

## Appeal Decision

Site visit made on 15 December 2016

**by Paul Freer BA (Hons) LLM MRTPI**

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

**Decision date: 17 March 2017**

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**Appeal Ref: APP/U5360/C/16/3152231**

**Land at 70-72 Chatsworth Road, Hackney, London E5 0LS**

- 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 Mr Alex Hochhauser of GATEFORD LIMITED against an enforcement notice issued by the Council of the London Borough of Hackney.
  - The enforcement notice was issued on 5 May 2016.
  - The breach of planning control as alleged in the notice is the unauthorised conversion of the rear part of the basement into two one bedroom flats (edged on the plan attached to the notice) and associated building works including a rear extension at basement level and a new staircase to access the basement rear courtyard.
  - The requirements of the notice are:
    1. Cease the use of the rear part of the basement as two flats
    2. Remove the unauthorised rear extension and staircase to the rear of the property
    3. Make the main part of the basement (as shown on the plan attached to the notice) to accord with the approved plans from application 2013/3362 plans numbered CR.70-72.PR.01
    4. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
  - The period for compliance with the requirements is six (6) months.
  - The appeal is proceeding on the grounds set out in section 174(2) (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision: The appeal is dismissed and the enforcement notice upheld as corrected**

### **Procedural Matters**

1. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer to the unauthorised conversion of the rear part of the basement and associated building works as being 'without planning permission' rather than 'unauthorised' as stated in the notice. No injustice would arise from correcting the notice in that respect, and I shall therefore correct the notice accordingly.
  2. The appellant considers that the enforcement notice is void for uncertainty and is not capable of correction, such that it is a nullity. In particular, the appellant considers that the wording of the notice is ambiguous and that it is not clear within the four corners of the document what is required of him to comply with it. In that respect, the appellant points to the requirements at 5(2), 5(3) and 5(4) of the notice.
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3. The requirement at 5(2) of the notice is to remove the unauthorised (sic) rear extension and staircase to the rear of the property. The appellant contends that there is no indication in the notice as to which part of the building is considered by the Council to be the unauthorised (sic) rear extension.
4. Although a plan attached to the notice showing the extension to be removed would have been helpful, the lack of such a plan does not itself make the notice a nullity. Furthermore, in this case, there is a plan attached to the notice that shows the extent of the property without the extension in place. It is a simple matter to ascertain through reference to that plan the extent of the unauthorised (sic) rear extension that the notice requires to be removed.
5. In relation to the requirements at 5(3) of the notice, the appellant points out that prior approval was granted in May 2015 for conversion of part of the basement to a residential unit (Council Ref: 2015/0718). The appellant considers it unreasonable that the notice prevents the implementation of that permitted development right. However, the appellant has clearly chosen to take a different route to that for which prior approval was granted by undertaking the works now subject to the enforcement notice. It is therefore not a question of the enforcement notice preventing the implementation of the development for which prior approval was granted: that is the consequence of the appellant taking a different path to the development of his property, and entirely of his own volition. I find nothing unreasonable in the enforcement notice in that respect. Moreover, there would be nothing to preclude the implementation of the development for which prior approval was granted once the requirements of the notice are fully complied with.
6. I find nothing ambiguous or uncertain with the wording in the requirement at 5(4). As a matter of ordinary language, the removal of all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises must and can only mean the removal of the debris, etc resulting from the demolition of the unauthorised (sic) rear extension and making the main part of the basement to accord with the approved plans from application 2013/3362, as required by paragraphs 5(2) and 5(3) of the notice respectively. The requirements of the notice can only relate to the premises defined on the plan attached to the notice, which in this case is sufficiently clear for the appellant to be able to understand the extent of those premises and to identify the land from which the debris, etc must be removed.
7. I therefore conclude that the enforcement notice is not a nullity and I am satisfied that it is clear within the four corners of the document what is required in order to comply with the notice.

### **The appeal on ground (e)**

8. The ground of appeal is that copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990.
9. The appellant invites the Council to prove, on the balance of probability, that the enforcement notice was properly served by an authorised person. This follows the decision in an appeal within the London Borough of Enfield (APP/Q5300/C/15/3006366), in which the Inspector found that the notice was a nullity because there was no evidence before him that the notice had been properly authorised.

10. However, in this case, the Council has provided a copy of the relevant section from its Scheme of Officer Delegation. From that document, it is evident that the Council officer who authorised the issue of the enforcement notice was the holder of a post entitled so to do under the Council's Scheme of Officer Delegation. I therefore conclude that the enforcement notice was properly authorised and, in that respect, can be distinguished from that found to be a nullity in the above appeal.
11. Accordingly, the appeal on ground (e) fails.

**The appeal on ground (f)**

12. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to cease the use of the rear part of the basement into two flats and to remove the unauthorised (sic) rear extension and staircase to the rear of the property. The purpose of the notice must therefore be to remedy the breach.
13. Although an appeal has been lodged on this ground, the arguments advanced are essentially the same as those considered above in relation to nullity. The appellant has suggested no lesser steps that could be taken to remedy the breach of planning control that has occurred.
14. Accordingly, the appeal on ground (f) fails.

**The appeal on ground (g)**

15. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
16. The appellant considers that a period of four months is not sufficient to find a suitably qualified contractor and carry out the work, allowing for the possibility of inclement weather. The appellant must also follow legal requirements in relation to evicting existing tenants. A period of compliance of 10 months is sought.
17. The requirements of the notice are to remove the unauthorised (sic) rear extension and staircase to the rear of the property. I am not convinced that this straightforward act of demolition requires a specialist contractor but, even if it did, the appellant has provided no evidence to support the contention that such a contractor could not be found within the period specified in the notice. For example, I have been provided with no evidence to show that suitably qualified contractors have been found and approached but are unable to carry out the work within the required timescale. I am therefore not persuaded that the appellant's concerns about being unable to instruct a suitably qualified contractor to carry the works are sufficient to justify an extension to the period of compliance specified in the notice.

18. Moreover, the period of compliance would now fall over the summer months, such that delays due to inclement weather conditions would be minimized.
19. I recognise that there are certain legal requirements in terms of terminating the tenancies of the existing occupiers and securing vacant possession of the property. The appellant suggests that this would take six months. However, I have not been provided with copies of those tenancy agreements, or details of the length of the tenancy agreements held by those occupiers or the terms for terminating those tenancy agreements. Consequently, I have no evidence to support the appellant's contention that six months would be required to secure vacant possession of the property and that an extension to the period of compliance is justified on that basis.
20. I acknowledge that the appellant and the existing tenants of the premises enjoys rights under the Human Rights Act 1998, including the right to respect for private and family life, home and correspondence under Article 8 and the right to peaceful enjoyment of one's possessions under Article 1 of the First Protocol. However, aside from contending that six months is too short and unreasonable, the appellant has not explained how his rights or those of the existing tenants under Article 8 and Article 1 of the First Protocol would be infringed by the compliance period specified in the notice.
21. Moreover, as the appellant concedes, the rights under the Human Rights Act 1998 are qualified rights. Consequently, there is a balance to be struck between the rights of the appellant under that Act and those who may be affected by the development that has taken place. In this context, the reason for the notice relates primarily to the poor quality of the accommodation provided by the use of the rear part of the basement as two flats.
22. I accept that there is no imperative to comply with the notice in terms of matters such as the effect on the living conditions of the occupiers of neighbouring residential properties or highway safety. Nevertheless, the National Planning Policy Framework indicates that securing a good standard of amenity for all existing and future occupiers of land is one of the core land-use planning principles. It is therefore in the public interest that the occupation of poor quality residential accommodation is not unnecessarily prolonged and that the breach of planning control alleged in the notice is remedied within a reasonable period of time.
23. In weighing the balance between the rights of the appellant and the wider public interest, and given also that the steps required to comply with the notice are neither complicated nor difficult, I consider that the period of six months specified in the notice is reasonable and proportionate. The period of 10 months sought by the appellant has not been justified.
24. Accordingly, the appeal on ground (g) fails.

### **Conclusion**

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected.

### **Formal Decision**

26. It is directed that the notice be corrected by replacing the word "unauthorised" in paragraph 3. with the words "without planning permission", and by deleting

the word “unauthorised” in paragraph 5(2). Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld.

*Paul Freer*

INSPECTOR