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## Appeal Decision

Site visit made on 29 April 2025

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 May 2025**

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### **Appeal Ref: APP/A5270/C/23/3320437 12 Drew Gardens, Greenford UB6 7QG**

- 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 Mrs Shobhai Williams against an enforcement notice issued by the London Borough of Ealing.
  - The enforcement notice was issued on 13 March 2023.
  - The breach of planning control as alleged in the notice is: Without planning permission: The material change of use of a rear outbuilding to a separate self-contained residential unit.
  - The requirements of the notice are to:
    1. Cease the use of the rear outbuilding as a separate self-contained residential unit;
    2. Remove the cooking facilities, kitchen sink, kitchen surfaces, cupboards and associated kitchen drainage connection;
    3. Remove all resulting debris from the site.
  - The period for compliance with the requirements is within three months from the date this notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.
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### **Formal decision**

1. The enforcement notice is corrected with the deletion of points 2 and 3 under section 5 titled 'What you are required to do'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

### **Background**

2. The appellant says that she and her husband purchased the property in September 2021. This included both the main dwelling, which had been extended to the rear, and also a single-storey outbuilding at the far end of the rear garden. The Estate Agents' marketing particulars at this time labelled the outbuilding as a bedroom, although this is also illustrated with a small kitchen surface and a separate shower room/wc.
3. It appears from the evidence that this accommodation had been utilised by the previous owner for a number of years, who was largely living apart from his estranged wife who, in turn, it is understood, lived upstairs in the main dwelling. The ground floor was apparently rented out. The above arrangement seemingly continued until the property was sold, as mentioned, in September 2021.
4. Due to extensive renovations the appellant did not move into the main dwelling until some twelve months after its purchase. The Council then

indicates that it received a complaint in January 2023 that the outbuilding was being made available for rental, and in this connection it refers to an advert placed on [www.nextdoor.co.uk](http://www.nextdoor.co.uk) by the appellant. The Council has provided this advert in support of its case, and I note that the appellant describes the outbuilding's facilities and offers it for rent at £850 per calendar month.

5. Subsequently, on 16 February 2023, the Council then served a Planning Contravention Notice (PCN). Although the Council says that no response was received to the PCN the appellant has provided a completed version with the requested information given.
6. It is not, however, clear whether this was for the benefit of the appeal or whether, instead, the Council had received the response prior to 13 March 2023. Nonetheless, the Council decided it was expedient to issue an enforcement notice which requires for the cessation of the use of the outbuilding as a self-contained residential unit and also the removal of a number of items which facilitated the said use.

### **Matters concerning the enforcement notice**

7. The appellant indicates in her representations that the outbuilding was occupied for a very short period at the start of 2023 but after '*receiving this notification, we gave our single lodger notice, and he moved out straight away.*'
8. From the above statement it is not explained what is meant by '*this notification*' ie whether the tenant vacated the accommodation after the PCN was received, but before the enforcement notice was issued, or subsequent to 13 March 2023. However, as no appeal under ground (b) was made – which would have claimed that the breach was not occurring as a matter of fact at the date of the enforcement notice's issue – I have to assume the latter.
9. It appears that the previous owner used the outbuilding and its limited facilities in an incidental capacity to the main dwelling for a number of years, and I see little reason why the appellant's family should not, at some future point, use the outbuilding in a similar fashion and afford themselves of its fixtures and fittings. This would not constitute development and such informal use would not require the benefit of planning permission as interaction with the main dwelling would be maintained.
10. Accordingly, I shall delete requirements 2 and 3 which I consider go beyond what is reasonable and proportionate in the particular circumstances and are thereby unnecessarily onerous. This correction would not cause injustice to the Council given my decision here to dismiss the appeal and uphold the enforcement notice.

### **The appeal on ground (c)**

11. An appeal made on ground (c) is that the development alleged in the enforcement notice has taken place but it did not require the benefit of planning permission as, for instance, it was permitted development, covered by way of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
12. Outbuildings within residential curtilages are permitted under Class E of Part 1, Schedule 2 of the GPDO subject to certain provisos, one of which is that the building has to be incidental to the enjoyment of the dwellinghouse. In effect,

this necessitates maintaining a close relationship between the outbuilding and the main dwelling.

13. The building should not therefore be used as a separate and independent dwelling. Therefore, normal living requirements ought to take place in the main dwelling. Something which is "incidental" cannot itself be a dwelling house. That said, although so called 'granny annexes' – where a member of the family usually occupies the separate building - can often function as self-contained residential units, the key is that there remains a relationship between the annexe and the main dwelling and there is a degree of interaction. Accordingly, the living accommodation would remain part of the same planning unit with the house so long as it remained in occupation by family members.
14. Here, the facilities within the studio effectively result in a self-contained residential unit of occupation. Further, as it is accessed separately from the main dwelling via a gate from the adjacent side driveway it represents an additional dwelling, independent of the main house.
15. I find, therefore, that the use of the outbuilding here as a self-contained unit of residential accommodation went beyond the limitations of Class E when it was occupied independently as a separate dwelling. In not constituting permitted development, its use requires the benefit of planning permission, but none has been sought. Moreover, the concept of the planning unit comes into play here.
16. The leading case in which the planning unit was defined was *Burdle v SSE* [1972] 3 All ER 240. In this judgement it was held that there may be three possible situations which can be identified when considering this concept. Two are relevant here; first, where there is a single main purpose, to which any secondary activities are ancillary or incidental. In such a situation the whole unit of occupation is the planning unit. Second, in instances where there are separate and distinct areas occupied for unrelated purposes, these areas are separate planning units and each is to be considered by itself.
17. The general rule is that the unit of occupation is the appropriate planning unit to consider until or unless a smaller unit is identified which is in separate use, both physically and functionally.
18. I address the relevance of this concept in my findings regarding the ground (d) appeal later in my decision letter, but I would consider that the main dwelling and the outbuilding formed a single residential planning unit until the property was sold - the outbuilding has not been separately banded for Council tax purposes - following which a material change of use occurred with the outbuilding's independent use, albeit for a very limited period by an outside tenant unrelated to the appellant's family. This arrangement was materially different to the previous owner's occupation whereby the then owner indicates there remained a relationship between the main dwelling and the outbuilding, with some limited interaction between the respective occupiers.
19. In essence, when the above arrangement ceased the planning position changed. Accordingly, as the use was unauthorised and required planning permission, the appeal on ground (c) cannot succeed.

### **The Appeal on ground (d)**

20. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced on or

before 13 March 2019 or, in other words, 4 years before the date of the issue of the enforcement notice (hereinafter referred to as "*the material date*") and has continued since this time.

21. The appellant says that the outbuilding was built in approximately 2009 and was used as a dwelling since at least 2017. Having regard to my findings on the ground (c) appeal and the provisions of s171B the claimed independent residential use of the outbuilding would have constituted a change of use. Accordingly, as this occurred prior to April 25 2024 when the relevant provisions of the Levelling Up and Regeneration Act 2023 came into effect the four year immunity bar still applies.
22. The property's previous owner, Justin Anderson, has provided a short statement to highlight his previous use of the outbuilding. Apparently, it was used for incidental storage purposes until, when in 2017, Mr Anderson's marriage had broken down. Whilst his wife remained living in the main dwelling he says he spent as much time as he could within the outbuilding to keep his distance. To corroborate this a number of local residents have provided representations which show similar recollections that he had lived in the outbuilding for up to five years prior to the property being sold.
23. In the judgement of *Swale BC v FFS & Lee* [2005] EWCA Civ 1568 it was established that any change of use to a dwellinghouse must be 'affirmatively established' over a four year period before an occupier or occupiers do not have to be continuously or regularly present in order for it to remain in such use. However, whilst Mr Anderson used the outbuilding for his own habitable purposes, this did not constitute a change of use and the four year immunity bar was not therefore applicable as no breach of planning control had occurred.
24. The judgement of *Panton and Farmer v SSETR and Vale of White Horse DC* [1999] JPL 461 does not therefore apply in this particular instance. In illustration, from the evidence provided, I would consider that once Mr Anderson vacated the premises and the outbuilding was subsequently occupied by an outside tenant, independently of the main dwelling, an additional planning unit had been created as per *Burdle*. Accordingly, this constituted an unauthorised material change of use requiring planning permission. As none was sought the Council decided to utilise its planning enforcement powers.
25. I have some sympathy for the appellant as it appears from her evidence she genuinely believed that, given the circumstances prior to her acquiring the property, the outbuilding could be lawfully used as a self-contained residential unit. Indeed, this may have been a factor in her deciding to make the purchase. In her appeal I note that she was not represented by a planning consultant and I can understand her apparent surprise when the Council initiated enforcement proceedings, which caused her to give her lodger, who had only occupied the outbuilding for some two months, notice to quit.
26. I am of the view that the appellant had unwittingly fallen foul of planning law but, given her limited grounds of appeal, I am bound by relevant legal principles and my decision has to reflect this.
27. Given that the onus is on the appellant to provide compelling evidence to support her case, in the absence of such, and for the above reasons, there is no evidence before me to indicate that immunity from planning control had been reached by the time the enforcement notice was issued.

28. The appeal on ground (d) must therefore fail.

*Timothy C King*

INSPECTOR