



Appeal Decision

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal Ref: APP/A5270/C/19/3241295

85-87 The Broadway, Southall, Middlesex UB1 1LA

- 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 Zafar Khan against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered EN190435CU, was issued on 15 October 2019.
- The breach of planning control as alleged in the notice is the erection of a rear roof extension, installation of metal railings on the flat roof of the first floor and the material change of use of the first and second floor of the property to six self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the first and second floor as six self-contained flats;
 2. Remove the kitchen and drainage connections from the four self-contained flats at the first floor;
 3. Remove the bathroom and drainage connections from the four self-contained flats at the first floor;
 4. Remove all internal partitions, doors and locks that facilitate the use of the four self-contained flats at the first floor;
 5. Remove the metal railing on the first floor flat roof;
 6. Remove the rear dormer roof extension; and
 7. Remove all resultant debris from the premises.
- **Or**
 1. Cease the use of the first and second floor as six self-contained flats;
 2. Amend the first floor to that specified in the plans approved under Council planning application reference 185692FUL;
 3. Remove the metal railing on the first floor flat roof;
 4. Remove the rear dormer roof extension; and
 5. Remove all resultant debris from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by St Albans City and District Council against Mr Jon Meredith. This application is the subject of a separate Decision.

Procedural matter

3. For the avoidance of doubt, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an appeal on ground (b). Upon review of the appeal and the submissions from the Appellant and the Council I considered that a logical decision on the appeal could be reached without the need for a scheduled site visit. I have therefore considered the appeal on this basis.

Reasons

4. Planning permission was granted on 31 December 2019 (185692FUL), for the 'Conversion of first floor commercial property into two self-contained residential units; internal and external alterations, including changes to front and rear elevations, fenestration and provision of rear access door'.
5. The appellant has advanced the appeal on ground (b). However, the information that has been provided to support their appeal is limited. The Enforcement Notice Appeal Form refers to the grounds and facts, with supporting documents said to follow in the post. The enforcement notice and plan were received together with an email dated 18 December, with a further email dated 24 June 2020, which gives limited additional information. No further statements, grounds or facts have been received.
6. The gist of the appellant's case is that the previous planning application took into consideration the Council's guidelines, with regard to space sunlight and views and should therefore not have been refused and the enforcement notice should not have been issued. These are matters that more correctly relate to the merits of the development and would be considered if an appeal under ground (a) had been made.
7. However, no appeal under ground (a) has been made. Consequently, the appeal is only proceeding on ground (b), that the matters alleged in the notice have not occurred. This is known as one of the legal grounds and therefore the onus of proof lies with the appellant.
8. In the email dated 24 June, the appellant asserts that the wording of the notice is incorrect and considers that it should have distinguished between the flats located at first and second floors. The appellant then refers to existing applications that relate to 4 flats at first floor, and not being given the opportunity to apply for the loft flats and that these and the railings were included in the notice without warning. However, no additional evidence is provided to support their case.
9. The Council have provided evidence that sets out details of the various site visits that have been made to the property since 8 March 2019. It is clear from their evidence that the first visit was carried out on 27 March 2019, with the second on 30 May 2019. For each occasion copies of the officers site visit notes and related photographs have been provided. I have also been provided with details of a Building Control Application, and site visit notes and photographs following a visit by a Council Tax Officer, on 26 February 2019.

10. The plans provided by the Council show that each of the six units had a bedroom, living room, a kitchen with a cooker and a range of storage cupboards, and a bathroom with a toilet, wash basin and bath. The basic amenities are therefore available in each flat for the exclusive use of its occupants.
11. Accordingly, it is clear from the Council's evidence, that the first floor had been converted into four self-contained units, on 8 March 2019. Moreover, the roof extension and two further self-contained flats, and the railings had been erected to the edge of the flat roof by 27 March 2019. I have not been provided with any evidence by the appellant to demonstrate that the Council's version of events is inaccurate or otherwise untrue. Consequently, I find that on the balance of probability, the development had occurred, prior to the issue of the enforcement notice on 15 October 2019. The appeal on ground (b) therefore fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR