



Appeal Decision

Site visit made on 11 August 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/T5150/C/20/3251043 40 Meadow Garth, London NW10 0SJ

- 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 Dr Abdulla Kaliah against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 9 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to two flats.
 - The requirements of the notice are:
 - STEP 1 Permanently cease the use of the premises as two flats.
 - STEP 2 Remove all kitchens, except ONE, from the premises.
 - STEP 3 Remove all bathrooms, except TWO, from the premises.
 - STEP 4 Remove all partitions, doors, facilities, fixtures and fittings associated with the unauthorised use 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)(c), (d), (f) and (g) 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.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appellant has asked that I consider his planning application from 2015 including the matter of its disposal. However, the only appeal before me for this site is against the enforcement notice referred to in the heading above. The Council's consideration and disposal of the appellant's planning application and his grievances about the behaviour of the Council are matters for the appellant to pursue with the Council, if appropriate.

Reasons

The ground (c) appeal

3. Planning permission is required for the appeal development under section 55(3)(a) of the 1990 Act. In 2015 the appellant applied for planning permission for the conversion of the appeal building into two self-contained flats. The appellant has been under the misapprehension that his planning

application was granted by the Council and his appeal on ground (c) is made on this basis. However, the evidence indicates his planning application was in fact disposed of under Article 40(13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Accordingly, in the absence of any evidence that planning permission exists for the appeal development, the appeal on ground (c) fails.

The ground (d) appeal

4. In general terms, for success on ground (d) in an appeal concerning the creation of new dwellings, the appellant must demonstrate that prior to the issue of the notice there had been continuous use of the breach alleged for 4 years beginning with the date of the breach. The burden of proof is on the appellant in a ground (d) appeal. The decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities.
5. The appellant states the change of use took place when he requested a change of address for the property on 30 July 2015. However, in correspondence dated 19 December 2019 the appellant states he has been living in one flat since November 2015 and the other flat has been empty "all the way though". This is confirmed by his statement where the appellant says he occupied one flat and the other "remained empty".
6. The evidence indicates Barclays Bank instructed surveyors to value the flats, which was done on 17 November 2015. At that time it is said the appellant was living in one flat and the other was unoccupied. Considering the above points, there is no evidence the breach of planning control alleged in the notice, ie the use of the premises as two flats, has been carried out continuously for the relevant immunity period under section 171B(2) of the 1990 Act ie 4 years.
7. My attention has been drawn to TV licensing records, Royal Mail records and receipts for construction works. Whilst these may indicate when works of conversion took place none of these demonstrate continuous usage of the property as two flats for 4 years.
8. Having considered all of the evidence provided I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the use alleged has been carried out continuously for 4 years prior to the issue of the notice. Accordingly, the appeal on ground (d) fails.

The ground (f) appeal

9. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is stated explicitly in Schedule 4 of the notice.
10. The appellant considers that the items the notice requires are removed were built pursuant to an earlier planning application, (Ref: 14/1639) and so the Council has no right to request the removal of these items. However, from the evidence available to me, that planning permission was for the erection of a single storey side to rear extension. It did not authorise works for the conversion of the property into two flats.

11. Moreover, in any event, under section 173(5) of the 1990 Act, a notice directed at a material change of use, as is the case here, 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 not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place. This is the situation here ie the requirements relate to items that facilitate the unauthorised use and so the notice may require their removal.
12. I conclude no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

The ground (g) appeal

13. The requirements of the notice are relatively straightforward. So I am satisfied the time period specified in the notice includes what should reasonably be allowed to comply with the requirements of the notice, even taking into account the public health emergency relating to COVID-19. Accordingly, the appeal on ground (g) fails.

Other Matters

14. My attention has been drawn to planning merits of the case including the floor area of the flats, their appearance, and the need for additional housing in the area. But as no fee has been paid for the ground (a) appeal I am not able to consider any such arguments in favour of granting permission for the development, including those above, issues relating to the health or hardship of the appellant or the effect of this case on his reputation.

Conclusion

15. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR