The Planning Inspectorate

Appeal Decision

Site visit made on 4 June 2013

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

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

Decision date: 10 June 2013

Appeal Ref: APP/T5150/C/12/2182166
47 Twybridge Way, London, NW10 0SU

- 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 Agilan Arasakone against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/12/0396.
- The notice was issued on 7 August 2012.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey detached building in the rear garden of the premises.
- The requirements of the notice are to demolish the single storey detached building in the rear garden, and remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 1 month after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) 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 is upheld with a correction.

Application for costs

1. An application for costs was made by Mr Agilan Arasakone against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary matter

2. The Council explains that, where the reasons for issuing the notice refer to the installation of an oven, this is an error. It invites me to correct the notice by deleting that reference. The appellant has raised no objection and I am satisfied that this correction can be made without causing any injustice.

Ground (b)

3. To succeed on this ground, the appellant must prove, on the balance of probability, that the matters alleged in the notice have not occurred.

4. Although the reasons for issuing the notice refer to matters of detail, including the width of the building and the provision of facilities, the allegation is simply that a single storey detached building has been erected. The appellant contends that a building has not been erected, because it was in the course of

construction when the notice was served and thereafter, work stopped. However, section 336(1) of the Town and Country Planning Act 1990 defines a "building" as including "...any structure or erection, and any part of a building, as so defined…" Together, the foundations, external and internal walls constructed so far clearly fall within this broad definition. Though incomplete, the structure on site is a building. Furthermore, it is single storey and detached. Ground (b) must therefore fail.

Ground (c)

5. To succeed on this ground, the onus is on the appellant to prove, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

6. The basis of the appellant's case is that the building amounts to permitted development (PD). Article 3 and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended, (the GPDO) state that "the provision within the curtilage of a dwellinghouse of (a) any building…required for a purpose incidental to the enjoyment of the dwellinghouse as such…" will constitute PD.

7. As indicated in a previous appeal decision Ref APP/T5150/C/10/2130410, 2130411, 2031412 & 2031413, to which the Council refers, the words "required for a purpose" in Class E limit such development to that which has been designed and built with a purpose in mind. Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the dwellinghouse as such include "the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse." The Government has published guidance in 'Permitted development for householders – Technical guidance' (TG) and this is a material consideration in this appeal. Among other things, the TG indicates that purposes incidental to a dwellinghouse would not cover "normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen."

8. The Council states that, during a site visit on 30 July 2012, the appellant's wife confirmed that the building was to be used for residential accommodation. However, the appellant advises that his wife does not speak English. On the basis of the written representations received, I cannot be confident of what was said to or by the appellant's wife or what she understood. I therefore attach little weight to that evidence.

9. Nevertheless, the onus remains on the appellant to satisfy me that the development constitutes PD and therefore that the building is being provided for an incidental purpose. It is not enough for the appellant simply to say, as he does, that "its intended use is incidental to the residential use of the house." He adds, somewhat obliquely, that the guidance on the interpretation of "purpose incidental to the enjoyment of the dwellinghouse", included in paragraph E.4 of Class E and set out above, would allow for the subdivision of the outbuilding and that this term would include "a place for personal religious contemplation." That may be the case, but the appellant does not actually say that the building is to be used for any of the purposes referred to in paragraph E.4, or indeed as a place for personal religious contemplation, or for any specific purpose. In any event, I would need a further explanation as to why

personal religious contemplation would genuinely and reasonably require a building measuring 7.18m wide by 5.86m deep[1] and subdivided into 4 rooms and including waste water facilities. Without further explanation, I am not persuaded that the building has been provided for personal religious contemplation or any other purpose incidental to the enjoyment of the dwellinghouse as such, especially since its layout and design appear more suited to use as primary living accommodation.

10. Aside from the question of purpose, the GPDO limits the size of building that can be constructed as PD. In particular, paragraph E.1(d)(ii) of Class E states that any building constructed within 2m of the boundary of the curtilage of the dwellinghouse will not be PD if its height exceeds 2.5m. The building is clearly within 2m of the curtilage boundary and the Council indicates that, when an enforcement officer visited the site on 30 July 2012, 8 days before the notice was issued, its total height was 3.88m. This is not disputed and indeed in an e-mail to the Council dated 31 July 2012, the appellant's agent indicated that the building would be "reduced in height to conform with PD tolerances." At the time of my visit, the maximum height was measured and agreed at 2.54m. It is clear from photographs that the height of the north end wall has been reduced. The current height is only marginally in excess of the PD limit but, the building does not yet have a roof. The appellant has submitted a drawing No GTD009c - 03b, dated 13 August 2012, which he says shows the building "now being completed". The dimensions of the building indicated on that plan do not match what has been constructed so far but, in any event, the plan shows a shallow pitched roof. Once completed, it seems clear that the height of the building would exceed the PD limit, even if only by a modest amount.

11. It therefore appears that the height limit in the GPDO would be breached but, regardless of that point, I am not satisfied on the balance of probability that the provision of the building is required for a purpose incidental to the enjoyment of the dwellinghouse as such. I am not persuaded that the building constitutes PD and accordingly I conclude that the appellant has not proved, on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. The appeal must also fail on ground (c).

Decision

12. The enforcement notice is corrected in Schedule 3 by deleting the words: "the floor area of the building and the installation of the oven in it means" and substituting the words: "and the floor area of the building mean". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

J A Murray

INSPECTOR

[1] Measurements taken and agreed on site.