



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/G5750/C/19/3233211

Land at 19 St Clair Road, Plaistow, London E13 9DU

- 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 Mohibul Haque against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 14 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of a ground floor extension to a self-contained unit of residential accommodation.
 - The requirements of the notice are
 1. Cease the use of the ground floor extension (as shown in the approximate location edged in blue on the attached plan) as a self-contained unit of residential accommodation.
 2. Remove from the property all but one kitchen, plus all internal dividing doorways and partitioning that solely facilitates the use of the ground floor extension as a self-contained unit of residential accommodation.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)[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 is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to this correction the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers, that is, without a site visit, without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and the points in dispute.
4. The parties were initially contacted in November 2020 and the Council confirmed that there was no necessity in this instance for a site visit to be made. Contact with the appellant's agent has been attempted several times,

however no response has been received and he has been advised that the appeal will be determined on the basis that a site visit is not necessary.

5. The appeal has not been made under ground (a) therefore the merits of the appeal scheme are not before me and I am unable to give consideration as to whether deemed planning permission should be granted.

The Notice

6. The plan attached to the notice identifies the land to which the notice relates in red and the approximate location of the ground floor extension in blue. However, the plan of 'The Annexe' which is embedded within the Council's delegated report dated 28 May 2019 identifies a much larger area in use as a self-contained residential unit. This plan also appears to coincide with the single storey side extension approved by the Council under reference 17/04218/HH. I invited the Council to correct the plan and it has provided a revised plan which shows the larger area.
7. I also sought the comments of the appellant but there was no response from him.
8. I am able to correct the notice through substitution of the plan so long as the matter has been canvassed with the parties, which it has, and where the amendments would not cause injustice. In this case the land to which the notice relates is not changed and the notice is clear in relation to which part of the house is being used as the self-contained dwelling unit. As such no injustice would arise if I were to make this correction.

Ground (e)

9. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required.
10. Section 172(2) 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 and on the 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.
11. The appellant argues that the Council failed to serve the notice in the correct manner because it did not contact the owner of the property prior to serving the notice. Notwithstanding whether or not the owner was contacted in advance, this is not a requirement of the Act.
12. The Council has confirmed the names and addresses of the parties on whom it served the notice, which include the name and address of the appellant. There is no evidence before me to show that the owner of the premises was not served with the notice. The arguments made by the appellant relate to the time before the notice was served.
13. On the basis of the evidence before me, I find that the notice was served in accordance with the Act and consequently the appeal under ground (e) does not succeed.

Ground (f)

14. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
15. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use of the extension as a self-contained residential unit to cease and works to be carried out which are associated with that use, I consider the purpose is to remedy the breach of planning control.
16. The appellant appears to have misread the requirements of the notice and thinks that he is required to demolish the whole building. That is not what the notice requires as pointed out by the Council.
17. The appellant says that the Council could have simply required the removal of what he describes as the kitchen provision. He makes no reference to the removal of internal doorways and partitioning and does not argue that those works exceed what is necessary to remedy the breach. On this basis, notwithstanding the appellants view that the issue could have been resolved without recourse to the notice, he has not shown that there is a viable alternative to full compliance with the requirements of the notice or that the requirements exceed what is necessary. For these reasons the appeal fails on ground (f).

Ground (g)

18. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is unreasonable because it should depend on the circumstances of the appellant and be agreed in writing between the Council and the appellant. He considers a more reasonable period as being between four and six months but does not explain why such longer period is necessary in view of his personal circumstances.
19. Section 173(9) of the Act requires the notice to specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. There is no scope for the compliance period to be a matter of agreement between the parties. An appeal under ground (g) provides the means by which the appellant can challenge the length of time he has to comply with the notice.
20. The Council is of the view that the compliance period is adequate because the requirements of the notice do not involve major structural works or extensive demolition. In any event the Council also points out that it has the power to vary the period of compliance in appropriate circumstances.
21. There is no substantive evidence to demonstrate why the compliance period falls short of what should reasonably be allowed. Therefore, I find that the three-month compliance period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Sarah Dyer

Inspector