
Appeal Decision

Site visit made on 22 August 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 04 September 2017

Appeal Ref: APP/Z5060/C/16/3162448

100 High Road, Chadwell Heath, Essex RM6 6NX

- The appeal is made by Amit Rayrella under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 13/00106/NOPERM) issued by the Council of the London Borough of Barking and Dagenham on 4 October 2016.
 - The breach of planning control alleged in the notice is "the unauthorised erection of an independent residential unit at the rear of a commercial premises".
 - The requirements of the notice are as follows: -
 - Remove the unauthorised independent residential unit at the rear of the commercial premises.
 - Remove all alterations and fixtures related to the independent residential unit at the rear of the commercial premises
 - Remove all subsequent waste material from the independent residential unit at the rear of the commercial premises."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e) and (g).
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Decision

1. It is directed that paragraph 5 of the enforcement notice be varied by deleting "Remove all alterations and fixtures related to the independent residential unit at the rear of the commercial premises".
2. It is directed that paragraph 6 of the enforcement notice be varied by replacing "**3 Month**" [*sic*] by "**6 months**".
3. Subject to these directions, the appeal is dismissed and the enforcement notice is upheld as varied.

Reasons for the decision

Ground (e)

4. The appellant's ground (e) appeal is actually a challenge to the validity of the notice and the Council have dealt with it on that basis.
 5. An enforcement notice must tell its recipients fairly what they are alleged to have done in breach of planning control and what steps they are required to take to remedy the breach or any injury to amenity caused by it. The steps required by the notice should match the matters alleged to be the breach of planning control unless under-enforcement is intended. I am authorised by
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section 176(1) to correct or vary a valid notice if I am satisfied that this will not cause injustice to the parties.

6. The alleged breach of planning control is the "erection of an independent residential unit at the rear of a commercial premises". This clearly alleges that an independent residential unit has been built, rather than having been converted from an existing structure.
7. The first requirement is to "Remove" the unit. This is a clear requirement to remove what has been built, i.e. to take it away.
8. The second requirement is to "Remove all alterations and fixtures related to the independent residential unit". This requirement is unnecessary because they will be removed by complying with the first requirement; alternatively, if the reference is to additional items, they should have been identified. I am satisfied that this matter can be dealt with, without causing injustice, by deleting the requirement altogether.
9. The third requirement is to "Remove all subsequent waste material from the independent residential unit". This is intended to be a requirement to remove the waste material arising from compliance with the first requirement.
10. With the deletion I have referred to, the notice tells the appellant fairly and with reasonable certainty what he is alleged to have done in breach of planning control and what steps he would have to take to remedy the breach. In these respects, I find that the notice complies with the requirements of sections 173(2) and 173(3) and is not a nullity. The challenge to its validity has therefore failed and the notice has been varied by deleting the second requirement.

Ground (d)

11. The question arising under ground (d) is whether, by the time the notice was issued on 4 October 2016, it was too late to take enforcement action in respect of the breach of planning control. In the case of building operations, the time limit is four years from the date on which the operations were substantially completed. Where there has been a change of use of a building to a single dwelling, the time limit is four years from the date of the change of use. The facts relating to these matters are in contention in this appeal.
12. In his statutory declaration, the appellant states, "In September 2012 I converted the rear part of the commercial premises at ground floor level into a separate, self-contained one bedroom flat, known as 100D". His grounds of appeal state that the flat is accessed from a rear access path and a floorplan is reproduced. The appeal continues, the appellant "seeks to establish that the change of use of the rear part of the building to a separate self-contained dwelling took place at least four years before ... 4 October 2016". In support of the appeal, the appellant has produced various documents, all dated in September 2012, relating to the installation of services at No 100D and a tenancy agreement dated 27 September 2012 for the letting of No 100D as a furnished dwelling.
13. The floorplan that has been reproduced shows accommodation consisting of a bedroom, lounge, kitchen and bathroom facilities with a door and a window on

to the rear access path. This is the residential unit, the erection of which is alleged to be a breach of planning control. It is a single-storey structure, which is located between a higher structure at the rear of the commercial premises and the rear access path. Since the appellant's evidence all relates to the conversion into No 100D of "the rear part of the commercial premises at ground floor level", it looks as if none of this evidence in fact relates to the unit referred to in the notice.

14. This deduction is borne out by the evidence produced by the Council. The unit did not exist when an aerial photograph was taken on 25 May 2012, but there was at that time a higher structure at the rear of the commercial premises. The unit could conceivably have been erected in the period between then and 4 October 2012, but when a planning officer called to view it on 19 March 2013, and again on 25 March 2013, he was told by the appellant on both occasions that the keys were with the builder. He gained access later on the 25 March 2013, when he was let in by the builder who was working there. He noted that there was a kitchen and a bathroom.
15. In these circumstances, it is very unlikely that the erection of the unit would have been substantially completed by 4 October 2012, to the extent that it would have provided the facilities required for day-to-day private domestic existence. It is the appellant's responsibility to show that this happened. However, he has not put forward adequate supporting evidence and I have therefore concluded, on the balance of probabilities, that it was not too late for the Council to take action at the time they issued the enforcement notice.
16. The appeal on ground (d) has therefore failed.

Ground (g)

17. The appellant seeks an extension of the compliance period from three months to twelve months, to allow the tenants time to find alternative accommodation, for possession to be obtained and the work to be organised. The Council are opposed to an extension of time, but in my opinion three months is too short a period in these circumstances. I have also noted that in the Council's view "the structure could be considered acceptable as a storage unit associated with the commercial use of the ground floor of 100 High Road". Time should be allowed for that possibility to be looked into, as well, and for any permissions that are needed to be applied for.
18. After taking all these matters into consideration, I have concluded that six months would be a reasonable compliance period. The notice has therefore been varied and the appeal has succeeded on ground (g) to this extent.

D.A.Hainsworth

INSPECTOR