been breached should properly be set out in the allegation.
8. As the appellant will, nevertheless, know from the enforcement notice what he has purportedly done wrong, I am able to correct the notice accordingly, under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party. I shall also add the punctuation included in the description in the original decision notice, for clarity and readability purposes.

The Appeal on Ground (b)

9. An appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make his case on the balance of probabilities.
10. The appeal relates to a detached (garage) building positioned in front of the residential dwelling at No 11 Park Lane.

11. Condition 7 of planning permission ref 07/20/0431/HF states the detached garage/workshop development shall be used solely as additional living accommodation in connection with the existing dwelling unit and shall not be used as a separate unit of accommodation.
12. The appellant refers to the building as an annex and, as noted, asserts that it is required and used by his disabled mother who is unable to climb stairs. Those assertions clearly imply that the building has not been used as a separate unit of accommodation, but as additional living accommodation in connection with the existing dwelling unit, as required by Condition 7.
13. The Council states that it received a complaint in September 2022 alleging the building was being used and rented out as a separate dwelling. The Council state that during a site visit on 6 October 2022, it observed a fully furnished independent dwelling with an open plan kitchen-living room, equipped with a washing machine, hob and cooker, fridge, appliances, as well as an ensuite bedroom and walk in wardrobe. The Council's photographs corroborate the same.
14. It is therefore evident that prior to issuing the enforcement notice, the building was capable of being used as a dwelling, in that it contained all the facilities necessary for day-to-day domestic existence. However, it does not necessarily follow that it was being used as a separate unit of residential accommodation, as alleged.
15. The Council says that the appellant explained during its site visit that the young male adult present was his son and that he was the sole occupier of the 'separate dwelling' and that his occupation was due to a relationship breakdown in the main dwelling. The Council say that the appellant confirmed that he lived in the main dwelling with his mother, Aysel Kana.
16. That version of events appears consistent with the Council's photographs insofar as the clothes and items (such as video game controllers) point to occupation by a young person.
17. Prior to issuing the enforcement notice, the Council issued a Planning Contravention Notice (PCN), dated 12 November 2022. Before responding, the appellant's agent wrote to the Council to confirm that the building owners' son 'uses the building as ancillary use to the property' and that he had asked the building owner and his son to provide a declaration of truth to that effect (witnessed and signed by a solicitor).
18. Although, I have no evidence that such a declaration was made, that explanation again appears largely consistent with the Council's observations and photographs and the explanation purportedly received from the appellant, during its site visit.
19. The PCN response subsequently provided postdates the enforcement notice and is completed by Aysel Kana who states that the building is for her sole use and that occupation began in 2020.
20. A personal statement is also provided by Aysel Kana with the PCN which states that the annex belongs to No 11 Park Lane and was built for her convenience. She states that the building has been modified to meet her mobility needs, being registered as disabled with severe mobility impairments due to a car accident in 1990.

21. However, those responses are evidently contradicted by the Council's observations and corroborating photographs, and the information given by the appellant's agent.
22. The personal statement is not a legally sworn document to which sanctions apply, so in itself carries limited weight, and no other evidence is provided to show that it was occupied by Aysel Kana at the time the enforcement notice was issued. Based on the evidence before me, it is more likely that at that time the building was used for residential purposes by the appellant's son.
23. Given the position of the building some distance in front of the main dwelling, it is clearly possible for it to be accessed and used independently of the main dwelling. Moreover, if there was a relationship breakdown in the main house, such that it required the residential use of the building by the appellant's son, that may have resulted in him having little or no interaction with the main house.
24. Despite the evidential burden being with the appellant, he has not therefore shown that when the enforcement notice was issued there was a physical and functional link between the use of the building and the main house, such that they would have remained part and parcel of the same planning unit. As a matter of fact and degree, it is more likely that the building was being used as a separate unit of residential accommodation.
25. The appeal on ground (b) fails.

The Appeal on Ground (c)

26. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. Again, the onus lies with the appellant to make his case on the balance of probabilities.
27. Condition 2 of planning permission ref 07/20/0431/HF states that the approved development 'shall be carried out and completed in accordance with the proposals contained in the application and drawing number MAY10_102MGR_01B...'. The Council alleges that the building does not match the approved plans, neither internally nor externally, and thus is in breach of Condition 2. The appellant has not argued otherwise.
28. The appellant's ground (c) case is that the conversion of an existing outbuilding into an annex does not need planning permission as there are no fixed cooking appliances in the building. However, the enforcement notice does not allege that the building was being used as an annex.
29. The allegation, as corrected, is that the building was being used as a separate unit of residential accommodation. For the reasons explained under ground (b), the appellant has not demonstrated that to be incorrect.
30. That is clearly in breach of Condition 7, which, as noted, states that the building shall be used solely as additional living accommodation in connection with the existing dwelling and shall not be used as a separate unit of accommodation.
31. The appeal on ground (c) fails.

Conclusion

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

Richard S Jones

INSPECTOR