



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 26 November 2024

Appeal Ref: APP/P4605/C/23/3330384

108 Edgehill Road, Birmingham B31 3RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Franklin Folahan against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 5 September 2023.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 2020/00240/PA granted on 6 March 2020.
 - The development to which the permission relates is: The erection of a single storey outbuilding to rear.
 - The condition in question is no 5 which states that: The development hereby permitted shall only be used for purposes incidental to the primary use of the premises as a residential dwellinghouse.
 - The notice alleges that the condition has not been complied with in that: The outbuilding is not being used for purposes incidental to the primary use of the premises as a residential dwellinghouse.
 - The requirements of the notice are: Cease the current unauthorised use of the outbuilding and return it to its intended use of a use being incidental to the primary use of the premises as a residential dwellinghouse in accordance with condition 5 of planning approval 2020/00240/PA.
 - The period for compliance with the requirement is: 1 month.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by:
 - Deleting the requirement at section 5 and replacing that with "Cease the current unauthorised use of the outbuilding".
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. The appellant has appealed under s174(2)(b) of the 1990 Act only. However, much of their case is aimed at showing there has not been a breach of condition 5 of planning permission 2020/00240/PA, because of the way they have operated the use/occupation of the outbuilding. To me, those arguments are better considered under s174(2)(c) of the 1990 Act, which is that the matter alleged (if they occurred) does not constitute a breach of planning control. There is, in effect, a hidden ground (c) appeal. If I was to consider such a ground (c) appeal first, the outcome of that would give the answer to the ground (b) appeal.

4. The case made by the appellant has been before the Council. Thus, the Council has had the opportunity to consider and respond to the points made. Therefore, approaching the appellant's evidence jointly under grounds (b) and (c) would not cause injustice to the Council and it would do justice to the appellant's arguments. I shall proceed accordingly.
5. Neither of these grounds of appeal require a visual inspection of the premises. The outcome of the appeal is based on assessing the written evidence. The Council has supplied photographs of the building and its interior anyway. Furthermore, there is no appeal under s174(2)(a) of the 1990 Act and so there are no matters of planning merit to consider. Therefore, I was able to determine the appeal without a site visit. No party has been prejudiced by this course of action.
6. In legal grounds of appeal, such as under s174(2)(b) and (c) of the 1990 Act, the burden of proof to make out the case rests with the appellant. The test of the evidence is the balance of probability.

The Notice

7. The notice alleges a breach of condition 5 of the planning permission because of the way it has been used and it requires the non-incidental use to cease. However, there is no scope in the enforcement regime to require reversion to the lawful use. The appellant would be entitled to simply stop using the building in the way that they have. Therefore, the aspect of the requirement aimed at returning the use back to its authorised incidental use is excessive. To meet the purpose of remedying the breach by making the development comply with condition 5, it is sufficient that the unauthorised use ceases. I intend to vary the notice accordingly. This variation causes no injustice to either side.

Grounds (b) and (c)

8. The Council advises that the plans approved when planning permission for the outbuilding was granted showed it would be used as an office and sunroom. Contrary to the approved layout, the building is now equipped with a double bed, kitchen and bathroom/shower. The appellant also admits that the building has been let for short term occupation via Airbnb. This has been by persons unrelated to the occupiers of the main house.
9. The outbuilding was not granted planning permission under the Town and Country Planning (General Permitted Development) Order 2015. Nevertheless, the Government document 'Permitted Development Rights for Householders – Technical Guidance' provides useful guidance about the use of such buildings within the curtilage of a dwellinghouse that would fall within purposes incidental to the main dwellinghouse. They include sheds, garages and storage buildings that can properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
10. In the context of the above, it seems to me that using the extra rooms in the outbuilding by occupiers of the main house as an office and sunroom as approved would clearly fall within the restriction that condition 5 seeks, which

is for it to only be used for purposes incidental to the primary use of the premises as a residential dwellinghouse. However, the fact is the outbuilding now contains primary living accommodation. Whilst the letting may be operated by the persons in the main house, and they have drawn attention to examples of other types of Airbnb accommodation, using the building as a self-contained unit of accommodation by persons not residing at or related to the persons in the main dwelling, even only for short term lets, could not be classed as being used for a purpose incidental to the primary use of the house.

11. Other matters such as how the letting has, or has not, affected the amenities of the local area is not something I can consider in this appeal for the reason explained above. I also cannot consider matters of neighbour relations for the same reason.
12. In view of the above, I find that under ground (c) there has been a breach of planning control because the restriction placed on the use of the building by condition 5 has been contravened. Thus, under ground (b) the matters alleged in the enforcement notice have occurred. Therefore, both appeals fail.

Conclusion

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

Gareth Symons

INSPECTOR