
Appeal Decision

Site visit made on 3 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/A5840/C/19/3237143

124 and 124A Crofton Road, London SE5 8NA

- 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 Mark Dew against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 16 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from ancillary garden to a four bedroom house with basement.
 - The requirements of the notice are:
EITHER
5.1 Remove access to the basement and infill the basement to make the development acceptable in planning terms in line with planning 10/AP/1787;
OR ALTERNATIVELY
5.2 Demolish the four bedroom house and revert the Land to ancillary garden to 124 Crofton Road;
5.3 Remove from the Land any material and debris arising from compliance with the requirements of 5.1 and 5.2 above.
 - The period for compliance with the requirements is twelve 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.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. Section 171A (1) (a) to the Town and Country Planning Act 1990 as amended ('the Act') says that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173 (1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The Council assert that the planning permission 10/AP/1787 has not been implemented and that, therefore, the building does not benefit from planning permission. The Council accepts that the built development is immune from enforcement action by virtue of s171(1) but contends that the residential use of the building is not immune by virtue of s171B(3) and that the construction of the building is part and parcel of the change of use and so the requirement to remove the building would remedy the breach.

4. I accept that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might be immune from enforcement action. However, the site comprised part of the garden of No 124 prior the Council's grant of planning permission for a two bedroom property. Therefore, from the evidence before me it appears that the site was already in residential use, forming part of the garden of No 124. The works carried out represent obvious and permanent operational development that should, in my view, clearly be dealt with within a period of four years rather than operational development which serves an ancillary purpose.
5. Given the above, I have considered whether it would be possible to correct the allegation. A possible course of action would be to amend the breach to allege non-compliance with condition 2 attached to planning permission reference 10/AP/1787, which states that 'The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans: 2-101 Rev B, 2-203 Rev D, and 2-204 Rev D'. However, the Council asserts that the development has not been implemented and cannot be considered an extant permission. Furthermore, given the above, I consider amending the notice in this way would cause injustice to the appellant since it would deprive him of the opportunity to argue ground (d).
6. I do not consider that the matters raised above are such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning control are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed.

Conclusion

7. For the reasons given above, I consider the enforcement notice is invalid. In these circumstances, the appeal under ground (f) as set out in s.174(2) of the 1990 Act as amended does not fall to be considered.

M Savage

INSPECTOR