



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/A5270/C/20/3265290

Land Rear of, 181 Noel Road, Acton, London W3 0JJ

- 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 Malek El-Houry against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 2 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey detached dwelling ("the Unauthorised Development").
 - The requirements of the notice are:
 1. Cease the use of the building as a dwelling.
 2. Remove the kitchen facilities including cupboards, worktops, sinks, cooker, hob and drainage connections from the dwelling,
 3. Remove the bathroom facilities and drainage connections from the dwelling.
 4. Demolish the dwelling in its entirety.
 5. Remove all debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is six months.
 - 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.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Malek El-Houry. This application is the subject of a separate Decision.

Preliminary Matters

3. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the grounds of appeal and points in dispute.
4. In their statement the appellant stated that the dwelling has been used as an annexe by a disabled relative since its completion. This is an argument that is more pertinent to an appeal on ground (b) however, that ground has not been pleaded. In any event, in the absence of substantive evidence regarding the use and considering the description given by the appellant in their retrospective

planning application¹, if an appeal on ground (b) had been made it would have failed.

Background

5. An application for planning permission for the retention of the dwelling was submitted on 1 October 2010 and subsequently refused by the Council on 11 December 2020. Since the application had not been determined when the Enforcement Notice was issued the appellant, in accordance with section 174(2A) of the Act, was not permitted to make an appeal on ground (a).

The appeal on ground (f)

6. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
7. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
8. In this case the enforcement notice requires the use of the building as a dwelling to cease, that the dwelling be demolished and all resulting debris be removed. As such, I find its purpose is to remedy the breach of planning control. That purpose can only be achieved by the cessation of the use and the demolition of the dwelling.
9. The appellant suggested a lesser step to require only the use as a dwelling to cease, on the basis that the Council identified no harm in respect of the building's appearance and since the building could be used as an annexe or some other form of ancillary use for occupants of the main building (subject to planning permission). However, this is an argument which relates to planning merits.
10. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). Similarly, the appellant's misgivings about the Council's handling of the case and that there were no objections to the planning application are matters which have no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
11. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

12. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that they consider six months to be an adequate period however, 12 to 18 months would be required in the scenario where the appeal is determined prior to consideration by the Council

¹ 203958FUL

of any planning applications for an alternative use and subsequent appeals (where relevant).

13. The purpose of the time period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. I consider the period of six months for the cessation of the use and the demolition of the dwelling, as specified in the notice, is proportionate to the breach of planning control that has occurred.
14. Whilst the appellant stated that he intended to appeal the Council's decision to refuse planning permission, there is no evidence that such an appeal has been made. Similarly, the Council stated that there had been no applications submitted for alternative uses.
15. In any event, six months is an adequate period in which the appellant could submit an application/s for planning permission for an alternative use/s. Furthermore, as the Council pointed out, should there be a demonstrable need, they have powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.
16. Accordingly, the appeal on ground (g) therefore fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR