



Appeal Decision

Site visit made on 14 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal Ref: APP/N5090/C/19/3226650

14 Golders Manor Drive, London NW11 9HT

- 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 Jacob Gertner against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 11 March 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the conversion of the property into one self-contained unit in the rear extension and a sui generis HMO formed from the remainder.
 - The requirements of the notice are:
 1. Cease the use of the rear extension as a self-contained residential unit.
 2. Permanently remove all kitchen units, sinks, cookers and food preparation areas from the extension.
 3. Permanently remove all bathroom facilities, including toilets, baths, sinks and showers from the extension.
 4. Cease the use of the remainder of the property as a sui generis HMO.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Costs

2. An application for costs made by the London Borough of Barnet against Mr Jacob Gertner is the subject of a separate Decision.

Preliminary Matters

3. The appeal was originally made on grounds (a), (b), (d), (f) and (g). In a letter dated 8 July 2019 the Planning Inspectorate confirmed that no fee had been received and that the appeal on ground (a) had lapsed and the planning merits of the alleged development cannot be considered when deciding the appeal. It also confirmed that the appeal would proceed on grounds (b), (d), (f) and (g). The appeal at that time was to follow the Inquiry procedure.
4. In an email of 24 December 2020 the appellant's agent confirmed that all grounds save for the ground (g) appeal were withdrawn. Following this change in the grounds of appeal the Planning Inspectorate changed the procedure to Written Representations.

Whether or not the Enforcement Notice was properly served

5. In this case, a ground (e) has not been pleaded. But nevertheless, I have a duty to ensure that the law is applied correctly to the facts I find.
6. Section 172(2) provides that a copy of the EN shall be served on the owner and occupier of the land to which it relates and any other person having an interest in the land.
7. Section 172 (3) (a) provides that a EN must be served not more than 28 days after the date of the issue but not necessarily contemporaneously on every person affected.
8. The Council informed the Planning Inspectorate in August 2020 that in reviewing the case that the EN was sent to the owner and only to the occupier of the property as opposed to each occupier independently.
9. The Council considered it was highly unlikely that if a copy of the notice had been delivered to each occupant that the occupiers would have chosen to appeal on grounds other than those already under consideration. At that time the Council considered that any appearance of prejudice could be removed by serving a second notice in identical terms but with copies going to the current occupiers. This was stated to be achieved without withdrawing, amending or otherwise affecting the current notice or appeal.
10. The Planning Inspectorate confirmed to the Council that it was a matter for the Council to consider whether or not it would be appropriate to invite representations prior to the Inquiry to ascertain if any individual considered that they had been substantially prejudiced by not being served with the notice. The Planning Inspectorate further informed the Council that where a person who should have been served with the notice would have reasonably advance and argument under ground (a) there may be substantial prejudice. In the current appeal it would not have been possible for one of those occupiers not served originally to introduce a ground (a) appeal as the fee had not been paid. If this were to be the case, then the most appropriate decision would be for me, as the Inspector, to quash the notice.
11. The Council wrote to the occupiers on 17 September 2020. The wording of the letter was less than clear and sought to allow the recipient an opportunity to make representations or to appeal against the notice. At the time the letter was sent no new appeal on the Enforcement Notice could have been made.
12. In addition, the letter of the 17 September 2020 referred to the appeal which had been lodged being made on grounds (a), (b), (d), (f) and (g). At this time the appeal on ground (a) had lapsed due to the non-payment of the fees. This was clearly an error.
13. The appellant has provided a joint letter from the occupiers of Room 2 and Room 7 at the appeal property stating they had understood that an appeal had already been made in respect of all the stated grounds in the Council's letter of 17 September 2020 and that they did not want to ask the Council to serve a notice on them, so they did not respond. It seems they have both been advised now that there is no active appeal seeking planning permission i.e. the ground (a) appeal which had lapsed. They state that had they been aware of this they would definitely have sought advice and considered making an appeal.

14. Section 176 (5) of the Act states where it would otherwise be a ground to allow an appeal the Secretary of State may disregard the failure to serve 'if neither the appellant nor that person has been substantially prejudiced by the failure to serve him'. In my view, given that the joint letter from the occupiers of Room 2 and 7 clearly states as a result of the incorrect information provided by the Council in relation to the ground (a) appeal they did not respond and that if they had known that there was no appeal on this ground, they would have sought advice and considered making an appeal.
15. As a result of the lapsed ground (a) appeal I consider that the occupiers of Room 2 and 7 who were not served with the EN have been substantially prejudiced by the failure of the Council to serve the EN on them as occupiers. Other occupiers who have not come forward may have equally been substantially prejudiced.
16. I conclude that the occupiers of Rooms 2 and 7, and others have been substantially prejudiced by this non-service of the enforcement notice and that 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. I will exercise the powers transferred to me accordingly and the enforcement notice will be quashed. In these circumstances the appeal under ground (g) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.
17. 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).

Hilda Higenbottam

Inspector