Grounds of Appeal against Enforcement ref. EN24/0418

August 2024

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WEA Planning Ref: 2024_16

1. Introduction

1.1. WEA Planning have been instructed by Mr Geoff Sewell ('the appellant') to pursue an appeal against an enforcement notice (reference EN24/0418) issued by the London Borough of Camden Council ('LBC' or 'the council') on 4th July 2024, under the Town and Country Planning Act 1990 (as amended). The enforcement notice relates to the Ground Floor Flat at number 255 Goldhurst Terrace, London, NW6 3EP ('the property') and alleges the change of use of an ancillary outbuilding to temporary sleeping accommodation. The enforcement appeal is submitted on three grounds - that the alleged breach has not occurred [ground (b)]; if it is deemed that the breach has occurred, then it does not constitute a breach of planning control [ground (c)]; and that the period specified in the notice for compliance falls short of what should reasonably be allowed [Ground (g)]. This statement addresses the key issues and explains the appellant's basis for this appeal.

1.2. The alleged breach as specified on the enforcement notice is as follows:

Without planning permission: the change of use of an ancillary outbuilding to temporary sleeping accommodation.

1.3. This statement supports the appeal against the enforcement notice on Grounds (b), (c) and (g) under section 174(2) of the Town and Country Planning Act 1990.

1.4. Based on the consideration of the facts and with the supporting details set out within this statement, we urge the Inspector to allow this appeal for the reasons set out in the "Grounds of the Appeal" chapter.

2. Site Surroundings, Character and Appearance

2.1. The property is situated within the London Borough of Camden on the southern side of Goldhurst Terrace. The building is semi-detached and has been converted into separate flats. Goldhurst Terrace is a predominantly residential street characterised mainly by terraced houses, as well as some detached and semi-detached housing. There are also several blocks of flats nearby, for example at St Mary's Mews. The building has three-storeys and is likely to be of the Edwardian period.

3. Site History

3.1. There have been various planning applications for the building, as listed below:

3.2. **2011/5554/P**

Excavation of basement and rear lightwell with balcony over at rear ground floor level and steps to garden, erection of extension at rear ground floor following removal of conservatory including raising of boundary wall and alterations to doors/windows at rear ground level all in connection with existing flat (Class C3).

Approved

3.3. **2011/3071/P**

Erection of single-storey timber outbuilding in rear garden ancillary to ground floor flat (Class C3) (Retrospective).

Approved

3.4. **2004/2140/P**

The conversion of a 2nd floor front window to french doors with guard rail.

Refused

3.5. **PWX0302287**

The conversion of a 2nd floor front window to french doors and the installation of a balustrade on the front bay roof, in association with the use of the bay roof as a terrace.

Refused

3.6. **TCX0206021**

REAR GARDEN 1 x bay - fell to ground level

3.7. **PWX0103981**

The erection of a rear single storey extension together with a replacement conservatory extension at ground floor level, as shown by 2 x unnumbered A3 drawings as revised by letter dated 15th January 2002.

Refused

3.8. **PWX0103262**

Certificate of Lawfulness for existing use as 3 self- contained flats. As shown on lease plan, signed affidavit, copies of 1979, 1980, 1982, 1992 and 1995 leases; Approved

3.9. **9501386**

Installation of new window, and alterations to existing balcony doors in rear elevation of the existing flat at first floor level

Approved

3.10. **9301229**

Erection of a single storey glazed conservatory at rear of existing ground floor flat.

Approved

4. Grounds of Appeal

4.1. This appeal is made on the basis on Grounds (b), (c) and (g) under Section 174(2) of the Town and Country Planning Act 1990.

4.2. It is worth noting the permission for the outbuilding which was granted in September 2011 (ref. 2011/3071/P). This gave consent for the erection of the outbuilding for use ancillary to that of the ground floor flat. Condition 1 makes clear that the use of the outbuilding must only be for purposes incidental to residential use of the flat.

4.3. The outbuilding is mostly unoccupied and used for storage and as a summerhouse for the enjoyment of the owner and his family. When it is used as sleeping accommodation, this is predominantly on a non-paying basis by visiting family members and various visiting artists who come to stay with the owner. Such guests of course have access to the main house and have meals with the family, much in the character of a single household.

4.4. Beyond non-paying guest use, the space is also occasionally let out on a paid basis, but not to any degree which would represent a material change of use, as explained in the grounds of appeal below.

Ground (b):

"that those matters have not occurred".

4.5. The Enforcement Notice alleges that the ancillary outbuilding has undergone a change of use to temporary sleeping accommodation.

4.6. Therefore, the first question is what constitutes temporary sleeping accommodation. The Greater London Council (General Powers) Act 1973 ('GLCA 1973') sets out the relevant definitions and restrictions on short-term lets in London. Under Section 25(2)(a) of the above act, a definition of 'temporary sleeping accommodation' is provided:

use as sleeping accommodation which is occupied by the same person for less than twenty-two consecutive nights and which is provided (with or without other services) for a consideration arising either-

(i) by way of trade for money or money's worth; or
(ii) by reason of the employment of the occupant;
whether or not the relationship of landlord and tenant is thereby created;

4.7. When the outbuilding is occupied, this is primarily on a non-paying basis, and therefore the definition as 'temporary sleeping accommodation' would not apply as there has been no consideration by way of exchange of money or employment.

4.8. The appellant acknowledges that on occasions the outbuilding has been occupied as sleeping accommodation for periods of less than 22 nights on a paid basis and would therefore be classed as temporary sleeping accommodation in line with the definition in the GLCA. However, the breach alleged in the Enforcement Notice is that a change of use has occurred.

4.9. The Deregulation Act 2015 ('DA 2015') amended the GLCA 1973 to include exceptions to Section 25, as follows:

25A Exception to section 25
(1)Despite section 25(1), the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if two conditions are met.
(2)The first is that the sum of—
(a)the number of nights of use as temporary sleeping accommodation, and
(b)the number of nights (if any) of each previous use of the premises as temporary sleeping accommodation in the same calendar year,does not exceed ninety.
(3)The second is that, in respect of each night which falls to be counted under subsection (2)(a)—
(a)the person who provided the sleeping accommodation for the night was liable to pay council tax […]

4.10. The appellant has not let the outbuilding as temporary accommodation for a period of exceeding 90 nights in this calendar year. The appellant is liable for council tax at the property. Therefore, the conditions of the above exception are met, and therefore a change of use as alleged by the Council has not occurred.

4.11. It is also relevant to consider the accepted interpretation of the '90-night rule' is that it applies only to letting of an entire home. Letting of a room within a home would not be subject to this rule. In such cases, the occupier would effectively be a lodger, regardless of whether facilities such as a kitchen or bathroom were shared or private. It is clear that Class C3 is wide enough to include a situation where a homeowner is living with one or more lodgers. If a room situated within the primary building of a dwellinghouse were let temporarily to a lodger, then no change of use would have occurred.

4.12. The same is true at the appeal property, albeit that the room is situated within an outbuilding which is incidental to the main dwellinghouse. In relation to the question of whether a purpose is incidental to the use of a dwellinghouse, there are various case law and appeal decisions which provide direction.

4.13. Case law arising from the judgment in Emin v SSE & Mid Sussex DC [1989] JPL 909 sets out the test to be applied in this regard as *"...whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house*". In applying that test regard should be had to *"…the use to which it is proposed to put a building and to considering the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse*".

4.14. It is not uncommon for outbuildings to be used as additional sleeping accommodation as part of a single dwellinghouse, often to house a member of the family (a 'granny annex'). Such situations would not be considered to represent the creation of a new separate dwelling but are instead accepted as a use which is ancillary to the use of the residential dwellinghouse as a whole. Whilst provision of a bed-and-breakfast within a dwellinghouse or an associated outbuilding may in most cases be considered to fall under Use Class C1, it could also be considered to fall under Use Class C3 if it were a minor part of the overall use of the property as a dwellinghouse. This is the case at the appeal site. The provision of guest accommodation at the appeal site is functionally dependant on the primary use of the dwellinghouse. The letting of the outbuilding as sleeping accommodation would not occur without the existence of the dwellinghouse. The fundamental functional relationship between the main house and the outbuilding means that its use for sleeping accommodation can only be an incidental or ancillary to the main dwelling.

4.15. In the case of Whitehead v. SSE and Mole Valley DC [1992], a housekeeper's self-contained accommodation in an outbuilding was held to be incidental to the main dwellinghouse rather than a separate unit of accommodation.

4.16. Similarly, the case of Uttlesford District Council v Secretary of State for the Environment and White [1992] considered self-contained sleeping accommodation created within what was previously a garage at the end of the garden. It was considered by the High Court to be incidental to the enjoyment of the dwellinghouse as such and that there had not been a creation of a separate planning unit. The fact that there was a bathroom and small kitchen within this outbuilding did not, in law, create a separate planning unit simply because these facilities afforded a degree of independence.

4.17. Appeal decisions have also supported this approach. For example, in appeal ref. APP/D3315/A/10/2123391, the inspector recognises that "*accommodation comprising a living area, bedroom, bathroom and kitchen area, could provide facilities for a measure if independent living. It does not automatically follow however that such a facility is tantamount to a separate dwelling*".

4.18. At the appeal site, given the occupation by paying guests has not been continuous, the amount, frequency and level of use is not significant. The '90-night rule' has not been exceeded, and the use of the outbuilding remains incidental to the main dwellinghouse. The alleged change of use has therefore not occurred, and this appeal should be allowed on that basis.

Ground (c):

"that those matters (if they occurred) do not constitute a breach of planning control".

4.19. Should the inspector consider that a change of use has occurred, we consider that this would not constitute a *material* change of use and therefore would not constitute a breach of planning control.

4.20. The exceptions introduced by the Deregulation Act 2015 make clear that use as temporary sleeping accommodation for less than 90 nights a year does not constitute a material change of use.

4.21. The extant planning permission allows for the outbuilding to be used in a manner incidental to that of the main dwellinghouse, and this continues to be the nature of the use of the outbuilding as discussed in relation to Ground (b) above.

4.22. In the case of Moore v. SSCLG [2012] EWCA Civ 1202 the court's finding was that '*It was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather in each case, it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation*'.

4.23. Various appeal decisions have demonstrated similar circumstances to the appeal site where lettings use of a property or an outbuilding was not deemed to constitute a material change of use, including appeals ref. APP/Q0505/C/20/3257639 and 3257640. In these appeals, the inspector outlined that the main issues were whether, as a matter of fact and degree, the use of the outbuildings as short-term visitor accommodation for paying guests became a primary use resulting in a change to a mixed use of the land and, if so, whether there was a change in the character of the use such that a material change of use occurred.

4.24. The inspector made the following consideration:

"There is nothing to indicate paying guests used any facilities in the main dwelling or that there was a material functional link with the use of the main dwelling as a family home. Whilst occupation by paying guests was not continuous, the amount, frequency and level of use was very significant. In my view the use of the two outbuildings by paying guests was a separate use in its own right and not either integral to or incidental to the primary use as a dwellinghouse."

4.25. Despite recognising that the use of the outbuildings for paying guests had resulted in a change of use, the inspector considered that this was not material:

"there was not a sufficiently significant change in character to have resulted in a material change in the use of the Land and development did not occur."

4.26. The appeal was therefore allowed on Ground (c) and the enforcement notice quashed. The inspector also noted that in the reasons for issuing the enforcement

notice the use of the words ‘likely’ and ‘potential’ in relation to the impacts of the change of use. The same is true for this appeal at 255 Goldhurst Terrace, where the Enforcement Notice gives the reason as “*the unauthorised use […] results in the* ***potential*** *for increased incidences of noise and disturbance*” (our emphasis). There is no evidence that this has actually occurred and there have been no complaints from neighbours. The overall character of use of the property as a whole has not changed, and therefore there has been no material change of use. This appeal should be allowed on this basis and the Enforcement Notice quashed.

Ground (g)

“that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”

4.27. The Enforcement Notice provides just one month for remedial actions. Given that reservations are taken 3 months in advance, we consider that to avoid cancellations for guests, a period greater than one month for compliance would be reasonable if this appeal were to be dismissed on Grounds (b) and (c).

4.28. Additionally, if this appeal were to be dismissed, the owner would look to submit a planning application for change of use to cover temporary sleeping accommodation, which would likely take 6 months for preparation and determination.

4.29. Therefore, in the case that the Enforcement Notice is upheld, it is reasonable that the period for compliance is amended to 6 months.

5. Conclusion

5.1. This statement sets outs the appeal grounds for quashing the enforcement notice reference E24/0418 which alleges the change of use of an ancillary outbuilding to temporary sleeping accommodation at the Ground Floor Flat at number 255 Goldhurst Terrace, London, NW6 3EP ('the property'). In summary:

- This appeal is made on Grounds (b) and (c) under section 174(2) of the Town and Country Planning Act 1990.
- The outbuilding is mostly unoccupied but is occasionally used as sleeping accommodation predominantly on a non-paying basis by visiting family members and artists.
- The short-term occasional letting of the outbuilding is akin to a lodger staying within a family home which falls within Use Class C3.
- The presence of a bathroom and kitchen area in the outbuilding is not indicative of the creation of a separate dwelling. Conversely, given the amount, frequency and level of use by paying guests is insignificant, the use of the outbuilding remains incidental to the main dwellinghouse.
- Even if it were deemed that the use of the outbuildings for paying guests has resulted in a change of use, there has not been a sufficiently significant change in character to have resulted in a material change in the use of the property.

5.2. For the reasons above, this appeal should be allowed, and the enforcement notice quashed. As such, we ask that the inspector to allow this appeal and we look forward to receiving your decision. Should you have any queries in respect of this submission, please do not hesitate to contact us.