The Planning Inspectorate

Appeal Decision

Site visit made on 7 June 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/B5480/C/20/3261350
11 Burntwood Avenue, Hornchurch, RM11 3JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Herjit Kataria against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/527/19, was issued on 30 September 2020.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the two single storey outbuildings at the rear into two self-contained residential units.
- The requirements of the notice are to:
  1. Cease the residential use of the two separate outbuildings in the rear garden (11a and 11b Burntwood); AND
  2. Remove all kitchen units, beds, shower cubicle, toilet facilities and all residential paraphernalia including appliances associated with the uses; AND
  3. Remove from the site all debris and materials accumulated as a result of taking the above steps.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by the insertion of 'Avenue' after the word 'Burntwood' in the first requirement. Subject to this correction the appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

2. The reference to the units which are the subject of the notice in the requirements is incomplete because it does not refer to Burntwood 'Avenue'. I can correct the requirement accordingly without causing injustice to either party.

3. The appellant considers that the breach of planning control has not occurred because the outbuildings which are the subject of the notice accommodate members of the extended family which occupies the main house, and they use the facilities in the main house. This amounts to an argument under ground (c). As the Council has had the opportunity to address the submissions by the appellant, neither party would be prejudiced if I consider the appeal on ground (c) as well as grounds (b) and (f).

Ground (b)

4. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal, and the onus of proof lies with

the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

5. The appeal relates to two buildings which are marked Unit 11a and Unit 11b on the enforcement notice plan. Unit 11b currently accommodates three bedrooms, a bathroom and shower room and a living area with kitchen. There is a utility cupboard with washing machines. Unit 11a is fitted out to the same standard of accommodation.

6. Notwithstanding how the buildings are used, which is addressed under my consideration of ground (c), the units provide self-contained residential accommodation. On this basis the matters to which the notice relates have occurred as a matter of fact.

7. For the reasons set out above the appeal on ground (b) fails.

Ground (c)

8. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

9. In order to achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.

10. No. 11 is a large, detached house fronting the road with a parking area accessed via an in/out driveway. It is comparable with other houses in Burntwood Avenue although it has a substantially larger garden. Units 11a and 11b are accessed via an area of hardstanding between the side of the house and the adjacent site which is under development.

11. The entrance to No. 11 is gated and there is an intercom providing access. There is one letter box which is marked '11', 'A' and 'B'. There is no separate vehicular or pedestrian access serving the units, however once inside the site it is not necessary to enter the main house to access the units.

12. There is a covered walkway between the rear of the main house and Units 11a and 11b. Close to the buildings themselves there is a low wall and gate surrounding a patio area in front of them. There is also fencing and buildings between the rear of the main house and 11a and 11b.

13. In physical terms, there are gates, buildings, and walls between the main house and 11a and 11b, providing some degree of physical separation. However, looking at the site as a whole there is no physical restriction preventing all occupiers accessing all parts of the site.

14. The two buildings are linked together, and this space is used for storage and to accommodate the boiler, fuse boxes etc. There was no evidence of separate meters in the units which the appellant says are attached to services from the main house, although the Council refers to them being present when it visited the site in 2020. However, in itself the presence or absence of separate meters is not determinative of the use of the buildings.

15. Functionally, the appellant says that both units are occupied by members of the family and a list of occupiers of the main house and the units has been provided to demonstrate this. The site accommodates four generations of the same family and in total there are 19 people living there.

16. The appellant also says that the occupiers of the units use the facilities in the house such as the pool and gym and that occupiers of the main house provide child care for the occupiers of 11a and 11b when they are at work. Whilst the facilities available to the occupiers of the units include everything required for day to day private domestic existence that does not appear to be the way in which the 11a and 11b are being used.

17. The outbuildings which are the subject of the notice and the wider site have a complex planning history. However, the documents provided by the appellant establish that a granny annexe (now 11b) was permitted in 2011 and the retention of an outbuilding (now 11a) was permitted in 2015. A condition attached to the 2011 consent limited the use of the granny annexe to purposes ancillary to the main dwelling and a condition attached to the 2015 consent limited the use of the outbuilding to purposes incidental to the enjoyment of the dwellinghouse.

18. There is no evidence to suggest that the planning permissions for the granny annexe and the outbuilding were not implemented. Therefore, it is reasonable to assume that at some point the buildings were used for purposes incidental or ancillary to the main house. The notice identifies a change of use from these uses to self-contained residential units.

19. The Council has not sought to argue that the current use of the units is in breach of conditions attached to the planning permissions. Nor is the Council arguing that the appeal site has been subdivided to form one or two new planning units each accommodating a single dwelling. It follows that providing the units were still in use for purposes incidental or ancillary to the main house when the notice was served then there is no change of use and ground (c) would succeed.

20. In terms of the planning history the plans of the outbuilding which was the subject of the 2015 consent show sleeping accommodation, as well as a games room, shower, and storage. This amounts to a mixture of uses which are ancillary to and incidental to the residential use of the main house. The accommodation provided by the 2011 consent is wholly ancillary to the main house.

21. The differences between 'ancillary' and 'incidental' uses are not of particular relevance in this case, either way the use of the buildings as constructed was for purposes strongly associated with the use of the main house. There is nothing in the evidence to suggest that the occupiers of the units which are the subject of the notice do not have the same level of interdependence with the house as was intended in respect of the outbuilding and granny annexe. The functional relationship is particularly strong given that the occupants are part of a large extended family.

22. The Council refers to the introduction of kitchens into the units as being of particular relevance. However, case law[1] has established that there is no

[1] Uttlesford DC v SSE & White [1992] JPL 171

reason in law why self-contained accommodation, to enable an elderly relative to be independent of the family, should become a separate planning unit from the main dwelling. Although the occupiers of the units cannot be described as 'elderly', it is clear that they have a similar relationship with the occupiers of the main house in terms of the provision of mutual support.

23. There is no dispute between the parties that the two units are registered for Council Tax and this point has also been made by an interested party. The appellant has provided Council Tax notices for Unit 11a which show that a discount has been applied which is described as an 'Annexe Discount'. He says that this applies to both units and is in recognition of the way in which they are used. Although, the Council Tax records have not been submitted in respect of Unit 11b there is no evidence to show that the annexe discount has not been applied to that unit also.

24. The appellant says that he was contacted by the Council's Street Numbering team, and this resulted in the units being identified as 11a and 11b Burntwood Avenue. Given the evidence before me, I do not find the Council Tax records or the street numbering contradict the appellant's description of the way in which units 11a and 11b are used.

25. The Council refers to the planning history of the site and its view that the appellant's intention has been to convert the outbuildings into two self-contained residential units. However, the appeal must be considered against how the site was being used at the time the notice was served, which it appears is the same way that it is currently used, and not any future use to which it may be put.

26. The Council argues that the breach of planning control which it has identified is contrary to planning policies. However, the merits of the development and any compliance or otherwise with the Development Plan are not matters which are before me in respect of an appeal under ground (c).

27. Drawing all of these points together, notwithstanding the facilities provided and the degree of self-containment, which is afforded to the occupiers, the use of the units is for a primary residential use, the same residential use as the main house and the units are part and parcel of that use. On this basis a material change of use has not occurred.

28. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice, as corrected, will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

Sarah Dyer

Inspector