
Appeal Decision

Site visit made on 20 February 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 24 March 2017

Appeal Ref: APP/N5090/C/16/3147995

Land at South-East Corner of The Spinney, 22 Hendon Wood Lane, London NW7 4HR

- 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 G M P Fitzgerald against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/00049/16, was issued on 7 March 2016.
 - The breach of planning control as alleged in the notice is without Planning permission, the change of use of the land to a scaffolding yard.
 - The requirements of the notice are 1. Cease the use of the land as a scaffolding yard and 2. Restore the site to its condition prior to the breach of planning control by permanently removing all scaffolding equipment (including boards, poles and fittings), building materials, and the wooden archway.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

Ground (d)

2. The relevant period to assess lawfulness achieved through the passage of time is 10 years, looking back from the date of the enforcement notice.
3. The appellant identifies the static home as being ancillary to the scaffold use. However, the static home identified as No 16 is not a use of land, but operational development. As a dwelling in its own right it would normally be considered as a separate planning unit and is the subject of separate enforcement proceedings. In this case I can see little justification to consider why a detached residence should be considered as being ancillary to the scaffolding business and therefore conclude that the dwelling should not be considered as part of the scaffold use.
4. The main access and position of the scaffold business has remained the same, although the actual route to the yard on site was modified around 2012 to a

more direct route. This has not affected the use of the yard or its general position over time. The majority of the site identified on the enforcement notice plan is in residential use, with a number of units around the site. The yard is confined to a small area of the overall land.

5. The appellant identifies that the land was purchased around 2002. The initial use was for storage of building materials, but the primary use was scaffold storage and this use has continued from about December 2003 to date and there are Licences to Occupy from about that time. The length of time of use is supported in statutory declarations by a partner in the business, a neighbour, visitors to the site and a person living at the site and these have detailed plans showing the small area of the overall site used for the scaffolding use.
6. The Council has a number of photographs, including aerial photographs and one from the front of the site, which it says indicate that the use has not been there for the required 10 year period. However, while some buildings/large structures can be identified in the area of the site generally, the area of the scaffold use is heavily shaded and close to trees which are at the side and rear, and I do not consider that you can reasonably distinguish whether the relatively small structures forming the scaffold storage are there or not. Image 2.2 from 2006 appears to show very little of the relevant area, because of tree cover and shadow, as is the case with Image 1 dated 6 April 2015. The Google Streetview image also shows relatively little. There do appear to be some narrow, vertical features at the rear that could well accord with the scaffold storage rack.
7. I note the various letters/affidavit submitted by local people, some of whom have lived in the area a substantial length of time. Many of the comments relate to the planning impacts of the use and are not relevant to the considerations in ground (d). There is also evidence provided about the length of use. However, the wording of some is not very clear in terms of what is meant, such as 'the site has existed for no more than approximately 5-7 years'. It is clear from inspection and the Council's photograph that there are limited views available into the site from the road, and this would have been more the case, before the access was formed underneath the 'arch' as a building would have screened much of the scaffold storage area. I also note the significant variability in the length of time that people say the use has occurred, with time varying from about 2 years to 7 years. The parties supporting the appellant would have had a closer view of the area and there are plans showing the actual yard area of the overall site.
8. In this type of case the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make his version of events less than probable, there is no good reason to refuse the appeal, provided the appellant's evidence is precise and unambiguous to justify the claims on the balance of probability.
9. I do not consider that the Council's evidence and interested party's support for it are sufficient to contradict the appellant's version of events, which is reasonably precise and unambiguous; so on the balance of probability I conclude that the scaffold use has existed for a period of 10 years prior to issuing the enforcement notice.

10. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Graham Dudley

Inspector

