

Appeal Decision

Site visit made on 13 December 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 20 December 2016

Appeal Ref: APP/A5840/C/16/3148567

102 Forest Hill Road, London SE22 0RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Hakan Tunc against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 11 March 2016.
 - The breach of planning control as alleged in the notice is the material change of use of the Property from a takeaway restaurant with ancillary self-contained dwelling above to a takeaway restaurant on the ground floor, a house in multiple occupation above at first floor and 3 self-contained dwellings to the rear.
 - The requirements of the notice are
 - 5.1) Cease the use of the Property other than as a takeaway restaurant with ancillary self-contained dwelling situated above;
 - 5.2) Remove the kitchen facilities from the rear extension (including for the avoidance of doubt any microwaves, fridges, freezers and kitchen appliances);
 - 5.3) Remove the 3 bathrooms from the rear extension (including for the avoidance of doubt the shower, hand basin, toilet, plumbing and electricity connections, partition walls and doors);
 - 5.4) Relocate the kitchen at first floor level from the hallway to one of the rooms at first floor level so that the kitchen is enclosed;
 - 5.5) Remove the French doors leading onto the unauthorised rear extension and replace the same with windows matching the original windows of the Property in terms of size, material and design;
 - 5.6) Remove all fixtures, fittings and partitions connected to the use of the Property other than as a takeaway restaurant with ancillary self-contained dwelling situated above; and
 - 5.7) Remove from the Property any material and debris arising from compliance with the requirements of 5.1 to 5.6 above.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) & (g) of the Act as amended.
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The notice

1. I consider the notice should merely address the unauthorised use rather than cease the use of the Property for any purpose other than that which existed before. I therefore consider Steps 5.1 and 5.6 should be corrected accordingly.

Decision

2. The notice is varied by the deletion of Steps 5.1 and 5.6 and their replacement with
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- 5.1) Cease the use of the Property as a mixed use comprising a takeaway restaurant on the ground floor, a house in multiple occupation above at first floor and 3 self-contained dwellings to the rear;
 - 5.6) Remove all fixtures, fittings and partitions connected to the use as a house in multiple occupation above at first floor and 3 self-contained dwellings to the rear.
3. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Reasons

Background

4. Two other enforcement notices have been served recently in connection with this property. One of these has no bearing on this appeal and concerns the erection of storage buildings. However, the second relates to an extension added to the rear elevation. It is in this extension that the 3 dwellings referred to in the notice before me are found. The notice concerning the storage buildings and the one relating to the rear extension were also served on 11 March 2016. As no valid appeals were lodged against either, they became effective on 18 April 2016 and the period for compliance with their steps expires in January 2017. Both of these notices require, among other things, the demolition of the building operations to which they relate.

Ground (f) appeal

5. Sections 173(3) and (4) of the Act as amended broadly say the steps required by an enforcement notice are to achieve, wholly or in part, a remedy of the breach of planning control that has occurred, or a remedy of the injury to amenity that has been caused by the breach. An appeal under ground (f) contends that the steps required by a notice exceed what is necessary to remedy the breach of planning control or remedy any injury to amenity, whichever the case may be.
6. The Appellant considers there to be an obvious need for this affordable/cheap housing, but in the absence of a ground (a) appeal it is not for me to assess the planning merits of the unauthorised works. He also says that the notice is too harsh and lesser steps via negotiations with the Council would be far better to resolve matters, though he has given no details as to the basis for such views.
7. The period for complying with the notice relating to the rear extension expires in January. That will therefore address the steps in the notice before me concerning that element, irrespective as to whether or not they are 'harsh'. In any event, I am of the view that if varied in the manner stated above then Steps 5.1 to 5.7 on this notice are reasonably necessary to remedy the breach of planning control that has occurred and to restore the land to its former condition. Consequently, I have no basis to consider they are excessive.
8. Accordingly the appeal under ground (f) fails.

Ground (g) appeal

9. An appeal under ground (g) is contending the period for compliance falls short of what should be reasonably allowed.

10. The Appellant says a longer period is needed so that notice can be given to the tenants, builders can be secured and the work undertaken. He therefore suggests 12 months to be suitable.
11. The Appellant has not given the length of the tenancies or the notice periods to support his case. However, having regard to the nature of the accommodation it is fair to assume they are not long. Therefore to my mind the stated 9 month period is reasonable in this instance, and I am aware that the local planning authority has powers to extend the period of compliance if it considers such an action is justified in the light of the circumstances that have unfolded.
12. In coming to this view I am mindful that the residents would lose their homes. I am aware too that children appear to live in the property, and their best interests must be a primary consideration. However, even accounting for these points I am of the view that 9 months would be sufficient for the residents to find alternative schooling (if necessary) and accommodation, whilst still allowing time for builders to be secured and the works to be undertaken.
13. As a further point I note that the concerns outlined by the Appellant do not justify modifying the timescales relating to the accommodation in the rear extension. This is because, as stated, the compliance period for demolishing that element is to expire soon.
14. Accordingly the appeal under ground (g) fails.

J P Sargent

INSPECTOR