The Planning Inspectorate

Appeal Decision

Inquiry Held on 19 – 21 January 2021
Site visit made on 21 January 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2021

Appeal Ref: APP/B5480/C/18/3215807
Land at 53 Ernest Road, Hornchurch RM11 3JN

- 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 Mr Stewart Roberts against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 19 October 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of outbuildings to a separate dwelling unit (C3).
- The requirements of the notice are:
  (i) Cease the use of the outbuildings as residential accommodation.
  And
  (ii) Remove all fixtures and fittings, and cooking facilities from the outbuildings.
  And
  (iii) Remove all materials and debris resulting from step (i) and (ii) from the site.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.

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

Application for Costs

1. At the Inquiry an application for costs was made by the Council of the London Borough of Havering against Mr Stewart Roberts. This application is the subject of a separate decision. An application for costs made by the appellant was withdrawn at the Inquiry.

Preliminary Matters

2. All evidence at the Inquiry was given under oath. As no ground (a) appeal has been made under section 174(2) of the 1990 Act, I cannot consider any planning merits or disbenefits of the appeal development.

The Notice

3. In a pre-inquiry note I set out queries relating to the drafting of requirements (i) and (ii) of the notice. At the Inquiry I sought the views of the main parties on these queries. As a result, the Council said that "residential accommodation" in requirement (i) should be changed to "a separate dwelling unit (C3)", such that the notice would not prevent the lawful use of the outbuildings as accommodation incidental to the enjoyment of the principal dwellinghouse at

No 53. Both main parties agreed I could vary the notice in this way without causing injustice to the appellant or the Council.

4. As drafted, requirement (ii) is ambiguous in respect of what fixtures and fittings it requires are removed from the outbuildings. At the Inquiry the appellant and the Council suggested alternative wordings, which I have considered, taking into account the evidence provided and the Council's concern of ensuring that the outbuildings cannot be easily converted back into a self-contained dwelling.

5. No documentary evidence has been provided to support the views of the appellant or his tenant, expressed at the Inquiry, on the condition of the land before the breach took place. So I have amended requirement (ii) as set out in my Formal Decision below, to make requirement (ii) specific. I am satisfied that I am able to vary the notice in this way, without causing injustice to the appellant or the Council, given that the wording I have used achieves the same result as the alternative wordings suggested by the parties.

Main Issues

6. Based on the appeal grounds, the main issues are:

   - whether it was too late for the Council to take enforcement action due to time limits set out in Part VII of the 1990 Act, in particular section 171B(2), ie the ground (d) appeal;

     and

   - if the above ground of appeal is not successful, whether the period for compliance with the notice falls short of what should reasonably be allowed, ie the ground (g) appeal.

Reasons

The ground (d) appeal

7. Under section 171B of the 1990 Act, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

8. So for the ground (d) appeal I must consider whether, prior to the issue of the notice, there had been continuous use of the outbuildings as a separate dwelling for 4 years beginning with the date of the breach.

9. The burden of proof in a ground (d) appeal falls on the appellant, the decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities.

10. The appellant states the outbuildings have been used as a separate dwelling since 11 January 2014 when Mrs Matt is said to have taken up residence. This precedes the date 4 years prior to the date the enforcement notice was issued, ie 19 October 2014. However, Mrs Matt did not appear as a witness at the Inquiry and no statutory declaration from her has been provided.

11. The documents provided to support the appellant's case in this regard are a tenancy agreement in the name of Mrs Matt for the period until 10 July 2014, a handwritten note of that same date, said to be from Mrs Matt, indicating she would leave the property on 10 September 2014, and a statement of accounts.

12. The appellant states Miss Crowe and Mr Wren have occupied the outbuildings since 9 September 2014 to the present day, a period exceeding 4 years prior to the issue of the notice. Yet this date is inconsistent with the move-out date given in the aforementioned handwritten note and inconsistent with the date Miss Crowe and Mr Wren's term started, stated in their earliest tenancy agreement as 11 September 2014.

13. Under cross-examination, the appellant said Mrs Matt moved out early and Miss Crowe subsequently said the letting agency suggested she could move in early. The appellant variously explained that Miss Crowe and Mr Wren moved in together, that Miss Wren moved in first because Mr Wren was on holiday, and that he could not remember. As such, considerable doubt is cast on the veracity of the appellant's evidence in this regard.

14. Four tenancy agreements have been provided for Miss Crowe and Mr Wren for the period including 11 September 2014 to 10 March 2018, after which it is said they have continued to occupy the outbuildings on a statutory periodic tenancy. The appellant accepts there are omissions and irregularities in these documents.

15. For example, the 2017-2018 agreement does not feature Miss Crowe even though she said in cross-examination that she was the 'lead' tenant. The 2015-2016 agreement does not feature a witnessed signature for Miss Crowe in the correct part, Mr Wren appears as 'Mr Robert', sections of the document relating to the tenant and agent appear to be missing and it contains no landlord signature or counterpart to that effect.

16. In addition, the tenancy agreements are not supported by a copy of any advertisement for the outbuildings, any contract with the letting agent, any bank statement showing rent paid or received, any deposit registration record, records of tax paid on rental income or gas safety certificates which are required by law for landlords. These are all documents commonly used as supporting evidence of residential occupation. Under cross-examination, when challenged on information not provided, the appellant stated that he had given his representation everything they had asked of him. Similarly, his tenant stated she had not been asked to provide anything else.

17. Given the aforementioned omissions and irregularities in the tenancy agreements, supporting documents are important. This is particularly the case as tenancy agreements may be easily bought, as was heard at the Inquiry during the appellant's cross-examination. Even if those provided are genuine, they may merely show tenancies were entered into rather than that the outbuildings have been continuously occupied as a dwelling for 4 years prior to the issue of the notice.

18. The statement of accounts which has been provided contains nothing to indicate its provenance. It is not accompanied by any covering letter, email or statutory declaration from the letting agent, nor did the letting agent appear at the Inquiry despite the appellant indicating in writing that they would.

19. Moreover, the statement of accounts refers to the tenant as 'Wren' when under oath Miss Crowe said she is the lead tenant and pays the rent. The statement does not identify the client, instead referring to 'Owner 1' when Land Registry records show the land is owned by the appellant and Julia Roberts. In my judgement, it is not credible that the lead tenant name could be recorded incorrectly throughout Miss Crowe's occupation when it is said she repeatedly raised this with the letting agent whilst also paying letting agency renewal fees.

20. Miss Crowe has provided tenant's insurance correspondence. This indicates she obtained insurance for tenancy liability (accidental damage to landlord's property, furniture, fixtures and fittings) for the outbuildings in addition to her contents. It is the Council's case that the former would usually be held by a landlord rather than the tenant. Moreover, the Council has identified that the insurance provider's website states that between 60% and 81% of tenants currently have no cover for their possessions. In the context of the above, the insurance obtained is unusual.

21. In addition, only the most recent insurance letter is accompanied by a policy schedule confirming details of the policy, including the dates of coverage. The insurance documents provided may simply show that an insurance product was obtained, rather than assisting in demonstrating continuous occupation of the outbuildings as a dwelling for 4 years prior to the issue of the notice.

22. On behalf of the appellant, Miss Crowe has provided Google Street View images from August 2015 and July 2017 which are said to show her previous car parked on the street outside No 53. Even if this is what these images show, they postdate the date 4 years prior to the issue of the notice and so do not assist in demonstrating continuous occupation of the outbuilding for 4 years prior to issue of the notice.

23. Whilst evidence for the appellant was given under oath, neither witness was independent given Mr Roberts is the appellant and Miss Crowe is purported to be his tenant. Moreover, the lack of supporting evidence, referred to above, that is usually available to corroborate residential occupation, is compelling when considered together with the NAFN[1] data provided by the Council.

24. The NAFN data indicates a date of association with the outbuildings for Miss Crowe and Mr Wren respectively, after the date 4 years prior to the issue of the notice. It is inconceivable that no such aforementioned supporting evidence exists. But as it has not been provided, I cannot take it into account. In my judgement, this makes the appellant's version of events less than probable, particularly as the NAFN data indicates a different address for Miss Crowe after the date 4 years before the notice was served.

25. Considering all of the above points, on the balance of probabilities the appellant's evidence is insufficiently precise and unambiguous. So I am not satisfied that prior to the issue of the notice there had been 4 years' continuous use of the outbuildings as a separate dwelling. Therefore, it was not too late for the Council to take enforcement action, due to time limits set out in Part VII of the 1990 Act, in particular section 171B(2). As such, the appeal on ground (d) fails.

[1] National Anti-Fraud Network

The ground (g) appeal

26. The notice was issued prior to the Covid-19 pandemic. As such, the Council considers the compliance period should be increased from 2 months to 6 months in line with Government guidance. The appellant accepts that the removal of fixtures and fittings would be a relatively straightforward exercise. But as the notice would make the occupants of the outbuilding homeless, the appellant seeks at least 12 months to comply with the notice so the occupants may find suitable alternative accommodation.

27. No specific evidence has been provided to indicate why more than 6 months would be required to comply with the requirements of the notice and for the tenants to look for alternative accommodation, even taking into account the fact that they may both work full time. Therefore, I am satisfied 6 months is reasonable, taking into account the above factors.

28. I conclude the period for compliance stated in the notice falls short of what should reasonably be allowed and I will extend the period for compliance accordingly from 2 months to 6 months. As such the appeal on ground (g) succeeds to this extent.

Conclusion

29. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice with variations, as set out in my Formal Decision.

Formal Decision

30. It is directed that the enforcement notice is varied by: the deletion of "residential accommodation" from requirement (i) and its substitution with "a separate dwelling unit (C3)"; the deletion of requirement (ii) and its substitution with "Remove from the outbuildings all cooking facilities and fixtures and fittings that facilitate the use of the outbuildings as a separate dwelling unit (C3)"; and the deletion of two months as the period for compliance with the notice and its substitution with 6 months. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Dagg	Barrister, Trinity Chambers MRTPI
He called	
Stewart Roberts	Appellant
Nerissa Crowe	Tenant

FOR THE LOCAL PLANNING AUTHORITY:

Sasha Blackmore	Barrister, Landmark Chambers
She called	
David Colwill	Enforcement Team Leader

INTERESTED PERSONS:

Trevor Lawrence	Emerson Park & Ardleigh Green Residents Association
Dhruv Patel	Local Resident
Dawn Rehbein	Local Resident
Luke Rehbein	Local Resident

DOCUMENTS

1 David Colwill email of 13 January 2021 regarding notice requirement (ii)

2 John Dagg email of 19 January 2021 regarding notice requirement (ii)

3 *Secretary of State for Communities and Local Government and Another v Welwyn Hatfield Borough Council* [2011] UKSC 15

4 *David Bonsall v Secretary of State for Communities and Local Government; Nigel Jackson v SSCLG* [2015] EWCA Civ 1246