
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/U5360/C/20/3250086

Land at 94 Manor Road, Hackney, London N16 5BN

- 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 Shalom Raphael Canzee against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 5 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land (within the red line plan around rear yard) from a residential garage (Class C3) to a car-breakers yard, vehicle fitting place and vehicle spraying place (Sui Generis).
 - The requirements of the notice are:
 1. Cease use of the rear garage building as a car-breakers yard.
 2. Cease the use of the rear garage building as a vehicle fitting place.
 3. Cease the use of the rear garage building as a vehicle spraying place.
 4. Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the property to the condition they were before the unauthorised extensions were constructed.
 5. Remove all waste, materials, equipment, and debris from the property resulting from compliance with the requirements in paragraphs 5(1) to (4) of this notice.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(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. It is directed that the enforcement notice is varied by the deletion of the words in step 4, paragraph 5 of the notice and the substitution of these words in their place "Make good all damage to the property resulting from the cessation of the unauthorised use and restore the relevant parts of the property to the condition they were before the unauthorised use took place." Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the

facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

4. The appeal relates to a detached garage building at the rear of a garden serving an end of terrace residential property fronting Manor Road. As the property is situated on the corner, there is a separate vehicular access to the garage building from Heathland Road.

The ground (f) appeal

5. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Town and Country Planning Act 1990 (the Act) and they are to remedy the breach of planning control (S173(4)(a)) or to remedy injury to amenity (S173(4)(b)). In this case the Council require the unauthorised commercial use to cease. The purpose of the notice is therefore to remedy a breach of planning control.
6. In making an appeal on ground (f), the onus is on the appellant to specify any lesser steps that would remedy the breach of planning control. In this case there are no Grounds and Facts to accompany the appeal and there is no Statement of Case from the appellant, which might specify any lesser steps. The notice, as issued, requires the cessation of the uses taking place and the making good of the building following the cessation of the uses. I find these words specify what has to be done to remedy the breach of planning control and in the absence of any lesser steps, the appeal on ground (f) fails.
7. However, it is necessary to vary the wording of the requirements, in particular step 4, as this refers to unauthorised extensions. The allegation describes a material change of use and there is no mention of operational development. There is no mention of it either in the reasons for issuing the notice, the Council Officer's "delegated" report or the Council's Statement of Case. It appears that the wording for step 4 is a "standard" paragraph that has been imported from elsewhere rather than being specifically drafted to address the allegation.
8. As such, I shall direct that step 4 is varied so as to exclude any reference to unauthorised extensions when making good the property, following the cessation of the use.

The ground (g) appeal

9. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the time necessary to carry out those requirements. In making an appeal on ground (g), the onus is on the appellant to suggest a different compliance period. However, as with the ground (f) appeal, the appellant has made no submissions.
10. In cases involving business operations, it is necessary to weigh the interests of the business against the harm caused by the activities the subject of the notice. The appellant appears to run a small business that previously involved visiting the homes of clients to carry out repairs and other work on cars. This

business is now run from what was a domestic garage. The number of employees is not known. The Council state that the unauthorised use was brought to their attention by neighbours disturbed by the operation of the use.

11. Taking these matters into account, I find that one month is a reasonable period to cease the use, having regard to the scale of the operation and the on-going harm caused by the use. The appeal on ground (g) therefore fails.

Conclusion

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

D Fleming

INSPECTOR