
Appeal Decision

Inquiry held on 7 May 2014

Site visit made on 7 May 2014

by Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI

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

Decision date: 4 June 2014

Appeal Ref: APP/T5150/C/13/2203155
67 Church Lane, London, NW9 8ED

- 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 Martin Hetheron against an enforcement notice issued by the Council of the London Borough of Brent.
 - The Council's reference is E/13/0511.
 - The notice was issued on 28 June 2013.
 - The breach of planning control as alleged in the notice is the change or use of domestic outbuilding to a self-contained unit of residential accommodation.
 - The requirements of the notice are to:
STEP 1 Cease the use of the building as a self-contained unit of accommodation.
STEP 2 Remove all items and facilities associated with this use, including the kitchen, kitchen units, cooking facilities, bathroom and toilet.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 falls to be considered.
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Decision

1. I direct that the enforcement notice be corrected in Schedule 2 by the insertion of the words "Without planning permission" before the words "the change of use of domestic outbuilding to a self-contained unit of residential accommodation". Subject to this correction, I dismiss the appeal and uphold the enforcement notice. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. At the Inquiry an application for costs was made by the Council of the London Borough of Brent against Martin Hetheron. This application is the subject of a separate Decision.

The allegation

3. In my opinion the allegation as set out in Schedule 2 of the notice is defective in that it is incomplete because it omits the words "Without planning permission". However, as this is apparent from the stated reasons for issuing the notice, I do not consider the failure to describe the breach of planning

control clearly is fatal to the notice. The parties agreed at the Inquiry that I can exercise my power to correct the allegation without giving rise to an injustice.

Procedural matters

4. A Ms Gong originally produced a Proof of Evidence on behalf of the Council. However, she left the Council's employment shortly before the Inquiry. Mr Wicks on behalf of the Council adopted her Proof of Evidence.
5. The Appellant did not produce a Proof of Evidence.
6. All evidence was taken on oath.

Planning history

7. A Certificate of Lawfulness (LDC 1) for proposed development (Ref: 04/2294) was granted on 14 September 2004 for a proposed single-storey detached building in rear garden and was accompanied by plans under the reference: 040708/01. Those plans showed a single storey flat roofed building with a large opening fronting the lane to the rear of the property, but no windows. Those plans also indicated that the building was intended to be used as a garage. The LDC was granted on the basis that the proposal would be lawful in that it would comply with the requirements for permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended, and so planning permission was therefore not required.
8. The Appellant applied for a Certificate of Lawfulness for use of the outbuilding as a self-contained dwelling (LDC 2) (Ref. 13/0776) dated 26 March 2013 which was refused by the Council on 8 May 2013.

Reasons

Ground (d) – whether at the time the enforcement notice was issued, it was too late to take enforcement action.

9. Ground (d) is decided solely on the basis of the evidence submitted, as a matter of fact and degree, and on the balance of probability. The onus and the burden of proof are firmly on the Appellant to prove what he asserts. Planning policy and any other such consideration are not relevant.
10. It is unclear as to whether the outbuilding was ever constructed in accordance with the plans submitted with the LDC application. At the Inquiry, Mr Durham (acting on behalf of the Appellant) said that he understood that the outbuilding had been "converted" to a dwelling. He was unable to say whether the building had ever been used as a garage.
11. I saw on site that there is what appears to be an up and over door fronting the rear access lane, but there is no evidence of this internally. Instead there is a solid wall to the rear of the bedsit. The building now has 2 windows facing the rear elevation of No. 67 and an entrance door and glazed panel in the flank elevation facing the common boundary with No. 69. Internally it has a small bathroom and a well equipped, fitted kitchen which is open plan with the bedroom/living area (bedsit). The building is finished externally with pebble dash render, so it is hard to envisage how the 3 windows and an entrance door could have been inserted had the building been built in accordance with the plans if it had been originally finished in pebble dash render.

12. The application form for LDC 2 states that the appeal building had been occupied from January 2008 by a single tenant.
13. The Appellant's grounds of appeal assert that the appeal building was constructed in 2004/2005 and that from early 2006 it was occupied as a single person residence by a Miss Martha Carney. However, the Appellant has not retained copies of the Assured Shorthold Tenancy Agreements. Furthermore, the Appellant says that as Ms Carney left owing rent, he has no address by which he can contact her. I therefore have no evidence to support the assertion that the building was first residentially occupied in 2006.
14. The Appellant asserts that 'the studio' was occupied from Spring 2008 by a Mr Simon Reid, up until October/November 2013. Assured Shorthold Tenancy Agreements (STAs) in respect of Mr Reid's occupation were submitted with the application Ref: 13/0776 (the LDC 2 application). Copies of these were provided to me at the Inquiry but they commence in June 2008, not January 2008.
15. All of the submitted STAs are prepared on identical forms, the rear page of which shows that they were completed on forms which themselves are dated 2012. The forms also indicate that there were updates, amongst others, in 2008, 2009, 2010, 2011, 2012. The Council points to the fact that the standard forms for STAs are updated from time to time, and in particular that they were updated following a change in the law in 2010. The Council also furnished me with a copy of the relevant Statutory Instrument: SI 2010 No. 908 HOUSING ENGLAND The Assured Tenancies (amendment)(England) Order 2010.
16. Furthermore, the Council provided me with a copy of its correspondence with Lawpack Publishing Limited, who produce the standard forms. This confirms that Lawpack Publishing Limited does not hold old/out of date stock due to Law changes but it provided Mr Wicks with editorial copies of the forms for 2008, 2009, 2010 and 2011.
17. From the foregoing, there is significant doubt as to the authenticity of the copies of STAs from 2008 onwards. Furthermore, the signatories of those documents did not attend the Inquiry to be cross-examined about them. I therefore attach no weight to the STAs.
18. Somewhat confusingly, the Statutory declaration of Mr Hetherton (produced in support of his LDC 2 application to authorise the residential use of the outbuilding) states that the outbuilding "was originally a detached single floor garage and during 2004/5 it was demolished and rebuilt as a residential studio in accordance with a Certificate of Lawfulness made 14th September 2004". He goes on to say "It was my residence for a period between 2004 and 2007".
19. First, if the garage was demolished and rebuilt as a residential studio, I do not understand why it now has an up and over door facing the rear access track with a solid wall internally. Secondly, if it was rebuilt as a residential studio it would not have accorded with the 2004 LDC 1. Thirdly, if it was occupied by the Appellant between 2004 and 2007 this contradicts the Appellant's assertion that it was occupied by a Ms Carney from early 2006 until some point in time prior to Mr Reid's alleged occupation from 2008. Thus, the evidence in respect of what was constructed, and the commencement of its residential occupation is not sufficiently precise and unambiguous. I shall therefore disregard it.

20. The ASTs provided in support of Mr Reid's occupation state that from 19 June 2008 the rent of £520 per month is payable in advance on 19th of each month; from 18 June 2009 shall be £550 per month payable on 18 of the month; from 17 June 2011 shall be £580 per calendar month payable on the 1st of each month.
21. Five separate pages relating to various Bank Statements addressed to: Mr S Reid, The Studio, 67 Church Lane, The Hyde, London, NW9 8ED were submitted as part of the refused LDC 2 application. However, they are dated 25 January 2008, 5 March 2008, 9 April 2008, 25 April 2008, and 12 June 2009 all of which pre-date 19 June 2008, the date upon which the STAs commence (one of the dates cited for the commencement of Mr Reid's alleged residential occupation of the outbuilding). Various withdrawals have been ringed by someone for the following amounts: £170, £200, £300, £180, £300, £300, and £200. Yet, none of these withdrawals reflects the sort of rent shown on the ASTs. It is therefore unclear to me what these bank statements are intended to show, or indeed whether the name and address on them are genuine.
22. At the Inquiry, Mr Durham said that the Appellant also had 2 or 3 tenants living in the main house at No. 67 who shared a bathroom. He was not sure, therefore, what accommodation had been referred to as "The Studio". It might perhaps refer to accommodation in the main house. However, even if Mr Reid was living in the main house at the respective times of the bank statements, it does not assist with establishing the residential occupancy of the appeal building. Furthermore, the Statutory Declaration of Mr Hetherton refers to a photograph of the appeal building (Exhibit V) and confirms that it is the property known as The Studio.
23. Complaints were received from a neighbour in respect of the occupant of the outbuilding, but only from about 2 years prior to the issue of the Enforcement Notice. It is therefore unclear as to whether the outbuilding was in residential occupation before that time. At the Inquiry, Mr Durham explained on behalf of the Appellant, that Mr Reid, who had allegedly occupied the outbuilding from 2008, turned to drinking when his girlfriend went to China some 2 years ago. He also said that Mr Reid was unemployed at that time. Subsequently, Mr Reid got a job as a project manager and in October or November of 2013, his girl friend returned from China, and the couple went to live elsewhere.
24. The Appellant alleges that services to the outbuilding were used from the main house at No. 67, albeit the Appellant is a senior manager with a nationwide power organisation and so could have used his company to connect the studio as a separate dwelling. As a consequence, the Appellant has no separate utility bills for the appeal building.
25. Nevertheless, the Appellant could have provided utility bills for No. 67 before and after the alleged residential occupation of the outbuilding, which might have demonstrated an increased in usage of utility services (billed to No. 67) for the period in question. Consequently, I have no evidence in respect of utility services. Furthermore, the appeal building was not identified for Council Tax purposes for the period in question. The Council raised an outstanding debt going back to 2008 on the basis that the Appellant told the Council it had been occupied since 2008 when he made his application for LDC 2.
26. At the Inquiry Mr Durham said that the outbuilding is currently occupied by a different individual by the name of Benjamin Murphy who has suffered injury

from a road accident, who has had various operations as a consequence, and who has been living on benefits. No hard evidence was put in, in respect of Mr Murphy and he did not attend the Inquiry to be cross examined.

27. For the foregoing reasons, I conclude as a matter of fact and degree, and on the balance of probabilities that the continuous use of the appeal building as a self-contained unit of residential accommodation throughout the relevant period (i.e. 28 June 2009- 28 June 2013) has not been demonstrated. The Appellant has failed to discharge the burden of proof and the unit of residential accommodation that has been created is not immune from enforcement action by reason of the passage of time.

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

Ground (a)

29. The appeal building contains a shower and toilet, and an open plan kitchen and living/bed room such that a separate unit of accommodation has been created. By the Appellant's own admission it has been occupied independently. As a matter of fact and degree, a change of use has therefore taken place.

30. Under ground (a) there are 2 main issues:

- The effect of the change of use on the character and appearance of the area.
- The effect of the change of use on the living conditions of the occupants of the host dwelling and its neighbouring dwellings, and on the occupants of the appeal building having regard to access, privacy and outlook.

31. Whilst the majority of the neighbouring properties in this stretch of Church Lane have outbuildings at the bottom of their respective gardens, they are not in use as separate units of residential accommodation. As such, the unauthorised development is out of character with the host environment.

32. The subject change of use amounts to backland development which falls to be considered under Policy H15 of Brent Council's Unitary Development Plan (UDP). The appeal building has no independent access and no separate or independent amenity space. Instead access is provided via a pedestrian footpath to the north side of No. 67 alongside the common boundary with No. 69; and there is a relatively small, paved yard between the rear of No. 67 and the appeal building (approximately 5m in depth) which is in common use and equipped with a washing line. As such, it amounts to poor quality, substandard accommodation in breach of Policy H15.

33. In combination, these factors lead to a loss of privacy and outlook for the occupants of the host dwelling. In particular, it affects their use of their rear garden which is no longer a private space. Furthermore, the comings and goings associated with the unauthorised dwelling have the potential to disturb the occupants of the host dwelling, as well as causing them loss of privacy.

34. I am able to afford limited weight to the letter of objection received as the author wishes their personal details to be confidential. Nevertheless, if the occupant of the unauthorised accommodation has caused noise nuisance to a neighbour, it reinforces my concerns in respect of the occupants of the host property. The fact that the Appellant may live in the host property himself is

- irrelevant since planning permission runs with the land not the individual owner or occupier.
35. The Appellant considers that regardless of any contravention of the Brent Local Plan the use as described in the notice (i) adds a unit of habitable space in Brent in an otherwise 100% underused and wasted large area of backland; and (11) does not in any way harm the amenities of the locality because the building was already there.
36. At the Inquiry, Mr Durham made the point that the Appellant had provided accommodation to 2 different people who had been in financial difficulty (i.e. Mr Reid and Mr Murphy). In addition, the appeal building with its own bathroom and kitchen facilities provides better accommodation than the rented rooms in the main house at No. 67 which have to share facilities.
37. However, first, the comings and goings associated with the use of the appeal building as a garage would be entirely different from its use as an independent residential unit. As I have already concluded, the use as an independent dwelling has the potential to generate noise and disturbance to the occupiers of No. 67 and its neighbouring properties.
38. Whilst the external appearance of the building differs from the original garage/outbuilding only in respect of the 3 windows and the entrance door which have been inserted, the windows in the east elevation facing the rear of No. 67 have an adverse impact upon the occupants of No. 67 by virtue of loss of privacy.
39. I have considered all other matters raised in this appeal including the fact that the unauthorised change of use has resulted in an additional unit of residential accommodation in an area with a housing shortage. However, the proposal amounts to an unacceptable standard of back to back housing. I have therefore found nothing to outweigh the conflict with policy which I have identified.
40. The appeal on ground (a) must therefore fail.

Jane V Stiles

INSPECTOR

