

Appeal Decisions

Site visit made on 13 March 2017

by John Whalley

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

Decision date: 16 March 2017

Appeals A - refs: APP/Q5300/C/16/3149293; /94 171 Southbury Road, Enfield EN1 1QP

- The appeals were made by Ms Helen Nicolaou, (APP/Q5300/C/16/3139293), and by Ms Panayiota Nicolaou, (APP/Q5300/3149294), under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Enfield Council.
- The notice was issued on 31 March 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the unauthorised material change of use of part ground floor, (as shown edged in blue on the plan attached to the notice for identification purposes only), as a one bedroom self-contained unit of accommodation, the material change of use of the rear ground floor, (as outlined in green on the plan attached to the notice for identification purposes only), as a one bedroom self-contained unit and the material change of use of the rest of the Premises on part ground floor and first floor as a House in Multiple Occupation.
- The requirements of the notice are to:
 1. Cease the use of the premises as two separate self-contained units of accommodation and House in Multiple Occupation.
 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 and House in Multiple Occupation.
 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 were made on grounds (b), (c), (d), (f) and (g).

Summary of Decision: The enforcement notice is upheld.

Appeals B: refs: APP/Q5300/C/16/3151024; /30 171 Southbury Road, Enfield EN1 1QP

- The appeals were made by Ms Helen Nicolaou, (APP/Q5300/C/16/3151024), and by Ms Panayiota Nicolaou, (APP/Q5300/C/16/3151030), under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Enfield Council.

- The notice was issued on 31 March 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the unauthorised erection of a single storey extension, (outlined in blue on the plan attached to the notice for identification purposes), to the rear of the Premises.
- The requirements of the notice are to:
 1. Remove the single storey rear extension, (outlined in blue on the plan attached to the notice for identification purposes);
 2. Remove all resulting materials from the Premises.
- The period for compliance with the requirements is 2 months.
- The appeals were made on grounds (b), (f) and (g).

Summary of Decision: The enforcement notice is upheld.

Appeal development

1. The appeal property, No. 171 Southbury Road, Enfield, is a 2 storey end of terrace house. It has been converted to provide 2 self-contained units of residential accommodation on the ground floor, while the rest of the house, including part of the ground floor, was in use as a shared dwelling, or a house in multiple occupation. A wide, lightly constructed single storey extension has been added to the rear of the house.

Appeals A – change of use of the property; refs: APP/Q5300/C/16/3149293; /94

The appeals on ground (b)

2. An appeal on ground (b) asserts that the breach of planning control alleged in the enforcement notice did not, as a matter of fact, take place. Originally, the Appellants said a change of use of No. 171 had occurred. An application for planning permission to that effect had been lodged. Later, it was said there had not been a material change of use since they purchased the property. None of that showed that the uses described in the enforcement notice had not, as a matter of fact, taken place. The appeals on ground (b) must fail.

The appeals on ground (c)

3. An appeal on ground (c) says there had not been a breach of planning control. In this instance, that would have amounted to an assertion that the change of use of the property from a single dwellinghouse to a mixed use of self-contained units of accommodation and as a house in multiple occupation did not require planning permission. That question was not addressed. The Appellants originally referred to possible compliance with Council recommendations. Later they said the development was deemed to have been permitted development.
4. The Town and Country Planning (Use Classes) Order 1987, as amended, (the Order), puts uses of land and buildings into various categories known as 'Use Classes'. Generally, planning permission is needed to change from one use class to another. There are exceptions where the legislation allows some changes between uses. The Order at Class C3: Dwellinghouses – is formed of 3 parts:
 - C3(a): those living together as a single household as defined by the Housing Act 2004, (basically a 'family');
 - C3(b): those living together as a single household and receiving care, and

C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

Class C4: Houses in multiple occupation (3-6 occupants) – in broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

5. A change from a C3 dwellinghouse use to a C4 house in multiple occupation use does not normally require planning permission. However, the London Borough of Enfield Council issued a Direction on 22 October 2002 directing that the section of the Order that permits a change of use from a dwelling to a house in multiple occupation shall not apply. Formal planning permission from the Council is required for such a change of use. Also, where, as here, the dwelling is divided into flats and a house in multiple occupation, that formation of the mixed uses of 2 or more residential units required planning permission. No case was adduced to show otherwise. The appeals on ground (c) fail.

The appeals on ground (d)

6. An appeal on ground (d) says the breach of planning control set out in the enforcement notice has become immune from enforcement action by the passage of time. All that was said was that the development as alleged had been in place for more than 4 years. In this instance, it needed to be shown that, on the balance of probabilities, the change of use of No. 171 Southbury Road from a single dwelling to 2 flats and use as a house in multiple occupation started more than 4 years before the date of issue of the enforcement notice.
7. The Appellants, having made a ground (d) appeal, should have addressed the question of a 4 year immunity period in relation to the uses set out in the notice's allegation. Those uses could only have become lawful if the use of No. 171 as flats and a house in multiple occupation started before 31 March 2012 and continued without interruption throughout the requisite 4 year period. It is not enough to say the breach of planning control occurred more than 4 years ago. Evidence is needed to establish that. No such evidence was provided. The appeals on ground (d) must fail.

The appeals on ground (f)

8. An appeal on ground (f) asks that something less than the requirements set out in the notice would be more appropriate. Originally, the Appellants appeared to be concerned only with the standard of repair of No. 171, rather than the emphasis of the notice's requirements to bring the uses enforced against to an end and to return the property to a single dwelling use. Later, they claimed that a schedule of work for the purposes of compliance had been completed. They said that requiring any further work would be excessive.
9. I saw no evidence of compliance with the requirement to cease the unlawful uses of the property. Nor was it shown that any of the works set out in the notice's requirements had been carried out. In my view, the requirements of the enforcement notice were directly relevant and not excessive. If, as the Appellants claimed, the requirements had been met, there would seem to be no point in pursuing a ground (f) appeal. The appeals on ground (f) fail.

The appeals on ground (g)

10. The appeals on ground (g) ask that more time be granted to meet the requirements of the notice. The poor health of one of the Appellants and a lack

of available funds to carry out further work on the property were the basis for a request for more time for compliance. However, the Appellants appeared to be attempting to deal with improvements to the property, rather than the requirements to cease the unlawful uses and remove services and items that facilitated the uses enforced against. Again, it was said that necessary works had been carried out and that all steps had been taken to comply with the notice. Once more, if, as asserted, the requirements had been met, a ground (g) appeal would have become otiose. But the unlawful uses were still going on and no works to return the property to a single dwelling use were evident. It was not shown why the requirements of the notice could not be met within the 3 months allowed. The appeals on ground (g) fail.

Appeals B – operational development; refs: APP/Q5300/C/16/3151024; /30

The appeals on ground (b)

11. It was accepted that a single storey rear extension had been built. It was said that planning permission had been sought. The appeals on ground (b), asserting that the breach of planning control as alleged in the enforcement notice did not, as a matter of fact, take place must fail.

The appeals on ground (f)

12. The Appellants said they may remove the extension. Later, they said an application for planning permission to retain the extension was to be sought. They said other properties in the area had similar extensions. The Appellants should not be the only exceptions. That is a planning merits submission, not directly relevant to the ground (f) appeals. As No. 171 has been unlawfully converted from a single dwellinghouse use, the concessions in The Town and Country Planning (General Permitted Development) (England) Order 2015 at Article 3, Schedule 2, to the Order at Part 1, Class A, which cover the enlargement, improvement or other alteration of a dwellinghouse do not apply. There is therefore no “fall back” position. No lesser requirements than removal of the rear extension were suggested. The appeals on ground (f) fail.

The appeals on ground (g)

13. The Appellants asked for more time to meet the requirements of the notice. They did not explain why they considered the 2 month period insufficient. I consider that period to be quite adequate to organise works and remove the insubstantial rear extension. The appeals on ground (g) fail.

FORMAL DECISIONS

Appeals A – change of use of the property; refs: APP/Q5300/C/16/3149293; /94

14. The enforcement notice is upheld.

Appeals B – operational development; refs: APP/Q5300/C/16/3151024; /30

15. The enforcement notice is upheld.

John Whalley

INSPECTOR