
Appeal Decision

Site visit made on 13 September 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/N5090/C/21/3284467
693 Finchley Road, London NW2 2JN

- 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 Albercraft Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 1 September 2021.
 - The breach of planning control as alleged in the notice is the use of a single storey flat roof garden building at the rear of the site as a separate dwelling house in breach of condition 4 of planning approval 18/1533/FUL (30.05.2018) which says: The use of the garden offices hereby permitted shall at all times be ancillary to and occupied in conjunction with the ground floor flats of the main buildings as detailed in approved drawing 691FR-PP1-01 Rev C and shall not at any time be occupied as a separate unit, dwelling, or commercial/ independent office.
 - The requirements of the notice are:
 - 1 Cease the use of the garden office as a self-contained unit of residential accommodation.
 - 2 Remove the bathroom from the garden office
 - 3 Remove all internal fences between the ground floor flat and the garden office
 - 4 Permanently remove all constituent material resulting from the necessary works carried out in point 2 and 3.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (e) and (f) 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. It is directed that the enforcement notice is:
 - corrected by deleting "and Section 171A(1)(b)" within section 1 of the enforcement notice.
 - corrected by deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and its replacement with "The material change of use of the single storey garden building at the rear of the site to a dwelling".
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Procedural matters

3. I have a duty to ensure that the notice is in order. The notice refers to Section 171A(1)(a) and Section 171A(1)(b) of The Town and Country Planning Act, 1990. However, the use of a garden building at the rear of the site as a separate dwelling house would require planning permission regardless of a condition. Therefore, I consider it is necessary to correct the allegation to "The material change of use of the single storey garden building at the rear of the site to a dwelling". The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear.
4. It is also necessary to delete reference to "Section 171A(1)(b)" of the Act. My understanding of the notice is not affected by these minor errors and nothing within the appellant's submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that these minor corrections are therefore necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
5. I have also dealt with another appeal (Ref: APP/N5090/C/21/3284466) at 691 Finchley Road London NW2 2JN. That appeal is the subject of a separate decision.

The appeal on ground (e)

6. The main issue to consider is whether the appellant has shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, he has been substantially prejudiced. In the legal grounds of appeal, the burden of proof is upon the appellant, with the standard of proof being the balance of probabilities.
7. The appellant states that the notice was not properly served because the two page notice which was received did not contain a list of requirements, the period for compliance, nor any Council officer signature. However, the appellant states that subsequent to lodging the appeal, a full copy of the notice had been provided.
8. The Council state that they hand delivered the notice at the appeal property and also sent it via post to the addresses outside the borough. They have also provided a copy of the notice with their appeal statement and a copy of the signed certificate of service. As such the Council asserts that the notice was served correctly.
9. Evidently, the appellant received a copy or copies of the enforcement notice and was able to lodge an appeal within the relevant timeframe. Furthermore, the appellant has appealed on ground (f) and therefore must have been aware of the requirements of the notice to do this. It has therefore not been demonstrated that parties with an interest in the land have been substantially prejudiced.
10. Consequently, the appeal on ground (e) must fail.

The appeal on Ground (b)

11. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellant's final

comments states that "after the initial use as offices had commenced, I have clarified with the agents that there was indeed a short period of time when separate residential units were functioning at the outbuilding". Notwithstanding that it had ceased when the notice was served, given the wording of the Act, 'that those matters alleged have not occurred', not that the matters are not occurring, the appeal on ground (b) cannot succeed.

12. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (f)

13. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

14. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice, which require the cessation of the use as a self-contained residential accommodation, and the removal of the bathroom and fences which separate the appeal building from the ground floor flat.

15. The appellant states the requirements of the notice are excessive since the removal of a shower room and fencing, neither of which requires planning permission, are unnecessary to remedy breach. It is also argued that it is perfectly normal for ancillary residential or office use to accommodate a toilet or a shower.

16. It is clear that both the separate wc/shower room and the fences installed, have sustained the unlawful use of the outbuilding as a separate dwelling. These facilities are part and parcel of the unauthorised use and should not be viewed in isolation as has been suggested by the appellant. Furthermore, no substantive evidence has been presented to demonstrate that the shower rooms and fences existed before the unauthorised change of use took place. Notwithstanding that these facilities may not require planning permission in their own right, a notice directed at a material change of use, as is the case here, may require their removal. I am therefore satisfied the requirements of the notice do not exceed what is necessary to remedy the breach of planning control.

17. On this basis, the ground (f) appeal fails.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR