
Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/N5090/C/19/3242178

Land at 53 Ridge Hill London NW11 8PR

- 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 A Malik (Metro Properties (London) Ltd) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1151/19, was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the use of outbuilding as 2 self-contained residential units.
 - The requirements of the notice are:
 - 1 The cessation of the use of the outbuilding as self-contained dwellings
 - 2 Permanently remove one toilet and bath and shower facilities from the outbuilding
 - 3 Permanently remove all kitchen units, sinks, cookers and food preparation areas from the outbuilding.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (e) and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Metro Properties (London) Ltd against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal form cites two grounds of appeal (f) and (g), however the appellant asked to add two further grounds of appeal (c) and (e). The Council has had the opportunity to provide comments on all four grounds of appeal.

Whether the Notice is a Nullity

4. The appellant says that the Council has not complied with the regulations because it did not include required information in its covering letter which was sent to those served with the notice. On this basis the appellant considers the notice to be a nullity. The Council considers that it has provided the necessary information to meet the regulations.
5. The regulations require that an explanatory note accompany every copy of a notice when served giving prescribed information as to the right of appeal. Whilst in this case this information is not in the form of a separate note it is

- contained or accessible via the letter which the Council served on the appellants and its attachments and references.
6. Part 2(5) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the 2002 Regulations) sets out information to be provided by the Council. This includes copies of sections of the Town and Country Planning Act 1990 (the Act). The relevant sections are referred to in the covering letter produced by the Council and a link provided to them so they can be viewed online.
 7. It is clear from the Council's letter that there is potential for the references to be out of date and there is no advice to people who do not have access to the internet. The appellant says that the requirements of Part 2(5) cannot be met by electronic means and that a hard copy of the relevant sections of the Act must be provided. These represent shortcomings in terms of the requirements of Part 2(5) of the 2002 Regulations in terms of the provision of the sections of the Act.
 8. The Annex which is attached to the notice sets out the right of appeal and the date by which the appeal should be made. It also references the information sheet by the Planning Inspectorate which was also provided. The cover letter refers to the action which is required to be taken if an appeal is to be submitted in terms of specifying the grounds and facts relied upon. This information meets the requirements of Part 2(5)(a)(ii) and Part 2(5)(b) of the 2002 Regulations.
 9. The appeal was submitted in time and in the correct format, albeit that additional grounds have been added. It follows that the appellant has not been disadvantaged by any shortcomings in the way in which the necessary information was provided by the Council. In terms of the notice itself the appellant has not provided any other argument to suggest that it is otherwise than clear on its face and to this end it does not constitute a nullity.
 10. A nullity occurs when a notice is missing some vital element and so is defective on its face. The appellant has exercised his right of appeal under ground (e) which is the route available to him to attack the notice on the basis of service. If successful, this would result in the notice being quashed but it does not make the notice a nullity.

Reasons

Ground (e)

11. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required. Section 172 (2)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) requires that a copy of an enforcement notice be served (a) on the owner or occupier of the land to which it relates and (b) 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.
12. The appellant says that the notice should have been served on the occupants of the outbuilding which he describes as Flat 6 and Flat 7. In response to this point being raised the Council has provided the residents of the outbuilding (the additional parties) with a copy of the notice under cover of a letter dated

- 19 March 2020. Within the covering letter to them, the Council advises that there is a right of appeal and that this has already been exercised.
13. The Council also invited the additional parties to comment on the grounds of appeal or to introduce new grounds, including ground (a). The copy of the notice, which was sent to them, although dated 19 March 2020, states that the notice takes effect on 2 December 2019. Because an appeal has to be made before the notice takes effect, contrary to the Council's invitation, the opportunity for the additional parties to appeal was not available to them.
 14. Under paragraph 176(5) of the Act I may disregard the fact that a person who should have been served with the notice was not served if neither the appellant nor that person has been substantially prejudiced by the failure to serve him. In this case the notice was served on the owner of the property and it is clear from the tenancy agreement provided by him that the appellant is also the landlord of the property.
 15. In addition to the landlord the Council also served the notice on a named occupier, the 'owner' and the 'occupier' of 53 Ridge Hill. There is however no evidence that the occupiers of the outbuilding received a copy of the notice by these means and there is a further person named on the tenancy for Flat 6 who the additional parties say was not sent the copy notice.
 16. The question is whether or not the service on the landlord, the owner and the occupier in the first instance was sufficient to ensure that the occupiers of the outbuilding were not substantially prejudiced. In this case there is no evidence to suggest that the occupiers of the outbuilding were aware of the enforcement notice having been issued in October 2019. On this basis they have been denied the opportunity to lodge an appeal themselves. Although they may not have submitted any additional arguments in respect of the grounds of appeal which are before me, crucially they have not been given the opportunity to appeal under ground (a) which would have allowed the merits of the development to be considered.
 17. The additional parties have indicated that they wished to appeal under ground (a) and they could have reasonably advanced an argument under this ground, which is not already part of the appeal. On this basis the appropriate course of action is for me to quash the notice because the additional parties have been substantially prejudiced.

Conclusion

18. For the reasons set out above the appeal under ground (e) succeeds and the notice is quashed.
19. On the basis that the notice is quashed for reasons relating to service it is not necessary for me to consider the other matters raised by the appellant under ground (e) or the other grounds of appeal.

Sarah Dyer

Inspector