



Appeal Decision

Site visit made on 29 October 2024

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/T5150/C/23/3314818

267 Tokyngton Avenue, Wembley HA9 6HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by MR Shukat Shukat against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 9 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding to the rear of the premises to a separate unit of residential accommodation.
- The requirements of the notice are:
STEP 1
Cease the use of the rear outbuilding as a separate unit of residential accommodation.
STEP 2
Permanently remove the bathroom and bathroom facilities, kitchen and kitchen facilities and all internal partition walls located within the outbuilding to the rear of the premises, and remove all items and debris, arising from that removal, and removal all materials associated with the unauthorised use from that premises.
- The period for compliance with the requirements is:
3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:
 - 1) At SCHEDULE 4 of the notice, the deletion of the requirements at STEP 2
And replacement with:
STEP 2 Permanently remove the bathroom and bathroom facilities, kitchen and kitchen facilities, and removal all items and debris arising from that removal and removal of all materials associated with the unauthorised use from the premises.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant's appeal form initially set out the grounds of appeal as being those set out in section 174(2)(c), (f) and (g) of the Act. However, the appellant subsequently clarified that the appeal should proceed instead on grounds (b), (f) and (g). I have determined the appeal accordingly.
4. Whilst I have noted the appellant's assertion that the outbuilding has been in place at the appeal site since 2007 the appellant has not formally advanced a case under ground (d); 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 the matters stated' in the notice. Nevertheless, such grounds may be made as 'hidden' grounds even if not explicitly stated by the appellant at the outset of the appeal process. In such circumstances it is still necessary to consider any such 'hidden' grounds of appeal.

5. The Council do not seek to enforce against the construction of the building itself or otherwise dispute the outbuilding's lawfulness, albeit noting that the appellant's evidence is contradictory in stating that it has been present since either 2005¹ or 2007². As this matter is not in dispute however, nor is it a matter alleged in the notice, I have not considered this matter further.

The appeal on ground (b)

6. The appellant clarified during the course of the appeal that it was to proceed on the basis of, amongst others, ground (b). That is, that those matters alleged in the notice have not occurred as a matter of fact. To succeed on this ground, the appellant must demonstrate on the balance of probabilities that those matters have not occurred. As the ground set out at section 174(2)(b) of the Act is worded in the past tense, the matter is not whether the alleged breach continues at the time of my visit to the site, but whether or not the breach had occurred by the date of issue of the notice.
7. The appeal building is located at the rear of the garden plot of No. 267, opposing the rear of the main house. Between the two, the garden plot, which is of considerable length, is laid entirely to hard-standing. The building is accessed from within the garden plot and, via a second, side door, from an access path between 271 Tokyngton Avenue and 1 Northchurch Road.
8. The largest of the appeal building's three main rooms faces back across the garden plot towards the main house and is served by a double window and a half-glazed door. A small w.c./shower room has a smaller window fitted with frosted glass that also faces towards the rear of the main house, whilst a second, irregularly shaped, room is located at the rear. This room has no conventional windows but receives light via a roof window.
9. At the time of my visit to the site the building's interior was spartan, albeit clearly in use. There was no oven or hob in the largest of the building's rooms, albeit a fridge / freezer was present and there were floor and wall-mounted kitchen-style cabinets on two walls of the room. There was also a sink and drainer set into the worktop in a manner akin to a kitchen sink. Instead, the rear room was laid out in an office style with a chair and table with a computer 'workstation' set up, along with a sofa (possibly a sofa bed), another chair and a small glass coffee table.
10. These observations from my site visit are broadly consistent with the appellant's appeal submissions. These variously suggest that the building was being used as an office / gym / storage use³ and that the larger of the rooms was used as a small kitchenette for tea / coffee making whilst in use as an office.

¹ LPA Statement - Appendix 3: Responses to Planning Contravention Notice (PCN)

² Appellant's Statement of Case – ground (b), paragraph 2-

³ LPA Statement - Appendix 3: Responses to Planning Contravention Notice (PCN)

11. However, the Council's photographic evidence suggests otherwise. Dated photographs from a visit in October 2022⁴ show the main room area laid out and occupied in the manner of a kitchen. The worktops appear full of day-to-day domestic paraphernalia including a microwave, air-fryer, various containers, plates and mugs as well as what appears to be an oven with a gas-fuelled hob-top with a pots on top. These suggest a manner of use that differs from my observations during my visit, and also from those claimed by the appellant, but which is consistent with the use of the building as a separate unit of residential occupation.
12. I initially accessed the building via the main house and the paved yard area between the two buildings during my visit to the site. However, the building in question is also accessible directly and independently from No. 267, via a path between No 271 and 1 Northchurch Road. A door opens directly onto this path from a corridor part of the outbuilding's internal layout. It is therefore fully accessible without reliance upon access through the main building at No. 267. These observations, together with the Council's submitted evidence indicates to me that the outbuilding is, and was, capable of use independently of occupation of No. 267 with sufficient day-to-day facilities for such.
13. I accept that there was no sign of a washing machine at the time of my visit and that the Council's photographs do not show one. However, the absence of one does not mean that the outbuilding was not, and is not, capable of being used as a separate unit of residential accommodation.
14. I have no evidence before me as to the extent that the outbuilding relies upon, or otherwise, the utilities and services of the main building at No. 267. However, I am not persuaded that the absence of 'separate utilities' is entirely indicative of it not being used as a separate residential unit of residential, and which, in any event, the appellant has not substantiated beyond a very broad statement. Thus, for an outbuilding that contains sufficient facilities and accommodation so as to be capable of use separately, with a clearly separate and independent access to it, the appellant has not presented evidence to demonstrate that it is or has been occupied as part of the same planning unit, or that it has been used and occupied as part of a functionally single household at No. 267.
15. For the reasons set out therefore, I conclude that the appellant has not satisfactorily demonstrated to the required evidential standard, the balance of probabilities, that the matters alleged in the notice have not occurred. Whilst the use of the outbuilding as I saw it during my visit to the site may be closer to the somewhat contradictory manner of uses suggested by the appellant across the various elements of evidence, as s174(2)(b) is worded in the past tense the key question is whether the breach **had** occurred by the **date of issue** *[my emphasis]* of the notice. I am satisfied that it had, and the appeal on ground (b) therefore fails.

The appeal on ground (f)

16. The breach of planning control alleged in the notice is the material change of use of the outbuilding at the rear of No. 267 to a separate unit of residential accommodation. An appeal under ground (f) is that the steps required by the notice, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.

⁴ Photographs dated 14 October 2022 – appear to be taken through windows rather than from within the building

17. It is clear that the purpose of the notice is to remedy the breach of planning control. It may very well be the case that the outbuilding is not currently used as a separate residential accommodation. However, as it has not been demonstrated to the required standard that the matters set out in the notice had not occurred, and the ground (b) appeal has thus failed, the first of the notice's required steps remains necessary and proportionate to remedy the breach of planning control, namely the separate residential use of the outbuilding.
18. With regard to the second of the notice's required steps, this is broad ranging in its scope. Moreover, it is common ground that the outbuilding has been present for some time, and also that the construction of the outbuilding itself is not within the scope of the notice.
19. Whilst that may be so, neither party has provided me with any evidence regarding the internal layout of that building since its construction. I have no evidence before me that the building was previously effectively a shell internally, which is what the notice seeks to require. In this respect, the notice's requirements exceed what is necessary to remedy the breach and the appeal on ground (f) succeeds in part on this basis, and I shall vary the notice accordingly. However, the removal of the kitchen and kitchen facilities, and the bathroom and bathroom facilities, remain proportionate to the remedy of the breach of planning control as they were, and are, capable of facilitating the use of the outbuilding in the manner set out by the notice.

The appeal on ground (g)

20. The appellant's appeal on ground (g) is made principally in response to the notice's requirements for the removal of all internal partition walls. This, it is argued, a period of 3 months would not provide sufficient time to engage the services of a surveyor to consider the structural implications of these requirements.
21. However, as I have concluded that the appeal on ground (f) should succeed in part, the structural implications of the remaining requirements of the notice are likely to be less onerous. Although there may still be matters for which the services of trades might be required I am not persuaded that a period of 3 months is unreasonably short. The appeal on ground (g) therefore fails.

Conclusion

22. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent. The appeals on grounds (b) and (g) fail for the reasons set out.

G Robbie

INSPECTOR