The Planning Inspectorate

Appeal Decision

Site visit made on 23 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal ref: APP/N5090/C/21/3286370
15 Tenderden Drive, London NW4 1EA

- The appeal is made by Mr Jack Grunhut under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Barnet Council.
- The notice was issued on 27 September 2021; reference No. ENF/0804/21.
- The breach of planning control was: Without planning permission, the making of a material change of use of the garage/side extension to use as an office with associated storage.
- The requirement of the notice is:
    1. Cease the use of the garage/side extension as a commercial office.
- The period for compliance with the requirement is 2 months.
- The appeal was made on grounds (c) and (f) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld

Costs application

1. The Appellant, Mr Jack Grunhut, made an application for a full award of costs against the Council. That application is the subject of a separate decision.

Appeal property

2. No. 15 Tenderden Drive, is a 2 storey semi-detached house in a quiet residential road of similar houses. No. 15 has a garage attached to the left side of the house. It is alleged that the garage is used as for commercial office purposes. Mr Grunhut said that access to the garage was gained via the house and through its front door. The garage covered an area of about 50m^2.

The enforcement notice

3. Although the Council responded to a criticism of the enforcement notice as an implied nullity claim, Mr Grunhut said only that the notice was vague. An enforcement notice can be invalid if it is flawed in some way, but not so defective as to be a nullity. As invalid notice can be corrected. The notice is not a nullity. Nor is it invalid. It identifies the alleged breach of planning control and requires cessation of the use. Any problem with uncertainty is addressed in the ground (f) appeal.

The appeal on ground (c)

4. An appeal on ground (c) asserts there has not been a breach of planning control. In a legal ground of appeal such as this, the burden of proof to refute the allegation lies with the appellant. The case of *Nelsovil v MHLG* [1962] 1 WLR 404 is authority for that position.

5. Mr Grunhut said use as a home office began in April 2021. It was used for legal work and retail business, associated with Mr & Mrs Grunhuts' work. He said no staff work at the office. No customers visit the property. Mr and Mrs Grunhut, the occupiers of the house, were the only ones working at the property. An unannounced visit by a Council officer did not find either visitors or employees at the property. That showed the unreasonable approach of the Council in assuming that employees work at the property when they had no evidence that occurred. Husband and wife each ran 2 separate businesses. Two desks and 2 working terminals were needed. Mrs Grunhut ran Keshet Couture Limited and The Wardrobe Hendon Limited. Mr Grunhut was a consultant solicitor, acting through his vehicle company. He also worked through Lion Law Limited. The number of desks and computers was justified. Mr Grunhut said it was reasonable for a husband and wife to have their own separate businesses and to both be able to work from a home office. The Council had no evidence to counter his claims that the property was a home office.

6. In my view, the Council's description of the 2 roomed office, its 4 desks and IT terminals clearly showed it was being used more intensively than might be expected from use as a home office. According to the Council, one of the desks appeared to be a reception desk. The office had its own outside door. Visitors were advised by a note on the front door of the house that deliveries should be made to the office door. When inspected by the Council, the office had a sofa, an armchair and a water cooler. There was also additional customer seating located in front of one of the desks in the second room. There were 5 filing cabinets, a full-size photo copier and a kitchenette with a microwave in the office. The Council had asked the owner of the property about the packages seen in the office. They were told that goods were received for one of the businesses at the home. They were then distributed to shops.

7. Whilst it was denied that anyone other than Mr and Mrs Grunhut worked in the appeal office building, a local resident said between 2 and 4 employees worked at No. 15 every day. Clients or customers arrived every week. Those comings and goings took up valuable parking spaces on the road.

8. In the case of *Sage v SSHCLG & LB Bromley [2021] EWHC (Admin)*, it was held that, as a matter of fact and degree, the level of use had gone beyond that which is incidental to a dwelling house. The crucial test is whether there has been change in the character of the use. Environmental impact can be relevant as evidence that a material change has occurred, because a use of the new character may be capable of yielding environmental impacts or have done so already. It appears in this instance that the level and type of use as described above has altered the residential character of No. 15 and the immediate area such as to conclude that a material change of use has occurred. The appeal on ground (c) fails.

The appeal on ground (f)

9. An appeal on ground (f) asserts that the requirements of the enforcement notice are too onerous. Mr Grunhut said the requirement was vague and not precise. It needed to be clearer to ensure the use as a home office incidental to the house could continue.

10. Where there is a difference between the parties as to the extent of a non-conforming use, it is a matter of fact and degree as to what constitutes unlawful development. For example, a house owner may repair and service their own car within the grounds of the house. If, for example, they occasionally help a friend by repairing that other person's car, that activity may be described as an ancillary use incidental to the normal enjoyment of the dwelling. If the house owner, even as a hobby, works on a larger number of cars at the house, there would come a point where that use went beyond the normal activity associated with the residential use of the house and its gardens. It would become an unlawful mixed use of residential and the repair of cars. Similarly, a house owner or occupier may keep several pet dogs at home. Depending upon the location, size of house, effect on the locality and any other material considerations, a decision maker may have to come to a view as to the point at which the use would change from a residential use to an unlawful mixed use of residential and the keeping of dogs.

11. In the present instance, the requirement of the notice is that the use of the garage/side extension as a commercial office shall cease. The Council could have required that much of the equipment and furnishings in the office be removed. What they have done is to require that the scale of activity be reduced such that it would be no more than could reasonably be expected of a normal use by a person working from home, rather than be used by persons running businesses with their associated activity from an office set up for use by several people and their visitors.

12. The requirement of the enforcement notice correctly addresses the breach of planning control. It is not too onerous. The appeal on ground (f) fails.

FORMAL DECISION

13. The enforcement notice is upheld.

John Whalley

INSPECTOR