



Appeal Decisions

Site visit made on 16 December 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal A: APP/U5360/C/19/3229659

Land at 7 Clapton Square, Hackney, London E5 8HP

- 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 J Taub of L. Herskovic LTD against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 17 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the basement area from storage (B8) use to self-contained residential accommodation.
 - The requirements of the notice are: (1) Cease the use of the basement area as self-contained residential accommodation. (2) Remove all kitchens in the basement area. (3) Remove all bathrooms in the basement area. (4) Remove all partitions, doors, facilities, fixtures and equipment that facilitate the use of the basement of the property as residential accommodation. (5) Make good all damage to the Property resulting from the compliance with steps (2) to (4). (6) Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
 - The period for compliance with the requirements is: Six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal B: APP/U5360/F/19/3233995

Land at 7 Clapton Square, Hackney, London E5 8HP

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jacob Taub of L Herskovic Limited against a listed building enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 26 June 2019.
 - The contravention of listed building control alleged in the notice is as detailed in section 3 of the notice.
 - The requirements of the notice are as detailed in section 5 of the notice.
 - The period for compliance with the requirements is: Six (6) months.
 - The appeal is made on the grounds set out in section 39(1) (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

Appeal B

2. The appeal is allowed and the enforcement notice is upheld with a variation.

Preliminary Matter

3. The contravention of listed building control and the subsequent requirements of the enforcement notice are detailed and so in the interests of brevity I have not repeated these in the banner heading above. I have however had full consideration of these matters for the purposes of reaching my decision.

Appeal A: The ground (b) appeal

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control had not occurred as a matter of fact at the time the enforcement notice was issued.
5. In this regard, the appellant states that the description of a B8 storage use does not reflect any formal submission for a historic change of use and that the basement has been used as storage ancillary to the residential use of the upper floors of the property, either by tenants for personal items or by the landlord for building materials and spare furnishings.
6. Whilst it can be helpful, it is not necessary to specify a previous use in the allegation, particularly, as is the case here, that use is in dispute. I shall therefore correct the enforcement notice to omit reference to a previous storage (B8) use.
7. The basement had been converted into self-contained residential units of accommodation. The appellant contends that at the time the enforcement notice was issued the smaller unit was not occupied and that the kitchen facilities had been removed. It is also asserted that the front basement extension was not in use as residential accommodation. However, whilst this may have been the case, the layout of the basement, which I observed during my site visit, still reflected that of self-contained residential accommodation. I only have limited evidence that ancillary residential storage was taking place at the time the enforcement notice was issued. Consequently, I am not satisfied on the balance of probabilities that a mixed use has been demonstrated by the appellant.
8. Accordingly, the appeal on ground (b) succeeds only in so far as it relates to omitting reference to a B8 storage use.

Appeals A and B: The ground (g) and (h) appeals

9. The enforcement notices afford a period of six months to comply with their respective requirements. I however appreciate there are tenants who will need to vacate the building and that the appellant's efforts to do so, in respect of the

remaining basement tenant, has already involved legal action, and this is likely to continue.

10. The appellant will also need to employ specialist builders to undertake the necessary works to the building, although I am not convinced as to why some of this, in respect of the remainder of the building, could not be undertaken whilst the basement tenant, or indeed others, remain in occupation. I am therefore not persuaded on the evidence before me that a period of 18 months is necessary and so consider that a period of 12 months strikes an appropriate balance, also given the intended sale of the property, and so that the breaches of planning and listed building control are not unduly perpetuated.

11. To this extent the appeal on ground (g) therefore succeeds.

Formal Decisions

Appeal A

12. It is directed that the enforcement notice be corrected and varied by:

- deletion of the words "*from storage (B8) use*" from the alleged breach of planning control in section 3 of the enforcement notice; and
- substituting "*Twelve (12) months*" as the period for compliance.

13. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

14. It is directed that the enforcement notice be varied by:

- substituting "*Twelve (12) months*" as the period for compliance.

15. Subject to this variation, the appeal is allowed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR