
Appeal Decisions

Site visit made on 7 December 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal A Ref: APP/G5750/C/19/3238986

Appeal B Ref: APP/G5750/C/19/3238987

Appeal C Ref: APP/G5750/C/19/3238988

Appeal D Ref: APP/G5750/C/19/3238989

Appeal E Ref: APP/G5750/C/19/3238990

Land at 264-266 Neville Road, Forest Gate, London E7 9QN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Adil Naeem, Appeal B is made by Miss Halima Ibrar, Appeal C is made by Mrs Raheela Sonia Raeem, Appeal D is made by Mrs Shaffia Naeem and Appeal E is made by Mr Shahid Naeem, against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 19/00035/ENFC, was issued on 30 August 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of an extension with roof-terrace.
- The requirements of the notice are:
 1. Demolish the extension with roof-terrace (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photographs attached at Appendix 1).
 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeals B, C, D and E are proceeding on the grounds set out in section 174(2) (d) 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 appeals 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.

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

2. Planning permission was granted in 2011¹ for a two storey rear extension at No 264 and a first floor rear extension at No 266. Permission was refused for the use of the appeal site as short term lettings with the inclusion of double storey rear extensions 19/01303/FUL, in August 2019².

¹ Ref 11/00096/HH

² Ref 19/01303

1. The extensions that have been built differ from those that gained permission in 2011. In particular, a single storey element spans the width of the rear of the two properties, with a roof terrace above enclosed by metal railings. It is not therefore the case that the development benefits from the 2011 planning permission, as suggested by the appellants, including in the letter from S Naeem.
2. The appeals are travelling with appeals³ against an enforcement notice alleging the use of the property as short term lets. As some of the submitted evidence relates to both cases I have had regard to it in determining this appeal.

Ground (d)

3. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. In other words, it is claimed that the development is immune from enforcement action, having subsisted for a four year period. To succeed on this ground, the appellants would need to show, on the balance of probabilities, that the development was substantially completed at least four years prior to the date the notice was issued (30 August 2019), that is on or before 30 August 2015. The burden of proof lies with the appellants to make out their case.
4. The appellants have provided various pieces of evidence. A signed letter from Adil Naeem states that he lived at the premises with his family from January 2001 and that building work, including two storey rear extensions, loft conversion and roof terrace with side grills, as well as a full internal refurbishment started in January 2011 and finished on 4 October 2011. A signed letter from Mr M Rahman states that he visited the property on 18 June 2015 and liked the size of the property, referring, amongst other things, to the rear double extensions and the roof terrace on the first floor. He has rented the property since that time and now sublets it to Cottage Residential Ltd for short term lets. A signed letter from Mrs Halima Ibrar states that she has lived at the neighbouring property at No 262 since 2000. The construction work for the rear double storey extensions, loft conversion, roof terrace and inside decoration work started in January 2011 and finished on 4 October 2011. She recalls this as she was disturbed by the construction noise. The property was rented out in March 2017 which Naeem and family moved out in December 2016. The roof terrace has been in place since 2011.
5. Copies of an invoice from Fair Property & Builders for decorating works and laminate floor to a new ground and first floor rear extension dated 6 and 28 September 2011 have been provided. A copy of a Building Control record for the provision of a lighting upgrade and replacement consumer unit for 264 Neville Road has been provided but the extract is undated and does not relate to the rear extension or roof terrace. A letter has been provided from Cottage Residential Ltd but this relates to short term lets and does not assist with regard to the extension and roof terrace.
6. The Council states that aerial photography indicates that the extension with the roof terrace has not been there for the required period, but has not provided any specific details or copies of the photography. They state that the

³ Ref APP/G5750/C/19/3238994, APP/G5750/C/19/3238995, APP/G5750/C/19/3238996, APP/G5750/C/19/3238997, APP/G5750/C/19/3238998

application form for the 2019 application indicated that the works were carried out between 31 March 2017 and 1 May 2017. However, the appellant has stated that those dates relate to minor internal repairs and decoration. The Council has not provided any firm evidence to refute the claims made by the appellants. I therefore conclude, on the balance of probabilities, that the development was substantially completed more than four years prior to the date the notice was issued and the development is therefore immune from enforcement.

7. For the reasons given above, I conclude that the appeals should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, and the appeals on ground (g), do not fall to be considered.

N Thomas

INSPECTOR