The Planning Inspectorate

Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2020

Appeal Ref: APP/N5090/C/19/3235180
Land at 1A Acklington Drive, London NW9 5WL

- 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 Mrs Collette Keenan-Brady against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1218/19, was issued on 31 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of a garage into a residential dwelling.
- The requirements of the notice are:
  1. Cease the use of the garage as a separate dwelling unit.
  2. Permanently remove all kitchens from the garage, including kitchen units, sinks, cookers and food preparation areas.
  3. Permanently remove all bathrooms from the garage, including baths, sinks, WCs and showers.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by:

   - Deleting the words *'conversion of a garage into a residential dwelling'* in the alleged breach of planning control and the substitution therefor of the following words *'material change of use of a garage to a single dwellinghouse';*

   - Deleting the words *'separate dwelling unit'* from the first requirement of the notice and the substitution therefor of the following words *'single dwellinghouse'.*

2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. I have a duty to ensure that the notice is in order. Although the notice refers to the *'conversion of a garage into a residential dwelling',* it is apparent that the notice is concerned with the material change of use of the garage to a single dwellinghouse, and the requirements should flow from the allegation.

4. Wide powers to correct a notice are available to me under section 176(1) of the 1990 Act as amended. However, they only apply if I am satisfied that the corrections will not cause injustice to the appellant or the Council. In this instance, I am satisfied that the appeal parties have interpreted the terms of

the notice as relating to the breach as corrected. The allegation and the first requirement can be corrected without causing injustice to any party.

Reasons

5. The appeal on ground (d) is that at the date the notice was issued no enforcement action could be taken in respect of the matters alleged in the notice. This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by Section 171B of the Act at the date of issue of the notice. The burden of proof lies with the appellant to make out their case, and the standard of proof is the balance of probability.

6. For the ground (d) appeal to succeed the onus is upon the appellant to demonstrate, on the balance of probabilities, that the change of use to a residential dwelling occurred at least 4 years prior to the date the notice was issued (31 July 2019), that is on or before 31 July 2015, and was sustained for a full 4 year period.

7. The appellant states that the garage has been used as a residential dwelling since August 2010, has been registered for council tax since November 2012, with council tax having been paid, and refers to records from the council showing that it has been used as a dwelling. However, no records have been provided to substantiate the appellant's claim. Moreover, no evidence has been provided to show that the use has been continuous for the required period.

8. Very limited evidence has therefore been submitted in support of the appellant's case. It does not clearly demonstrate that the garage has been used continuously as a single dwellinghouse for the required period, and falls short of discharging the burden of proof. The appeal on ground (d) therefore fails.

Other Matters

9. Although there is no appeal on ground (g), I note that the property is likely to be occupied. I have had regard to the suitability of the compliance period in view of the current public health crisis due to the Covid-19 virus. However, I note that the Council has powers under s173A(1)(b) to extend any period for compliance, a matter entirely at its discretion, without prejudicing its right to take further action.

N Thomas

INSPECTOR