
Appeal Decision

Site visit made on 11 January 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/N5090/C/21/3276372

12A Queens Way, London NW4 2TN

- 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 V Singhanian against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 26 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey canopy to the rear of the property.
 - The requirements of the notice are:
 - 1 Demolish the single storey canopy to the rear of the property.
 - 2 Remove all constituent materials from the works listed in 1. above from the property.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e) and (f) 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. The appeal is allowed, and the enforcement notice is quashed.

Procedural Matters

2. The Appeal has only been lodged under grounds (e) and (f). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (g), in so far as they have stated that the period of compliance is too short. Both parties have been given the opportunity to comment on this and therefore, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.
3. I have also dealt with another appeal (Ref: APP/N5090/C/21/3278359) at 12 and 12A Queens Way. That appeal relates to an appeal against and enforcement notice for the use of the property as a large scale (Sui Generis) House in Multiple Occupation (HMO) and is the subject of a separate decision.

The appeal on ground (e)

4. In the legal grounds of appeal, the burden of proof is upon the Appellant, with the standard of proof being the balance of probabilities. The main issue concerning the appeal on this ground under this heading is:

- a) whether copies of the enforcement notice were served as required by section 172 of the Act; and
 - b) if not, whether the appellant, or the person who was not served as required, have been substantially prejudiced by the failure to do so.
5. Section 172(2) of the Act requires that a copy of the 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.
6. With regard to S172(2)(b), any other person with an interest in the land may include mortgagees, tenants, and sub-tenants. It is for the Council to decide who is materially affected, but they risk an appeal on ground (e) if they exercise their discretion wrongly.
7. The appellant states that the notice was not properly served because, the property identified on the plan attached to the notice is 12 and 12A Queens Way, which forms a single planning unit currently in use as a large HMO (12 Queens Way) and ancillary annexe (12A Queens Way). However, the notice has only been served on the owners and occupiers of No 12A and not the owners and occupiers of No 12. Therefore, the appellant argues that not all of the owners and occupiers of the land (both Nos 12 and 12A) have been notified in accordance with Section 172.
8. The Council do not dispute that the owners and occupiers of No 12 have not been served copies of this notice. Instead, the Council state that the rear canopy is for the sole use of the separate appeal site which is that of 12A Queens Way. The Council also state that rear canopy has no connection to the HMO use at No 12 and have submitted a series of annotated photographs, in an attempt to demonstrate this. The Council consider that all interested parties for No 12A who were made known to the Council through official Land Registry details at the time of the creation of the notice, were served and the proof of this fact was recorded on the Schedule of Persons Served.
9. Whilst there are two separate front entrance doors at the front of the property, labelled 12 and 12A, the detailed planning history/details submitted by the Council does not demonstrate that No 12A has been successfully subdivided from No 12 through the grant of planning permission. Indeed, the Council's appeal statement refers to a recently refused planning application for the subdivision of the property to form a separate dwelling¹. I also observed during my site visit that internal access is provided from within No 12 to 12A at both ground floor and second floor level. Furthermore, there is a shared front drive and rear garden, and thus nothing to prevent the rear canopy being shared and used by occupiers of the HMO at No 12. Therefore, based on all of the evidence submitted and from my own observations during the site visit, the layout of the property lends further support to the appellant's contention that Nos 12 and 12A, forms a single planning unit currently in use as a large HMO (No 12) with an ancillary annexe (No 12A).

¹ Council ref: 21/2036/FUL.

10. I also note that for the other appeal on this site², relating to an appeal against and enforcement notice for the alleged use of the property as a large House in Multiple Occupation (HMO), the address shown on the notice is "12-12A Queens Way, London NW4 2TN", and that notice was served on both the owners and occupiers of Nos 12 and 12A. This strongly indicates that both 12 and 12A are connected and in the same use as a large HMO as suggested by the appellant. Furthermore, during my site visit I observed that the bedrooms associated with the large HMO use were predominantly located within the main part of the building labelled No 12, and the Council's comments strongly suggest that copies of the Notice were not actually served on any of the occupiers of No 12.
11. Given the current layouts of the property, the lack of any physical separation in the rear garden, combined with the fact that the canopy is open at the rear, I find that occupiers of No 12 would be able to access and use the canopy extension and thus, are likely to be materially affected by the Notice. I therefore find that the manner in which the notice was served to only the owners and occupiers of No 12A, falls well short of what can reasonably be regarded as its proper service under the provisions of section 172(2) of the Act.
12. As a result, the possibility that some or all of the occupiers of the large HMO at No 12 may not have been aware of the notice and the possible consequences, and so would not have had the opportunity to exercise their right of appeal against it, or made substantive submissions, cannot be discounted. In these circumstances I find that there has been substantial prejudice.

Conclusion

13. I conclude that others have been substantially prejudiced by the nonservice of the enforcement notice and this is not a case when I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeal on ground (e) succeeds and the enforcement notice will be quashed. In light of this finding the Local Planning Authority may wish to issue a new enforcement notice in exercise of their 'second bite' powers under s171B(4).
14. In these circumstances, the appeal on the grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

R Satheesan

INSPECTOR

² Appeal ref: APP/N5090/C/21/3278359.