The Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2020

Appeal Ref: APP/T5720/C/19/3237112
Land at 76 Shaldon Drive, Morden SM4 4BH

- 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 Reza Saberi against an enforcement notice issued by the Council of the London Borough of Merton.
- The enforcement notice, numbered CS/LEG/RO/511/996, was issued on 14 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the outbuilding on the land to a self-contained residential unit.
- The requirements of the notice are: (a) Cease the use of the outbuilding on the land as a self-contained residential unit; (b) Remove all those fixtures and fittings that facilitate the unauthorised use of the outbuilding including the permanent removal of the facilities in use for cooking facilities, kitchen units, sinks, worktops, appliances, and food preparation areas; and (c) Remove from the land all materials, machinery, apparatus and installations used in connection with or resulting from compliance with steps (a) and (b) above.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) (c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. A number of the points raised in the appellant's appeal on ground (b) fall to be considered within the remit of an appeal under ground (c). I have, therefore, treated these as being made under a 'hidden' ground (c) appeal using the powers of correction accorded to me under section 176(1)(a) of the Act. As the appellant has made these points and the Council has had the opportunity to address them, neither party would be prejudiced by my actions in this regard.

Reasons

Ground (b)

3. The site consists of part of a single storey building at the rear of 76 Shaldon Drive. This building can be accessed from the rear garden of No 76 or via a short rear access lane that serves a number of properties in this road.

4. The case to be made under this ground is that those matters, (i.e. the matters stated in the notice which may give rise to the breach of planning control), have not occurred. The allegation in the notice is that the outbuilding at 76

Shaldon Drive has been converted to a self-contained residential unit. Therefore, under this ground, the onus lies with the appellant to demonstrate that this had not occurred when the notice was issued.

5. It is clear from the evidence before me, from both the appellant and the Council, that the outbuilding had been converted to form a self-contained residential unit prior to the issuing of the notice. This is acknowledged in the appellant's submissions and is evidenced in the Council's statement and its accompanying photographs.

6. For this reason, the ground (b) fails.

'Hidden' Ground (c)

7. The appellant's ground (b) case brings forward arguments that fall to be made under ground (c) - that those matters, (i.e. the matters stated in the notice which give rise to the alleged breach of planning control), if they occurred, did not constitute a breach of planning control. Again, the onus lies with the appellant to prove his case.

8. The appellant states that the outbuilding is used as an annexe on a monthly basis by his mother and on occasions by his daughter. As a result, it is used for purposes ancillary to the use of the main dwelling and no independent planning unit has been created. The cases of *Uttlesford DC v SSE & White* [1992] JPL 171 and *Whitehead v SoS for the Environment & Another* [1992] JPL 561 are cited in support.

9. On this point, established case law is clear, the use of an outbuilding in the curtilage of a dwellinghouse for purposes ancillary to the use of that dwellinghouse does not represent a change of use. Therefore, planning permission would not be required in those circumstances.

10. However, the appellant's case is scant on this point. He fails to provide a body of evidence that demonstrates that the building has been used for, as he puts it in his statement, a purpose integral to the enjoyment of the main house.

11. The Council challenges his position by stating that *"the outbuilding was being lived in at the time of the visit"* [11 June 2019] *"and was functioning as a separate self-contained residential unit"*.

12. I saw at my site visit that the manner in which the building has been converted, and I have not been informed that this has been any different in the past. It does not lend itself to a use "integral" to No 76. It and its neighbouring properties are served by a short rear access lane. Approaching the building from the lane, the outbuilding has two doors. Looking from the lane, that on the right runs through a covered walkway, which serves as a utility area for No 76, and thence to the rear garden of the house.

13. The door on the left gives access from the lane to the residential unit that is the subject of this appeal. There is a doorbell here that serves the unit alone. There is no direct access from the building to the main house, nor to its rear garden. Its front door is the only access to and from the unit. To access the main house from it, one would have to go out through its front door and then use the other door through the utility area and rear garden.

14. This does not equate with a use that is neither integral nor ancillary to that of the main house. There is a degree of separateness that demonstrates that this is an independent self-contained residential unit.

15. Whilst not being definitive in itself, the Council Tax registration of the unit as a separate dwelling provides further evidence to support my finding.

16. For these reasons, the appeal on ground (c) fails.

Ground (d)

17. This ground of appeal reads "that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters". Again, the burden lies with the appellant to prove his case on the balance of probabilities.

18. The appellant is correct when he says that the word "constant", used in an email from the Council to him regarding the use of the outbuilding, is not contained within section 171B(2) of the 1990 Act. In the light of established case law[1], what the appellant is required to show is the continuous residential use of the outbuilding for a four-year period. *De minimis* breaks are allowed in the four year period. However, substantial breaks would be likely to preclude the Council from taking enforcement action against the breach and, in these circumstances, the continuous nature of the breach would be broken.

19. Submissions from both parties refer to whether the outbuilding had the required "three facilities", which they define as shower, kitchen and bed, throughout the four years. I have taken this to mean the facilities required for day-to-day private domestic existence, set out in *Gravesham BC v SSE and O'Brien* [1983] JPL 306, which provided a definition for a dwellinghouse.

20. The appellant contends that it was too late for the Council to take enforcement action as it admits the first complaint was received on the 9 February 2011, that is to say more than 8 years before the notice was served.

21. The enforcement history set out in the Council's statement states that the *"use stopped as fitting were"* [sic] *"removed and it returned to use incidental to the main dwellinghouse"*. I have not been told what fittings were removed. The appellant states that it referred to the removal of a bed. Importantly, however, the appellant does not counter that, following the complaint, the outbuilding was used for incidental purposes.

22. This enforcement history refers to further complaints that the outbuilding was being used as a dwelling. These are dated February 2013, March 2018 and October 2018. On the first of these, it is stated that the bed and kitchen were removed and the building was returned to a use incidental to No 76. On the second, the kitchen was removed and the case was closed. On the last, it was again reported that a kitchen was again removed, and the outbuilding returned to a use incidental to No 76.

23. The appellant does not counter these matters. It is for him to prove that the use was continuous, and the evidence before me does not point in that direction. His reference to abandonment in *SSCLG & Beesley v Welwyn Hatfield BC* [2011] UKSC 15 JPL 1801 is different to the situation before me. It relates

[1] *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886

to the loss of a use that has become lawful, whereas in this ground (d) appeal the appellant seeks to show that use of the outbuilding as a self-contained residential unit has become lawful.

24. Here, the appellant does not supply substantive evidence to show, on the balance of probabilities, that the use of the outbuilding as a self-contained residential unit occurred continuously for a period of four years prior to the date of the notice.

25. Therefore, for the reasons given above, the appeal under ground (d) fails.

Conclusion

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

Roy Curnow

INSPECTOR