
Appeal Decision

Site visit made on 4 August 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal ref: APP/G5750/C/21/3277990

46 Rawstone Walk, Plaistow, London E13 0HZ

- The appeal is made by Mr Isbor Ali 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 Newham Council.
- The notice was issued on 27 May 2021; reference No. 20/00052/ENFNOT.
- The breach of planning control was: Without planning permission, the material change of use of a ground floor side extension to a self-contained unit of residential accommodation.
- The requirements of the notice are:
 1. Cease the use of the ground floor side extension (as shown in the approximate location edged in blue on the plan attached to the notice) as a self-contained unit of residential accommodation.
 2. Remove from the property one of the two kitchens, any internal dividing doorways that solely facilitate the use of the side extension as a self-contained unit of residential accommodation, plus all duplicate doorbells, duplicate signage and duplicate outside waste bins.
 3. Remove from the property all but one supply of electricity, gas and water.
- The period for compliance with the requirements is five months.
- The appeal was made on grounds (b), (c) and (f) as set out in the amended Act.

Summary of decision: The appeal fails. The enforcement notice is upheld

Appeal property

1. The appeal property, No. 46 Rawstone Walk, is a 2 storey end of terrace dwelling. It has a 2 storey side extension adjacent to Pelly Road. A front door from the walkway to the extension provides access into a hallway, shared with a one room bedsitting room, (also described as a studio flat), on the ground floor, the main house and to the room above the bedsitting room.

The enforcement notice appeal on ground (b)

2. An appeal on ground (b) asserts: "That those matters, (that is, the matters stated in the notice which may give rise to the breach of planning control), have not occurred.". This ground of appeal was introduced to meet the straightforward but somewhat unusual situation whereby what the Local Planning Authority say has happened has not in fact happened.
3. The Appellant, Mr Isbor Ali, said he bought the appeal property in 2009. He lived there with his wife, 2 daughters and son. He had an extended family. He built the single storey side extension for use as a guest room.

4. In 2017, a woman and her child who were homeless moved into the side extension. She has asked to stay until suitable accommodation could be found elsewhere. She offered to pay rent. Later, she entered into a short-hold tenancy agreement with Mr Ali. She promised to leave at the end of that agreement. Later, the tenant requested an extension as she could not find a new place to live. Mr Ali declined. He asked her to leave. But she took advantage of government Covid policy against eviction. Mr Ali said he was trying to evict the tenant.
5. Mr Ali said the side extension did not have its own bathroom or own entrance. The house had only one main entrance used by Mr Ali and his tenant. The bathroom was outside the side extension in the common area. There was no separate door to enter it. The side extension was not a self-contained living accommodation. It did not have all the ingredients of a dwelling. The side extension was not designed for the preparation of food and as was essential to self-contained accommodation. The side extension did not have its own central heating system, hot water system, or a separately monitored electricity supply. There were no internal dividing doorways installed to facilitate use of the side extension as a self-contained unit. There were no duplicate doorbells, signage, or outside waste bins in the property. There was only one installation in the property each for electricity, gas, and water.
6. The Council noted that although the external door to No. 46 is shared, the side extension and ground floor bathroom were occupied by the tenant separately from the Mr Ali's accommodation in the main house. The tenant had been paying Council Tax to reside in the studio flat within the side extension from 16 January 2020 to the present day.
7. In my view, it cannot be correctly said that the alleged breach of planning control did not, as a matter of fact, take place. The appeal on ground (b) fails.

The appeal on ground (c)

8. An appeal on ground (c) asserts that those matters (if they occurred) did not constitute a breach of planning control.
9. It was the Council's case that both the ground floor side extension and host dwelling contain the necessary wherewithal for day-to-day private existence. Independent facilities for cooking, washing and sleeping showed there has been self-containment of the ground floor side extension. That resulted in a material change of use of the property.
10. Section 55 (3) of the Town and Country Planning Acts states: *For the avoidance of doubt it is hereby declared that for the purposes of this section—(a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.*
11. The Council's inspection of the house at No. 46 showed that Mr Ali's tenant and child enjoyed a considerable degree of privacy and separation within that part of the house they occupied. Whilst I note that full independence of all services and facilities in the main house is not available, the tenant can enjoy living in a private room with a degree of independence that suggests living in such separate accommodation has amounted to a material change of use of No. 46. Planning permission was required for the change of use of 46 Rawstone Walk from a single dwelling to 2 residential units. The appeal on ground (c) fails.

The appeal on ground (f)

12. An appeal on ground (f) asserts that the requirements of the enforcement notice are too onerous and that something less should be substituted. Section 173(4) of the Act sets out the purposes of the requirements. They are:
- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
13. The Council said the purpose of the notice was to remedy the breach of planning control. I agree that cessation of use of the studio flat in the side extension, removal of the additional kitchen and any additional doorbells signage and wastage bins is required to remedy the breach. No lesser steps were suggested. I consider the requirements of the notice are proportionate and reasonable. The appeal on ground (f) fails.

FORMAL DECISION

14. The appeal fails. The enforcement notice is upheld.

John Whalley

INSPECTOR