



Appeal Decision

Site visit made on 12 October 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Appeal Ref: APP/N5090/C/19/3229982

68 Brent Terrace, London NW2 1BY

- 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 by Mr A Schwebel against an enforcement notice issued by the London Borough of Barnet Council.
 - The enforcement notice ref. ENF/0285/19 was issued on 25 April 2019.
 - The breach of planning control alleged in the notice is:
The use of an outbuilding as a self-contained residential dwelling.
 - The requirements of the notice are to:
 1. Cease the use of the outbuilding as a separate unit of residential accommodation.
 2. Permanently remove all kitchen units, sinks, cookers and food preparation areas from the outbuilding.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is quashed.

Background

2. The appeal property is a two-storey terraced house with a relatively small front area and a rear garden behind which is a common footpath providing back access to all the houses in this long terrace. The appellant's Land Registry title shows that he owns the entire plot including the section of footpath behind his house.

The enforcement notice

3. The appellant argues that the outbuilding is sited on land that does not form part of the curtilage of no. 68 Brent Terrace as shown on the plan attached to the notice. As such the enforcement notice should be regarded as invalid.
4. His reason for saying this is that the outbuilding is sited on a piece of fenced land that lies on the farther side of the common footpath. I understand that this piece is part of an extensive area of disused sidings belonging to Network Rail, although it is separated from the larger area by a steel paling fence.

5. He goes on to say that he fenced this piece in the mid-1990s, as had owners of several nearby properties, and that he is now owner of by virtue of adverse possession rights acquired over 12 years.
6. The government publication '*Practice Guide 4; Adverse Possession of Registered Land*' advises amongst other things that following introduction of the *Land Registration Act 2002*:
 - adverse possession of registered land for 12 years of itself will no longer affect the registered proprietor's title;
 - after 10 years' adverse possession, the squatter will be entitled to apply to be registered as proprietor in place of the registered proprietor of the land;
 - on such an application being made the registered proprietor (and certain other persons interested in the land) will be notified and given the opportunity to oppose the application,
7. In this case nothing has been adduced to suggest the appellant, as squatter, has applied for registration as proprietor of the land. It follows that the registered proprietor – who I understand is Network Rail – has not had the opportunity to oppose any application.
8. Furthermore, the appellant does not benefit from transitional arrangements following introduction of the 2002 Act, which would require him to have possessed the land for 12 years from October 1991. The appellant says he did not fence off the piece until the mid-1990s.
9. It is my duty to correct any defects of an enforcement notice provided that no significant prejudice would be caused to any party. I note here that it is a fairly common situation for residential garden land to be intersected by a right-of-way. In this case, had the appellant been the proprietor of the land in question, the piece on the farther side of the footpath could have been included on the enforcement notice plan and the description of the land to which the notice relates could have been varied to include land to the rear of 68 Brent Terrace without causing such prejudice.
10. However, given that the appellant is not the owner of the piece – although he occupies it – there would be significant prejudice to Network Rail and possibly other interested parties, who would not have had the opportunity to object to the claimed adverse possession, nor been able to make representations about the enforcement notice and this appeal. In these circumstances I consider it would be beyond my power to make such a correction.
11. Overall it appears to me that the enforcement notice is invalid by virtue of not applying to the piece of land on which the outbuilding stands, and not being correctable. However, this does not affect the Council's ability to issue a new notice and serve it upon Network Rail as owner, the appellant as occupier and any others found to have an interest.

Conclusions

12. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement

notice is invalid and will be quashed. In these circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Stephen Brown

INSPECTOR