
Appeal Decision

Site visit made on 8 May 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/T5150/C/16/3161890

46 Sudbury Court Road, Harrow, London, HA1 3SH.

- 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 Shoolin Girishkumar Yagnik against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0462, was issued on the 28th September 2016.
 - The breach of planning control as alleged in the notice is the conversion of an integral garage to a self-contained flat.
 - The requirements of the notice are to: Cease the use of the garage as a self-contained flat; Remove the kitchen, bathroom and partition walls, and Remove all materials and debris associated with the unauthorised use of the premises; Do not use the integral garage for any purpose other than as part of the main dwellinghouse at 46 Sudbury Court Road.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Preliminary matters

1. Accompanied site visits were arranged for the appeal site on the 29 March 2017 and 6 April 2017 but it was not possible to see inside the property at these times, therefore a further visit was undertaken on the 8 May 2017.
2. The Council's statement was not copied to the appellant's agent within the normal timescale, however the statement was received by the Planning Inspectorate correctly and therefore further time was given to the appellant to respond.

The Notice

3. A notice must set out what a person has done wrong and what must be undertaken to remedy that. Further, Regulations¹ prescribe that the local planning authority must set out the reasons why it is expedient to issue the notice and the Council must refer to all of the policies and proposals in the development plan that are relevant to the decision to issue the notice. I am concerned that the Council's statement seeks to introduce fundamentally different objections to the alleged unauthorised development than the reasons specified in the notice.
4. There are four main reasons given within the notice why the Council considered it was expedient to issue it. These relate to: the unauthorised change of use

¹ The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002

took place within the last 4 years; There is a conflict with policy H18 of the Council's Unitary Development Plan (2004) (UDP) as the unauthorised change of use represents sub-standard accommodation by virtue of the lack of bin and cycle storage; detriment to the residential amenities of the area by reason of an increase in demand for on-street parking and contrary to UDP policy H19 and PS14 of the UDP; and the absence of a legal agreement to secure improvements to defined facilities and infrastructure for sustainable transport, education and open space, also resulting in conflict with specified UDP policies.

5. However, in the Council's statement on the appeal, the main thrust of the planning objections to the development under ground (a) are for different planning reasons concerning the substandard size of the flat itself resulting in what is considered to be cramped and poor quality accommodation. These concerns are not specified in the notice.
6. The Council says that UDP policies have been superseded by the adoption of the Development Management Policies DPD (Nov 2016), and it would be correct to update in representations changes to the development plan so as to ensure that the appeal decision is based on the current position of the development plan. However, there is no reference in the notice to the London Plan (2016) which is now relied on in respect of standards for residential floorspace and that plan was in place prior to the issue of the notice. This is a fundamental difference.
7. Further, the Council have not provided evidence to demonstrate that the UDP policies previously referred to have been brought forward in the new Development Management Policies. Neither does the Council's statement provide justification or amplification of the reasons actually specified in the notice including any evidence of how the contributions sought would meet the specified tests concerning the Community Infrastructure Levy.
8. Overall, I conclude that the Council has sought to fundamentally change tack on the planning objections to the alleged unauthorised development and that the requirements for the notice to be complete in the justification for the expediency of the decision to issue it, and its reference to the development plan, have not been complied with. I agree with the appellant that to proceed on this basis would be unreasonable and would be unfair to the appellant as it would be prejudicial to him. I am therefore not able to correct the notice and will treat it as a nullity. If the Council considers that there are other grounds on which it is expedient to issue a further notice then the 'second bite' provisions of section 171B(4)(b) should be referred to.

Decision

9. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

David Murray

INSPECTOR