
Appeal Decision

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: 20 March 2020

Appeal Ref: APP/M5450/C/19/3235582

Land at 108 Southdown Crescent, Harrow HA2 0QS

- 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 T Jayakumar against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 15 July 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the single family dwellinghouse on the land to use as three self-contained flats.
 2. The construction of a loft conversion to both properties comprising of hip to gable and rear dormer.
 3. The construction of a part Single and two storey side to rear extension and single storey rear extension.
 4. The construction of a rear patio.(Breaches 2, 3 and 4 constitute 'The Unauthorised Development')
- The requirements of the notice are:
 - 1) Cease the use of the land as three self-contained flats;
 - 2) Remove all kitchens except (1) one from the dwelling house;
 - 3) Remove all bathrooms except (1) one from the dwelling house;
 - 4) Remove all internal partitions that enable to use of the house as 3 flats;
 - 5) Demolish the entire Unauthorised Development;
 - 6) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is 6 calendar 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 (the 1990 Act).

Summary Decision: The enforcement notice is quashed.

The Notice

1. 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. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The appeal property is at the end of a terrace of properties and there is an access track between it and the adjacent terrace of properties. The plan attached to the enforcement notice (edged in red to indicate the land affected by the enforcement notice) indicates that the boundary with the adjoining property, 106 Southdown Crescent (No 106), is at an acute angle to the rear elevation of the appeal property.

3. This acute angle of boundary is also shown on the plans that were submitted associated with a prior approval planning application for a large extension¹ and a planning application² for a single and two storey side to rear extension and single storey rear extension. The side wall of the single storey rear extensions shown on those submitted plans run adjoining that acute angle boundary.
4. However, I noted at the site visit that part of that side wall of the single storey extension to the rear of the property is perpendicular to the rear elevation of the appeal property. This is also reflected in the plans submitted by the appellant to indicate the layout of the building as extended and altered. As such, a part of the single storey extension as constructed is not within the land edged red on the plan attached to the enforcement notice.
5. In response to my request, as to whether the site plan attached to the enforcement notice, included all of the land that the operational development cited in Section 3 of the enforcement notice is constructed upon, the Council submitted an amended plan. It also stated that in its opinion the corrections shown on that plan which included alterations to the boundary with No 106 and the removal of the access track between the appeal property and the adjacent terrace could be carried out without injustice. This, in its opinion, was due to the fact that a land registry search indicated that the access track was not owned by the appellant. It also stated that an extension built at No 106, built in 2014, indicates that the boundary line has changed as a result and that both parties have agreed to this change and the building line of both extensions reflects this.
6. The appellant was given the chance to also comment on this issue and he has stated that even though he may not own the access track he has had unrestricted use of it for the past 33 years. He has also stated that the shared wall between No 106 and the appeal property that forms the side wall of the single storey extension was built in accord with an award made under the Party Wall Act 1996 (the 1996 Act).
7. I acknowledge that it would appear that I could make the correction to delete the access track from the land affected by the enforcement notice without injustice to any parties. I also note that there appears to be an agreement between the appellant and the owner of No 106 under the 1996 Act for the single storey extension to be built utilising a shared wall and for part of that extension to be built on land that formed and may still form part of No 106. Nevertheless, I have no evidence before me, like a land registry document, to indicate that the land edged red on the amended plan submitted by the Council is not, in part, still within the ownership of No 106. Consequently, even though the area of land involved is quite small in size the correction to the plan, in this respect, would mean that the land affected by the notice would be extended into an area that could still be within the ownership of No 106.
8. Whilst the owner/occupier of No 106 appears to be conscious of the appeal, as he has objected to parts of the development as a third party, it is not clear if he is aware of the implications of the enforcement notice requirements in relation to the demolition of the single storey part of the development. In any case, it is also not clear as to whether the appellant would be able to fully comply with the requirements of the enforcement notice in relation to

¹ Ref No: P/1501/16

² Ref No: P/1522/16

demolishing the whole of the single storey extension. This is because he may need to gain consent from the owner of No 106 to carry out those works. As a result, I cannot be certain that the correction to include the additional land would not cause injustice to the appellant.

9. I acknowledge that there is no ground (e) appeal before me, that copies of an enforcement notice were not served, as required by section 172(2) of the 1990 Act. Nevertheless, section 172(2) of the 1990 Act states that a copy of the enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
10. The evidence before me indicates that the Council did not serve a copy of the enforcement notice on the owner/occupier of No 106. If the corrections were made to the plan attached to the enforcement notice to include the additional land, I cannot be certain that the notice would have been served on all of the relevant parties as required by section 172(2) of the 1990 Act. Section 176(5) of the 1990 Act permits failure to serve any person as required by section 172 of that Act to be disregarded if neither they nor the appellant have been substantially prejudiced by that failure.
11. However, it would not be appropriate to disregard the potential failure to serve the owner/occupier of No 106 as I cannot be certain that they would not have wished to submit an appeal on their own behalf given that the demolition of the single storey extension may have an impact on land/structures in their ownership. Therefore, it would appear that they could be substantially prejudiced if this appeal continued.
12. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity, the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act since it appears that injustice would be caused were I to do so. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

13. The enforcement notice is quashed.

D. Boffin

INSPECTOR