



Appeal Decision

Site visit made on 2 December 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/Y5420/C/20/3257935

14 Perth Road, London N22 5PX

- 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 Manjeet Singh against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 31 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to 6 self-contained flats, the construction of a rear roof extension and the construction of a raised platform to the rear at ground floor level.
 - The requirements of the notice are to:
 1. Demolish the rear roof extension in its entirety.
 2. Demolish the raised platform to the rear of the ground floor extension in its entirety.
 3. Cease the use of the property as self-contained flats.
 4. Remove from the property all but one of the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the property as self-contained flats.
 5. Remove from the property all but one supply of electricity, gas and water.
 6. Remove from the site all debris arising from compliance with steps 1, 2, 3, 4 and 5.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) (e) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be varied by deleting "Six (6) months" and replacing it by "Twelve (12) months" as the time for compliance in paragraph 5 due to the appeal succeeding under ground (g).
2. Subject to this variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Manjeet Singh against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

The enforcement notice

4. The appellant says that the notice refers to a "rear roof extension", and requires its demolition, but says that there are 2 rear roof extensions at the property and so he could not possibly know which one is the subject of the enforcement action to which the notice relates. However, I do not agree that the notice is unclear in this respect. The ground floor rear extension is not a roof extension, notwithstanding that it has a roof, and no reasonable person

would interpret it as being such. The notice unambiguously attacks the dormer extension of the roof of the property, a clarity which is reinforced by reference to the dormer in section 5 of the reasons for issuing the notice.

Ground (e)

5. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act.
6. Section 172(2) requires that a copy of an enforcement notice shall be served – (a) on the owner and on the occupier of the land to which it relates; and (b) on any person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
7. There is no dispute between the parties that the appellant was served with a copy of the notice as owner of the property, as was the mortgage lender with an interest in the property. The appellant argues that the tenant occupiers were not properly served.
8. Notwithstanding that the appellant has submitted statements from 2 tenants alleging that they did not receive copies of the notice, and stating that they would have appealed under ground (a) on the basis that planning permission should be granted, I place significant weight on the signed statement of the Council officer evidencing that the occupying tenants of all 6 units of accommodation were served with copies of the notice by leaving the documents (under cover of 6 individual letters in envelopes marked “Important – this Communication affects your Property”) at the premises by placing them through the letterbox under Section 329(1)(b) of the Act.
9. The appellant’s response to the Planning Contravention Notice (PCN) identified the units as numbered bedsits rather than flats, and supplied the names of all tenants. Notwithstanding, the Council served the copies of the enforcement notice on unnamed occupiers and referred to flat numbers (“The Occupiers, Flat 1, 14 Perth Road”, “The Occupiers, Flat 2, 14 Perth Road” and so on). The appellant argues that this was improper service, particularly as the tenants had an interest in the premises and their names were known for service purposes. However, even were I to take a view that such addressing of the copies was not fully in accordance with sections 172 and 329 of the Act, I consider that it was reasonable to have expected the tenant occupiers of the correspondingly numbered units to have understood that the documents left at the premises were intended for them. Further, while there was one notice copy left for the occupiers of each unit it is reasonable to have expected both occupiers to become aware of its contents, where occupancy was shared, as it was addressed to both. Therefore, I do not find that anybody was substantially prejudiced in the way the notice copies were addressed and served for the purposes of section 176(5) of the Act nor were human rights violated.
10. Also, the appellant has said that the copies of the notice were not accompanied with an explanatory note including a copy of sections 171A, 171B and 172 to 177 of the Act or a summary thereof as required by section 173(10) of the Act and SI 2002/2682. The Council has provided evidence of explanatory material it says was provided with the notice copies served. The appellant appears to accept this in relation to other recipients, as do I, but not in respect to the copy of the notice he received. However, as the appellant has been able to make a

valid appeal on multiple grounds, I do not consider that he was prejudiced even were explanatory materials not included with the 3 copies of the notice that were served on him at 3 separate addresses.

11. The appellant draws my attention to an email sent by the Planning Inspectorate in relation to an earlier unrelated appeal involving an entirely separate appeal property¹. Through that email, it appears that the appointed Inspector in advance of an Inquiry made some enquiries of the parties in relation to the sufficiency of explanatory material accompanying the notice. The notice was withdrawn and the appeal was not determined. Consequently, the Inspector did not make a determination that the notice was a nullity and in any respect those enquiries, and the Council's withdrawal of the notice in that appeal, do not affect my conclusion in this appeal based on the reasons I have given above.

12. For the above reasons, the appeal under ground (e) does not succeed.

Ground (b)

13. For this ground to succeed, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred.

14. The appellant has provided no substantive evidence that the property has not been used as 6 self-contained flats, or that a rear roof extension and raised platform to the rear have not been constructed. I saw that each of these were in existence at the time of my site visit, and the Council's evidence is that officers observed the same on 18 February 2020.

15. The burden of proof is on the appellant to show that the matters have not occurred, and accordingly, in these circumstances the appeal under ground (b) fails.

Ground (d)

16. For success under this ground the appellant must satisfy me on the balance of probabilities that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.

17. The appellant argues that, in respect of the alleged material change of use of the top floor within the roof space to a self-contained flat, it was too late for action to be taken by the Council at the time the notice was issued. Section 171B(2) of the Act provides that no enforcement action may be made in relation to such changes of use after the end of the period of 4 years beginning with the date of the breach. Tenancy agreements from 2003 to 2012 have been provided referring to occupancy of the top floor flat (room 6) and I also note references to cooking facilities. The appellant is cited as the landlord in each agreement.

18. However, in answer to a question in the PCN as to how the premises had been used before the appellant's stated use as 6 bedsits, he said "*The property has been empty since February 2017 as we were refurbishing the property which partially completed May 2019 and fully completed in Feb 2020. Prior to the refurbishment works two rooms were rented with shared facilities*". There is no mention by the appellant of the historic use of the space within the roof as a

¹ APP/Y5420/C/18/3209139, 28 Whymark Avenue, London N22 6DJ

self-contained flat (or any use at all of any part of the property as separate self-contained dwelling(s)), which I would have expected based on the appellant's appeal submissions before me that (save for a period of refurbishment) there had been continuous use as such as far back as 2003. This does not amount to the precise and unambiguous evidence which well-established planning law² indicates is necessary for me to accept the appellant's version, and I am unpersuaded on the balance of probabilities that the top floor flat was immune from enforcement action due to the passage of time at the time the Council issued the enforcement notice.

19. Accordingly, the appeal under ground (d) fails.

Ground (f)

20. For an appeal to be successful under this ground, I must be satisfied that the steps required in the notice to achieve its purpose are excessive.

21. It is clear from the way the requirements of the notice have been drafted that its purpose is to remedy the breach of planning control rather than injury to amenity. It does this by ceasing the unauthorised use and restoring the land to its condition before the breach took place.

22. It is a well-established legal principle that where the purpose of the notice is to remedy the breach of planning control, then in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f) and the notice cannot be varied to attack its substance. A notice requiring the recipient to return the land to its condition before the breach took place cannot be turned into a notice requiring something less by reliance on the power available to an Inspector under s176(1) of the Act to vary the terms of the notice.

23. Accordingly, as there is no ground (a) appeal, it is not possible for me to consider the appellant's planning arguments proposing changes to the size and design of the rear roof extension and raised platform, or the existence of any permitted development "fall-back positions" in relation to these developments. In order to remedy the breach of planning control, I agree with the Council that the appropriate requirement in relation to each is to demolish it and remove the materials. It should also be noted that permitted development rights do not apply in the case of unlawful development and so it is not excessive for demolition to take place in its entirety.

24. In remedying the breach of planning control, the notice is also not excessive in requiring discontinuance of the unauthorised use and the removal of works integral to and facilitating it. As multiple kitchens in the appeal property are part and parcel of the unauthorised use, and notwithstanding the appeal decision cited by the appellant³, it is appropriate to restore the configuration of a dwellinghouse which would ordinarily include one kitchen. I have seen no evidence that the appeal property included 2 kitchens before the breach of planning control, including for religious reasons, and as discussed above I am unable to consider issues of planning merits.

25. Accordingly, the appeal under ground (f) fails.

² F W Gabbittas v SSE and Newham LBC [1985] JPL 630

³ APP/N5090/C/19/3230596

Ground (g)

26. For an appeal to succeed under this ground, I must be satisfied that the period for compliance in the notice falls short of what reasonably should be allowed.
27. As compliance with the notice will involve the need for occupiers to seek alternative accommodation, and also taking into account changes to the length of notice that must be given to tenants amid the current pandemic, I consider that 6 months is too short a time for the current use of the property to cease and for all the required works to take place.
28. The appellant has requested that the compliance period be varied from 6 months to 24 months. However, in my judgement this would be a disproportionate period for the unlawful development to remain and I consider that 12 months is a reasonable time in which all requirements can be met.
29. The appeal therefore succeeds on ground (g) and I will vary the notice accordingly.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed except to the limited extent on ground (g). I shall uphold the enforcement notice with a variation.

Andrew Walker

INSPECTOR