
Appeal Decision

Site visit made on 9 August 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/N5090/C/21/3276524

Land at 120 Clitterhouse Road, London NW2 1DN

- 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 Muhammad Chowdhury against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0078/21, was issued on 28 April 2021.
 - The breach of planning control as alleged in the notice is Without Planning Permission, the creation of an additional self-contained residential unit, in the ground floor rear extension of the property.
 - The requirements of the notice are: 1. Cease the use of the single storey rear extension as a self-contained residential unit; 2. Permanently remove all cooking facilities from the single storey rear extension, including the kitchen units, sinks, cookers and food preparation areas; and 3. Permanently remove all bathroom facilities from the single storey rear extension, including the toilet, basin and shower.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) 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 dismissed and the enforcement notice is upheld.

Reasons

2. 120 Clitterhouse Road is an end-of-terrace two-storey property that was converted to two flats in 2013. A single storey extension has been added to the rear of the property within which a flat has been created. Access is gained from a side door. This leads to a passageway that in part doubles as a kitchen area. Doors from this lead to a bathroom, bedroom and a room that was being used for crafting when I visited. At the rear, the flat benefits from a small rear garden.

Ground (e)

3. This ground of appeal is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an

- interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected.
4. The onus is on the appellant to prove his case. All that has been submitted in support of the appeal on this ground is a single line in his appeal form that reads "I do not live at the said address".
 5. The recipient of a Notice does not have to live at the property that is the subject of that Notice. The question at hand is whether all those that should have been served with a copy of the Notice were.
 6. Although the Appellant states that he does not live at the property, I note that on his application form he gives the appeal site as his address. He does not make the case that he was not served with a copy of the Notice. As he has been able to make a timely appeal against it, it suggests that either he was served a copy in the proper manner or that it was brought to his attention in a timely manner.
 7. Section 176(5) of the Act sets out that 'Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him'. Irrespective of whether he lives at the property, the Appellant has not been prejudiced by the Council's actions in serving copies of the Notice.
 8. Given the above, the appeal under ground (e) fails.

Ground (d)

9. After the Appellant had submitted his appeal, the Planning Inspectorate received confirmation from the Appellant that some of his arguments were better suited to a Ground (d) appeal. The case that has to be made is that, at the date the Notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The burden lies with the Appellant to make his case on the balance of probability.
10. The time limits in which enforcement action might be taken against breaches are set out in s171B of the Act. In this case, s171B(2) sets out that the time limit is four years. Thus, the Appellant has to show: that the use began at least four years prior to the date that the Notice was issued, that is to say 28 April 2017; and that this use was continuous for four years and was not thereafter lost.
11. The Appellant states that the property has been used as two units on the ground floor for at least 6 years. That at the rear, which is the subject of this appeal, was extended about 3 years ago and that its occupant has been there for 'a number of years'. Council tax is being paid for the flat. No supporting evidence for this case has been provided by the Appellant.
12. The Council's submissions show that Council Tax might have been paid for the two ground floor units at the time of the appeal. However, the evidence shows that the unit that forms the subject of the appeal was not registered for this purpose until 1 April 2020.

13. The Council has submitted 'Google Earth' images that it suggests show that the extension in which the unit has been formed was not built until late 2018 or early 2019. Due to their size and quality, I cannot be sure that this conclusion can be drawn on the balance of probability.
14. The Appellant has stated that the units are larger than those in the next door property, and that they have access to good-sized outdoor space of access is immaterial to Ground (d) arguments.
15. The onus lies with the Appellant to make his case, and he has provided scant evidence in this regard. On the basis of the submissions, I find that the case has not been proven on the balance of probability and the Ground (d) case fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Roy Curnow

Inspector