The Planning Inspectorate

Appeal Decisions

Site visit made on 15 April 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2024

Appeal A Ref: APP/R5510/C/22/3309932
48 Goulds Green, Uxbridge UB8 3DG

- 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 James Khalid against an enforcement notice issued by the Council of the London Borough of Hillingdon ('the Notice').
- The enforcement notice, numbered HS/ENF/020890, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of an outbuilding to a separate self-contained residential unit (shown hatched in blue on the attached plan).
- The requirements of the notice are (i) Cease the unauthorised use of the outbuilding as a separate self-contained residential unit; (ii) Dismantle and remove from the outbuilding the ''fitted kitchen'' comprising the sink, washing machine, fridge, oven, work surface(s) and wall/floor cupboard units; (iii) Dismantle and remove from the outbuilding the ''shower room'' comprising the shower, shower cubicle, shower tray and associated plumbing; the sink unit and associated plumbing, and the toilet pan and toilet cistern; (iv) Dismantle and remove from the outbuilding the internal studwork wall delineating the shower room from the kitchen/lounge/bedroom; (v) Dismantle and remove the closeboard fencing separating the rear garden from the outbuilding to the dwellinghouse; and (vi) Remove from the land all the debris, items, fixtures and fittings, building materials, plant and machinery resulting from the works listed in (ii), (iii), (iv) and (v) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').

Appeal B Ref: APP/R5510/X/23/3334730
48 Goulds Green, Uxbridge UB8 3DG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr James Khalid against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 70466/APP/2022/3247, dated 19 October 2022, was refused by notice dated 14 September 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is The outbuilding known as the Annexe at the rear of 48 Goulds Green, Uxbridge UB8 3DG has been used as sleeping accommodation as a self-contained flat since 27 April 2016 where it was then used as rented flat accommodation from 10 October 2018 until present.

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:
the deletion of requirement (iii) and (iv) in section 5 of the Notice, 'What you are required to do', and re-number requirements (v) and (vi) of this section as requirements (iii) and (iv), respectively.

   Subject to the variations, the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. The two appeals relate to the use of the same outbuilding for residential purposes. They raise similar issues and, as such, can be assessed in a single decision. However, each decision is made independently with separate reasoning for each, where required.

4. The appeal form and the statement of case for Appeal B refer to the Appellant as Mr J Gould. It was confirmed by email that this was an error and the Appellant for both appeals is Mr James Khalid.

5. Where I refer to evidence given by third parties, I have used their initials for the sake of their privacy.

Reasons

Site Description

6. 48 Goulds Green ('No 48') is a semi-detached dwellinghouse with gardens to its front and rear. The single-storey outbuilding that is the subject of the appeals lies to the rear of the property. At the time of my visit, it and a small area of garden had been separated off from the rear garden area serving No 48 by way of a timber fence. A gate in the fence provided access between the outbuilding and No 48. This gate did not have a lock on it, but opened towards the outbuilding so that its occupants could easily control its use by placing objects to stop it being opened, as was the case when I visited.

7. A partially glazed pedestrian door gave access to the outbuilding from the shared lane to the rear of No 48. Internal sub-division had allowed for the creation of a toilet-bathroom and a small room without a window that was in use for storage when I visited. The greater part of the internal floorspace of the outbuilding was given over to an open plan living-bedroom-kitchen area. As it provided the facilities required for day-to-day private domestic existence, it would qualify as a dwellinghouse[1]. A partially glazed door gave access to the garden area on its side of the fence.

S174 Ground (d) and s195 Appeal

8. A Ground (d) appeal is made on the basis that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control it alleges.

[1] As defined in *Gravesham BC v SSE & O'Brien* [1983] JPL 306

9. The appeal made under s195 followed the refusal of an application for a certificate of lawful existing use, made under s191 of the Act. In that application, the Appellant claimed that he had used the outbuilding as a residential unit separate from No 48 for sufficient time for the use to become immune from enforcement action.

10. The time limits within which enforcement action can be taken against breaches of planning control are set out in s171 of the Act. In respect of the change of use of a building to a single dwellinghouse, this is 4 years (the 'relevant period').

11. In the Ground (d) appeal, the Appellant has to demonstrate that the use was carried out continuously for 4 years prior to the issuing of the enforcement notice on 26 September 2022. In the s195 appeal, he must demonstrate that this was the case prior to the date of the s191 application, 19 October 2022. In both appeals, the onus lies with the Appellant to make his case on the balance of probability and that the use was undertaken continuously for the relevant 4-year periods, and not lost thereafter.

12. Where a local planning authority has no evidence of its own to contradict the Appellant's version of events, or make it less than probable, the Appellant's evidence must be precise and unambiguous.

13. The Appellant made two statutory declarations ('SD'), dated 20 May 2022 ('SD1') and 29 September 2022 ('SD2'). Although there were some differences, overall, they were broadly similar. These carry significant weight in my deliberations.

14. He says that work on the outbuilding was commenced around April 2015. A large number of receipts were submitted for building materials purchased from builders' merchants, both in the local area and further afield. However, many of these do not have any addressee or delivery details and so I cannot be sure that they were used on this building. Notwithstanding this, I take the information given to be correct.

15. He says that he moved into the outbuilding on 27 April 2016. This was as a result of personal circumstances, and his then partner and his children stayed in the main house. From that date, he says he used the outbuilding as "my sleeping accommodation and as a self-contained flat". He says that his use of the outbuilding continued until 10 October 2018.

16. The phrase "my sleeping accommodation and as a self-contained flat", which is used in both SDs and in his appeal statement for the s195 appeal, is vague. There might be a material difference between the use of the outbuilding as sleeping accommodation and its use as a self-contained dwelling. Furthermore, the outbuilding might have been fitted out at the time to make it a self-contained dwelling, but this does not automatically equate to its use as a dwelling separate to No 48. In this context, it is necessary for the Appellant to demonstrate that the residential use was not incidental to the use of the No 48. Its incidental use would mean that the outbuilding's use would have some functional relationship with No 48. If it was used in this way, there would be no change of use to a separate, self-contained dwelling, and a new planning unit would not have been formed.

17. The Council served a Planning Contravention Notice ('PCN') on the Appellant, on 29 September 2020. This was returned, completed, on 20 October 2020. Given the penalties for making false or misleading statements, set out in s171D(5) of the Act, I must also give significant weight to the PCN.

18. In his responses to question 6(c) of the PCN, which related to the use of the outbuilding, the Appellant stated that "from April 2016 when my family relationship broke down…we shared the kitchen in the main house". This demonstrates a functional relationship between the outbuilding and No 48. No evidence is provided showing when, or if, the functional relationship ended during the Appellant's use of the outbuilding.

19. I am also aware of the comment made by JK in their SD, that, when giving the Appellant's children tuition, from April 2016, this occurred in the outbuilding. Although not determinative of an incidental use, to my mind this reinforces my finding that there was a functional link with No 48. Furthermore, I have no evidence to show that the fence that subdivides the rear garden at No 48 was erected at this time. This structure would have been fundamental to creating a separate planning unit.

20. Therefore, on the basis of the information that he has given for the period that he occupied the outbuilding, that is to say to 10 October 2018, I cannot find that the Appellant used it as an independent dwelling that created a new planning unit. As I say, the outbuilding might have had the facilities to be used in this manner, but that use has not been demonstrated.

21. Given this, I have to determine whether four years' use is proven subsequent to 10 October 2018. The Council issued the Notice on 26 September 2022. Therefore, he could not achieve immunity from its terms, as there was less than 4 years between the two dates.

22. In the s195 appeal, therefore, he must demonstrate that there had been a continuous 4-year use prior to the date of the s191 application, 19 October 2022.

23. There is evidence, in the form of: SDs; Assured Shorthold Tenancy Agreements; banking transactions; an agreement with a property management firm; and correspondence to and from the Council's Council Tax department and the Valuation Office that would point towards the outbuilding being put to a continuous independent use.

24. However, answers in the PCN run counter to this, and cast further considerable doubt on the claimed use. Questions 5(b)-(f) relate to the outbuilding's internal layout and facilities within it. In response the Appellant variously answered that: the outbuilding was not divided into rooms; that no kitchen was installed in it; no bedroom had been installed in it. Additionally, in answer to question 6(b), he said that the outbuilding was in use as a "gym/storage/home office" and that, in answer to question 6(c), "the outbuilding is not in residential use currently".

25. Thus, taken at face value, the use of the outbuilding was, on 20 October 2020, a gym/storage/home office, albeit that the Appellant had previously used it as "sleeping accommodation" and "living accommodation". Given this, as the date for the certificate application was 19 October 2022, 4 years' continuous use

could not have accrued between the cessation of the Appellant's use of the outbuilding and the submission of the completed PCN.

26. The gym/storage/home office use is not mentioned elsewhere in the Appellant's submissions, nor is the PCN.

27. In respect of a s191/195 submission, it is an offence to knowingly or recklessly make misleading statements or showing intent to deceive through withholding material information. It is a similar situation in respect of completing and submitting a PCN. Where they contradict one another, I cannot say whether the evidence in the appeal submissions or that in the PCN is correct. What I am able to say, though, is that the contradictions make the Appellant's evidence imprecise and ambiguous.

28. Therefore, as a matter of fact and degree, the Appellant has failed to make the case on the balance of probability that the outbuilding has been used as a separate dwellinghouse. Thus, both the s174 Ground (d) and s195 appeals fail.

S174 - Ground (f)

29. An appeal under Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the Notice seeks to remedy the breach of planning control.

30. The Appellant's case is set out in his appeal form. It is that the Notice "should not include removal of the wash and bathing facilities only kitchen". No reasoning for this is given.

31. The Appellant stated in his SD that a shower room and toilet were installed in association with the use of the outbuilding as a gym. I give this claim significant weight, and I note that it is not countered by the Council. As such, it has been demonstrated on the balance of probability that the shower and toilet served the lawful use of the outbuilding. I find this to be an obvious alternative that does not undermine the purpose of the Notice to cease the breach of planning control.

32. I will, therefore, vary the Notice by removing requirement (iii), as well as (iv) because removing the wall to the shower room to leave it open to the outbuilding would be unreasonable. To this extent, the Ground (f) succeeds.

S 174 - Ground (g)

33. An appeal made under Ground (g) is that the time given for compliance with the requirements of the Notice falls short of what is reasonable.

34. The Appellant seeks an extension of the compliance period to 12 months. He says that this has to allow for the tenant to vacate after serving notice on them and then to carry out the remedial works. He has not provided evidence of a tenant in the building at the time that he made his appeal, nor, if there was a tenant, evidence of a tenancy agreement that would show that more than 3 months would be required to allow that tenant to vacate. Similarly, no evidence has been given to show why the physical works required by the Notice, as

varied, could not be undertaken in 3 months. From this and my visit to the site, I cannot see any grounds to extend the period for compliance for this reason.

For the reasons given above, the Ground (g) fails.

Conclusions

Appeal A

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation.

Appeal B

36. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of as sleeping accommodation as a self-contained flat was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

Inspector