



Appeal Decision

Inquiry Held on 13 October 2020

Site visit made on 14 October 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/N5090/C/19/3231033

Land at 35 Dartmouth Road, London NW4 3HY

- 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 Ms Sarah Heinonen against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 14 May 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the sub-division of the property into two self-contained flats'.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats.
 2. Permanently remove from the property all but one kitchen including kitchen units, sinks, cookers and food preparation areas.
 3. Permanently remove from the property the partition walls and doors behind the main front door at ground level that divides the ground floor from the upper floors.
 - 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), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion in paragraph 3 of the words 'sub-division of the property into' and the substitution thereto of the words 'material change of use to'. Subject to these corrections the appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

2. The appeal forms were completed by the owner's brother. He stated at the Inquiry that he was acting on behalf of his sister, the owner of the property, in effect, as her agent. It was agreed that following the Inquiry the Planning Inspectorate would contact the owner and seek written clarification of this matter. The Inquiry was adjourned, after presentation of the cases by both parties and a third party was concluded, to allow for this correspondence to take place. I am satisfied from the letters and emails received that Ms S Heinonen had instructed her brother to act on her behalf in this appeal. The appellant is therefore Ms S Heinonen and her brother has acted on her behalf.
3. The Inquiry was closed in writing on 27 November 2020.
4. All evidence at the Inquiry was under affirmation.

The Notice

5. The allegation does not refer to the act of development i.e. a material change of use. It was agreed at the Inquiry that a correction of the allegation to refer to a material change of use would not result in prejudice or injustice to either party. I will therefore correct the Notice to refer to the act of development.

Appeal on ground (e)

6. A ground (e) appeal is a legal ground of appeal. It is for the appellant or relevant party to provide relevant facts to show that the Notice has not been served as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) of the Act states that a copy of the enforcement notice shall be served on (a) the owner and on the occupier of the land to which the notice relates; and (b) on any other person having an interest in the land which, in the opinion of the authority is materially affected by the notice.
7. The appellant pursued a ground (e) on the basis that the Notice was not served on any particular individual as it was only addressed 'dear sir/madam' and did not address anyone with a specific interest in the land. It was stated in evidence that the appellant came across the Notice at the appeal property and it was addressed to the 'owner/occupier'. She did not receive any copy of the Notice addressed to her.
8. The Council provided a schedule of those on whom the Notice was served. This included the appellant at the address recorded on the Land Registry Document and the owners/occupiers of the property and flats. I am satisfied that service of the Notice on the appellant complied with the requirements of the Act, and it is clear that the appellant was aware of the Notice and was able to lodge an appeal. The appellant has not, in my view, been substantially prejudiced.
9. However, the Land Registry records a 'unilateral notice in respect of a lease dated 1 December 2016 for a term of 7 years'. The beneficiary is stated to be Trentpeak Ltd with a date of 10 January 2017. The Council accepted that Trentpeak Ltd had an interest in the land and should have been served with the Notice. The schedule of those served with the Notice does not include Trentpeak Ltd.
10. While I accept that there was service of the Notice at the property addressed to 'the Owner', it is likely that this is the letter that Ms Heinonen picked up at the property. The representative of Trentpeak Ltd confirmed he became aware of the Notice and the Inquiry as a result of the site notice displayed near the site for the notification for the Inquiry and that led to him to attend the Inquiry.
11. The Council considers that due to the close relationship of the appellant, her brother and the representative of Trentpeak Ltd it was likely that Trentpeak Ltd were aware of the Notice.
12. In my view, it is not satisfactory to seek to demonstrate adequate service of a Notice by reference to the likelihood of one party informing another. The relationship of the appellant and her brother to those at Trentpeak Ltd was not demonstrated to have been known at the time of the service of the Notice. Moreover, Trentpeak Ltd had an interest in the Land and should have been served with the Notice.

13. The Director of Trentpeak Ltd stated that had he had knowledge of the Notice at the time of service he would have sought legal advice and pursued an appeal. He was responsible for the property and managing the tenants and he considers he has all the relevant evidence to support an appeal. He was unable to present a case due to the limited time he had been aware of the Notice and the appeal. In addition, it is likely that Trentpeak Ltd would have sought to pursue an argument under ground (a) and that ground had lapsed because of the non-payment of fees by the appellant.
14. Taking all these matters into consideration, I am unable to conclude on balance that all those with an interest in the land have been served properly. Section 176 of the Act allows me to disregard the fact of non-service if neither the appellant nor the person not served has been substantially prejudiced as a consequence. Trentpeak Ltd was not served with the Notice and this is accepted by the Council. In my view, Trentpeak Ltd has clearly been substantially prejudiced by not being able to appeal the Notice.
15. I conclude that Trentpeak Ltd has been substantially prejudiced by this non-service of the enforcement notice and that this is not a case when I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeal under ground (e) therefore succeeds. I will exercise the powers transferred to me accordingly and the enforcement notice will be quashed. In these circumstances the appeal under grounds (c), (d), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Nicholas Heinonen	Acting on behalf of the appellant
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Brett of Counsel	Instructed by HB Law
He called	
Ms Sade Olokodana	Principal Planner (Deputy Manager), Planning
MSc MRTPI	Enforcement Section, London Borough of Barnet

INTERESTED PERSONS:

Mr Omiros Mavrounitois	Director of Trentpeak Ltd
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