

Appeal Decisions

Site visit made on 22 November 2016

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 18 January 2017

2 Appeals at 80 Powys Lane, London N13 4HR

Appeal A: APP/Q5300/C/16/3148507

Appeal B: APP/Q5300/C/16/3148508

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Hassan Jemal (Appeal A) and Mr Jemal Ahmet (Appeal B) against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice, numbered CON/6960, was issued on 18/03/2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the Premises into two separate units of accommodation.
 - The requirements of the notice are:
 1. Cease the use of the Premises as 2 separate units of accommodation.
 2. Remove all kitchen, cooking facilities and white goods installed in each unit of the Premises except for one.
 3. Remove all internal doors and partitions which facilitate the separation of the Premises into separate units of accommodation.
 4. Remove all gas meters except for one.
 5. Remove all electricity meters except for one.
 6. Remove all resulting materials from the Premises.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) and (b) for Appeal A, and ground (b) for Appeal B of the Town and Country Planning Act 1990 as amended. Since the prescribed fees for Appeal B 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.
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Decisions

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1. The appeals are allowed and the enforcement notice is quashed.

The appeals on ground (b)

2. Appeals on these grounds can only succeed if the matters alleged in the notice simply have never happened at all as a matter of fact. On this ground of appeal the onus is on the Appellants to make out their case.
 3. The site inspection revealed a separate doorway was installed where the garage doors were positioned at the front of the property. The doorway was supported by a brick structure that had been built forward of the garage doors underneath a roof canopy. The doorway led to a stairs to an open plan room
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- above the garage which included a fully fitted kitchen and some covered furniture next to a large window. Adjacent to this room was a separate en-suite fitted bathroom leading to a rear empty room with a rear facing window.
4. The main house had a separate entrance at ground floor to the right of the installed doorway. This led to a hall and large kitchen and sitting room. On the other side of the hall were living rooms. Adjacent to the kitchen was a separate door which led to the ground floor garage. Patio windows have been installed in place of the garage door and to the left of these is a separate doorway leading into the garage space from the front of the house.
 5. The appellants indicate that in 2011 the 4 bedroom house was extended over the existing garage with two rooms and a bathroom. Access at first floor level to the extension was through an opening in the wall from the first floor bedroom.
 6. The appellants indicate that they have started to use the extension rooms as ancillary to the main house mainly to accommodate their relatives and friends, but the owner considered that it was not always practical to pass through the main building and bedroom to the extension and formed a separate access and kitchen. The plans accompanying the grounds of appeal show the before and as built situation, although the plans show an internal link between the first floor bedroom and the extension.
 7. However, there is now no internal link between the first floor bedroom and the extension. The physical and functional separation of the unit of accommodation has occurred as a matter of fact and provides all the necessary facilities for independent day-to-day living and is capable of being used as such.
 8. Whilst capable of being used as a separate unit the appellants' evidence is that the material change of use has not in fact occurred. The appellants indicate that while adding the side extension to the house the intention was to have rooms that could be used as a 'Granny Annex' for the appellant and his wife. At a later point the appellants decided to block-off the internal passage between the first floor bedroom in the main house and the extension because they experienced practical issues with the living arrangements and installed a kitchen and a separate access. The appellants maintain that the parents and children live together and use the side extension as part of the main house.
 9. The Planning Practice Guidance confirms that the burden of proof is firmly with the appellants, and the relevant test is the 'balance of probability'. However, other than the physical evidence of the separation the Council's evidence does not show that the alleged activity of a material change of use to a separate unit of accommodation has in fact occurred. The absence of this evidence and or the lack of contradictory evidence to the appellants' version of events do not indicate as a matter of fact and degree that the use has occurred.
 10. Should the alleged use occur then the Council could issue another notice. If that were to be the case, then the allegation and the requirements of the notice should refer to a 'residential use' and not just to 'two separate units of accommodation'.

11. I conclude the appeals on ground (b) succeed and the enforcement notice is quashed. Given that I intend to quash the notice there is no further ground to be considered.

Iwan Lloyd

INSPECTOR