The Planning Inspectorate

Appeal Decision

Site visit made on 1 October 2012

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 9 October 2012

Appeal Ref: APP/X5210/C/12/2176649
Garden Flat, 14 Lawn Road, London, NW3 2XS

- 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 Mrs Rosemary Nicholls against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN11/0644.
- The notice was issued on 16 April 2012.
- The breaches of planning control alleged in the notice are:
  1) The unauthorised construction of a glazed walkway extension between the main building and the outbuilding.
  2) Breach of condition No 2 of a planning permission Ref 2010/3420/P for 'Erection of single storey outbuilding at rear of existing garden flat (Class C3) following demolition of 4 lock up garages and associated alterations' which states 'The outbuilding hereby approved shall only be used for purposes incidental to the residential use of the garden flat at number 14 Lawn Road and shall not be used as a separate independent Class C3 dwelling or Class B1 business use'. The condition has been breached in that the outbuilding has been fitted out and is used as the main kitchen and dining area for the flat.
- The requirements of the notice are to:
  1) Remove the glazed walkway extension between the main building and the outbuilding.
  2) Remove from the land all the associated base, fixtures, fittings and debris.
  3) Cease the use of the outbuilding as the kitchen and dining room of the flat and remove the fitted kitchen and dining room furniture.
  4) The area on which the linked walkway is located shall be landscaped in grass.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) 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 succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Decision.

Preliminary and procedural matters

1. In the grounds of appeal the Appellant raised a number of matters, such as condition No 2 being imprecise and what constituted the planning permission. These matters were not specifically pursued in the Appellant's statement. The Appellant has been professionally represented throughout the appeal process, and indeed throughout the previous planning application process. I will determine this appeal on the basis of the Appellant's statement.

2. The notice refers in paragraph 1 to a breach of planning control under s171A(1)(a) of the 1990 Act. This subsection relates to the carrying out of development without the required permission which is allegation 1). There is also an alleged breach of a planning condition in allegation 2) and this is provided for in s171A(1)(b). I have powers to correct the notice providing that no injustice is caused to the Appellant[1]. From the documentation she has provided there is no question that the Appellant was not fully aware of the terms and meaning of the notice even though the statutory provisions were not fully set out. For the sake of clarity, I will correct the notice accordingly.

3. The Appellant asked that, if I was minded to dismiss the appeal, I would suspend the notice pending the outcome of a retrospective planning application. I was later advised that no retrospective application would be made but other measures would be taken by the Appellant[2]. These matters are more properly put forward in a ground (g) appeal which the Appellant has not made. However, I consider that a six month period in which to comply with the notice is reasonable, given the scope of the requirements. Whether a planning application is made or not has no bearing, in my opinion, on the time for compliance with the notice. I also note that the Appellant has not made any appeal under ground (a) or a deemed planning application in this appeal in which the planning merits of the alleged breach of control could have been determined in this appeal.

The appeal on ground (f)

4. In an appeal on ground (f) the Appellant has to show that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections. The purposes of the requirements of a notice are to remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place and the notice may require the removal of any building or works[3].

The glazed walkway

5. The Appellant acknowledges that the glazed aspect of the walkway does not benefit from planning permission and that it did not form part of the planning approval[4]. It may well be that some form of pergola and paving was approved as part of the 'associated alterations' permitted. But the walkway that has been erected comprises a structure with, among other things, an opaque white waterproof roof; a white internal ceiling with electric spot-lights inserted into it; fixed runners for the panes of glass that form the walls; and light coloured floor tiles laid as one would lay tiles internally. It appeared to me that it was a permanent structure that formed part of the dwelling. It was not a garden feature as a pergola would be.

6. Given the purposes of the requirements, the requirements to remove the glazed walkway and associated base, fixture, fittings and debris are not excessive.

[1] S176 of the 1990 Act
[2] Email dated 27 September 2012
[3] S173(4) and (5) of the 1990 Act
[4] Ref: 2010/3420/P

The outbuilding

7. Planning permission was granted for, among other things, a single storey outbuilding. This was subject to a number of conditions, including condition No 2 which restricted the use of the outbuilding for purposes incidental to the residential use of the Garden Flat and expressly stated that it should not be used as a separate independent dwelling or business unit. In addition condition No 6 required the development to be carried out in accordance with a number of plans, which included drawing no P-03 rev J. This drawing shows the outbuilding as a 'New Hobby Room' with a kitchenette along the south wall.

8. A kitchen, or kitchen/cooking facilities, is an integral part of a dwelling. Drawing no P-03 rev J shows a kitchen/dining room at the front of the flat. This room is no longer a kitchen/dining room, it is now a bedroom with an en-suite bathroom. There is no kitchen, or kitchen/cooking facilities, within the flat. The kitchen is currently in the outbuilding. The outbuilding is therefore required, and being used, for a purpose integral to the use of the flat as a dwelling. The use of the outbuilding is therefore not an ancillary use and there has been a breach of the condition. The requirement to cease the use as the kitchen is therefore not excessive.

9. A notice directed at a change of use, which this notice can be construed as, as well as a breach of condition, may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use[5]. The 'L' shaped fitted kitchen facilitates the unauthorised use of the outbuilding. The fitted kitchen also does not comply with the approved drawing, which shows the outbuilding as a hobby room with a kitchenette along one wall only, and the requirement to remove it is therefore not excessive.

10. It does, however, seem to me that a dining room is not an integral part of a dwelling in that one could eat anywhere within a dwelling. The use of the outbuilding as a dining room, whether the only dining room or one used occasionally, therefore in my opinion is an ancillary use and if the Appellant chooses to use the outbuilding as a dining room[6] that is a matter for her. I will vary requirement 3) accordingly.

Requirement 4)

11. The requirements of a notice cannot require improvements to be made, only for the land to be restored to its condition before the breach took place. In this respect I consider that requirement 4), that is, that the area on which the linked walkway is located shall be landscaped in grass, is excessive and I will delete it.

Other matters

12. The Appellant has referred to an appeal decision relating to the removal of a kitchen and bathroom from an outbuilding[7]. The facts of that case were different from this appeal in that, among other things, the breach of planning control alleged was the residential use of the outbuilding. The comments made by the Inspector in that decision were therefore made in a different context from the circumstances of this appeal.

[5] *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630
[6] And as a sitting/play room with a television as I saw on my visit
[7] APP/M4320/C/08/2082328 also referred to as DCS case No.100-064-621 (Sefton 11/09/09) in paragraph 3.8 of the Appellant's statement

13. So far as other matters raised by the Appellant are concerned, such as the permission that has been granted, the paving and the pergola and the use of the building, I note that the requirements of a notice do not preclude a landowner doing what he is lawfully entitled to do in the future once the notice has been complied with.

Conclusions

14. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Decision

15. The appeal is allowed on ground (f), and it is directed that the enforcement notice is corrected by:

    a) In paragraph 1, the insertion of the words 'and Section 171A(1)(b)' after 'Section 171A(1)(a)'.

    and that it is varied by:

    b) In paragraph 5 requirement 3), the deletion of the words 'and dining room' and 'and dining room furniture'.

    c) The deletion of paragraph 5 requirement 4) in its entirety.

    Subject to this correction and these variations the enforcement notice is upheld.

Gloria McFarlane
Inspector