The Planning Inspectorate

Appeal Decision

Inquiry held on 18 January 2011
Site visit made on 18 January 2011

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 March 2011

Appeal Ref: APP/T5150/C/10/2131158
Land at no. 5 Highfield Avenue, Wembley HA9 8LE

- 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 David Charles against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0853.
- The notice was issued on 19 May 2010.
- The breach of planning control alleged in the notice is without planning permission the change of use of a rear extension of the premises to a self-contained flat.
- The requirements of the notice are to:
  1. Cease the use of the rear extension as a self-contained flat and remove the partition/door, which separates the extension from the original house, and all materials, and items associated with this use from the premises.
  2. Remove all kitchen equipment from the extension.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of decision: the appeal is dismissed and the enforcement notice upheld with a variation.

Application for costs

1. At the Inquiry an application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

The inquiry

2. Evidence at the inquiry was taken under oath or solemn affirmation.

3. Although the appeal was made solely on ground (d), it was apparent from arguments put forward at the inquiry that a case was also being made on ground (c) – that there had been no breach of planning control. I have therefore considered this part of the case first.

Background matters

4. The appeal property is a two-storey semi-detached house on the northern side of Highfield Avenue. There is a flat-roofed single storey extension at the back, which according to the appellant and his builder was built in 2005, with completion probably in the period from August to September. The drawings

submitted for Building Regulation purposes show a rear entrance lobby outside the existing French doors of the dining room, with an external door to the garden. This gives into a room with approximate internal dimensions of 3.4 metres by 4 metres, labelled as 'TV room'. A compact wc/shower cubicle is shown in the corner, with access from within the room.

5. I saw that the extension had been built approximately in accordance with the drawings. Differences include a changed access to the wc/shower, which is from the lobby rather than from the room, and kitchen fixtures not shown on the drawings - have been installed along the eastern wall. These include storage cupboards, a worktop, a one-and-a-half bowl sink, a hob and oven with an extract fan above, a microwave, and a clothes washing machine. As for furnishings, there was a double bed and a wardrobe in the room at the time of my visit, and a refrigerator standing in the lobby.

The appeal on ground (c)

The appeal on ground (d)

6. This ground is that it is too late to take enforcement action against the matters stated in the notice. That is, that on the balance of probabilities the alleged change of use took place at least 4 years before the enforcement notice was issued on 19 May 2010.

7. The Council do not dispute the dates given by the appellant for construction of the extension in 2005, and accept that the structure itself is now lawful as an extension to the house. However, the notice is concerned with the change of use of the extension from being an integral part of the house to use as a self-contained flat. The extension may well have been permitted development under the provisions of Schedule 2, Part 1, Class A of the GPDO[1], as the appellant believes. However, there is no allowance in the GPDO for the change of use alleged. This argument amounts to an appeal on ground (c) – that there has been no breach of planning control – but had one been made, it would have failed.

8. The appellant says that the extension was built for his wife's use, when health problems at around that time prevented her from climbing stairs. She had used the room for a period of about 3½ months from September 2006, when she left hospital after knee operations. After that the room was occupied by their daughter, until she moved to her own premises in 2008. The room was then not used effectively until the appellant let it on an assured shorthold tenancy in November 2009. That tenant has remained in occupation until the present day. Although he can use the access through the house, he has his own access to the room via the garage to the side of the house and into the rear access lobby.

9. It is argued that the extension has been in a continuous residential use since it was built. However, residential use is a relatively broad class, including residential institutions, and houses in multiple occupation as well as dwellinghouses. In this case the question is whether the rear extension came to be used as a separate dwellinghouse from the main house, and if so, when that occurred.

[1] The Town and Country Planning (General Permitted Development) Order 1995 as amended.

10. The pertinent definition of a Class C3 dwellinghouse in the Town and Country Planning (Use Classes) Order 1987 as amended is use of premises by single person or by people to be regarded as forming a single household. Furthermore, paragraph 2.81 of Annex 2 to Circular 10/97[2] advises that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate 'planning unit' from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act.

11. In this case the lobby, the wc/shower and the main room of the extension are separated from the main house by a lockable door, and are externally accessible without passing through the main house. The accommodation is clearly designed for residential purposes, and contains the normal facilities for cooking, eating and sleeping. In terms of its physical arrangement the extension can be regarded as a separate self-contained flat, but the question remains as to whether it was used as such.

12. It appears to me that Mrs Charles's occupation of the extension, when she was recuperating, was very much a part of the single household, and that the whole building was in use as a single dwellinghouse for that period. Similarly, when the Charles's daughter occupied it for approximately the next year-and-a-half, there is nothing to indicate that she was not a part of the household, and it is likely that the whole building remained as a single dwellinghouse for that period as well. After their daughter left I understand the extension was not effectively occupied for about a year. However, it was not used in any way by another household, and in my view it did not cease to be a part of the single dwellinghouse.

13. Although there was no evidence put forward on this, even if their daughter's occupation had in some way not been as part of the single household, the occupation by Mrs Charles already extended beyond the critical date of 20 May 2006 – four years before issue of the notice.

14. It appears to me that a critical change took place in November 2009, when the extension was let. The building as a whole was no longer occupied by people forming a single household. The main part was occupied by the appellant and his wife, and the extension was independently occupied by a tenant who was not in any way related to them. On the balance of probabilities I consider this created a new and separate dwellinghouse. Although services such as gas and electricity were not supplied separately, this does not significantly alter the fact that two households existed after November 2009.

15. It appears to me, as a matter of fact and degree, that the rear extension has been used as a self-contained flat since November 2009. Prior to that the use by the appellant's wife, and then by their daughter, must be regarded as part and parcel of the family use of the dwelling. The material change of use therefore took place in November 2009, a matter of 6 months before issue of

[2] Circular 10/97 - 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements'.

the enforcement notice. This is well within the time limit of 4 years, and the appeal on ground (d) must therefore fail.

Other matters

16. I concur with the Council that it is likely that the extension itself was substantially complete more than 4 years before issue of the notice, and is now a lawful structure. The partition and door that separate the main room of the extension from the original house are to my mind part and parcel of the extension, forming as they do the lobby that insulates the main room from the external elements. It is not a feature that is only necessary for use of the extension as a self-contained flat, but is just as reasonably necessary for its use as a part of the main house. The Council accept that this is the case, and I therefore intend to vary Step 1 of the notice by deletion of the requirement to remove the separating partition/door.

17. On the other hand, it appears to me that the kitchen equipment is necessary for use of the extension as a self-contained flat. Given the existence of the original kitchen in the main house, it is over and above what is necessary for use of the whole building as a dwellinghouse. I therefore consider that Step 2 of the notice should remain. Had an appeal been made on ground (f) – that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections – it would have succeeded in part and failed in part.

Conclusions

18. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed. I intend to uphold the notice with the variation noted above.

Formal decision

19. I direct that the enforcement notice be varied by:

    DELETION of the words *'the partition/door, which separates the extension from the original house, and'* from Step 1 in Schedule 4 to the notice.

    Subject to this variation I dismiss the appeal and uphold the enforcement notice.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Patrick Anderson BA MA	Planning Consultant Planning Aid for London.
He called:	
David Charles	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks	Chartered Town Planner Enforcement Services Ltd.
He called:	
Sarah Ashton BA MA	Planning Enforcement Officer The London Borough of Brent Council.

DOCUMENTS

1 Attendance list.
2 The Council's letter of notification of the appeal, dated 14 July 2010 with the circulation list.
3 Letter from the Royal National Orthopaedic Hospital, dated January 2008 put in by the appellant.
4 Summary of Mrs Charles's medical problems.
5 Tenancy agreement for the period 23 November 2009 to 22 May 2010
6 Extract from the Use Classes Order.
7 Letter from Paradigm Housing Group dated 12 August 2010.
8 Letter dated 19 August 2010, and leaflet from Sol Housing Support Solutions Ltd.

PLANS

A Plans submitted for Building Control purposes (2 no.).