
Appeal Decisions

Site visit made on 28 January 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal A: APP/Y5420/C/19/3232784

Appeal B: APP/Y5420/C/19/3232785

The land and building(s) known as 9 Osier Crescent, London N10 1QQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Jonathan West (Appeal A) and Miss Alexandra Ryall (Appeal B) against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 20 June 2019.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the property from residential use (C3) to a mixed use comprising of use as a dwelling and as a nursery /child day care service with associated use of outside areas and outbuilding for educational / playground purposes.
 - The requirement of the notice is to cease the use of the property, garden and outbuilding as a nursery / child day care service.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
-

Procedural Matter

1. As set out above there are two appeals on this site. They relate to the same enforcement notice and the same ground of appeal, therefore, to avoid duplication I have dealt with them together.

The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
3. Section 55 of the 1990 Act states, amongst other things, that “development,” means the making of any material change in the use of any building. Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) relates to a use as a dwellinghouse as set out in the Schedule to the UCO.
4. To ensure that the description of the alleged breach reflects section 55 of the 1990 Act and the UCO I consider that the wording ‘*unauthorised change of use of the property from residential use (C3)*’ within the description of the alleged breach should be deleted. I intend to replace the deleted wording with ‘*material change in the use of the property from a dwellinghouse (Class C3)*’. I can carry out these corrections without injustice to the parties.

The ground (f) appeals

5. That the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. Having regard to its requirement, the purpose of the enforcement notice is to remedy the breach of planning control. As a result, and in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach.
6. The appellants consider that instead of ceasing all child-minding duties that they would limit the number of children they care for to a maximum of 10, with an average of 7 per day. They also state that they would limit the amount of time the children spend in the garden to 2 sessions and that the outbuilding would not be used for childminding. Where and how the parents park to drop off/pick up the children would be controlled.
7. However, even though the Council has suggested that variations to the requirements may be possible the suggested alternatives would require me to assess the planning merits of those alternatives. As stated above, there is no ground (a) appeal or deemed planning application in this case therefore I am not empowered to consider those planning merits.
8. To remedy the alleged breach of planning control, as detailed within the enforcement notice, the cessation of the use of the property, garden and outbuilding as a nursery/child day care service is required. No lesser steps would remedy the breach.
9. I acknowledge that the Council have stated that based on the number of children cared for in 2011 it was concluded at that time that the business on balance did not constitute a child day care service and could continue to be used as a home based child-minding business which did not require planning permission. Nevertheless, it is not for me, as part of this appeal, to determine whether planning permission would be required for a material change of use if a child-minding business was operated from the land on the basis of the information provided. To that end it is open to the appellants to apply for a determination under sections 191/192 of the 1990 Act in that respect.
10. Moreover, the requirements of an enforcement notice do not preclude the appellants from carrying out what they are lawfully entitled to use the property for once the notice has been complied with.
11. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeals on ground (f) fail.

Conclusion – both appeals

12. For the reasons given above I consider that the appeals should not succeed, and the enforcement notice is upheld.

Formal Decisions

13. It is directed that the enforcement notice be corrected by: -

- Deleting the wording '*unauthorised change of use of the property from residential use (C3)*' within the description of the alleged breach and replacing it with '*material change in the use of the property from a dwellinghouse (Class C3)*'.

Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

D. Boffin

INSPECTOR