Appeal Decisions

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal A Ref: APP/W5780/C/21/3277097
Appeal B Ref: APP/W5780/C/21/3277098
Flat E 67 Belgrave Road, Ilford, Essex, IG1 3AP

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ravinder Basi and Appeal B is made by Mrs Barinderjeet Kaur Basi against an enforcement notice issued by the Council of the London Borough of Redbridge.
- The notice, numbered E0026/20, was issued on 20 May 2021.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use of the single storey rear extension to use as a self contained unit of residential accommodation.
- The requirements of the notice are: i. Cease the residential use of the single storey rear extension, ii. remove all fixtures and fittings, including the kitchen, that facilitate the residential use, iii. Clear all resultant debris resulting from step (i) and (ii).
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by: the insertion of the word "separate" between the words "the" and "residential" in both Section 5(i) and Section 5(ii).

2. Subject to the variations, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The notice alleges "use as a self-contained unit of residential accommodation". The requirements should reflect the breach of planning control alleged and should therefore be varied so that the notice requires the separate residential use of the single storey extension to cease, and to remove all fixtures and fittings that facilitate that separate use. This will provide clarity and doing so will not cause injustice to the parties as it is not more onerous and it accurately reflects the alleged breach of planning control.

Ground (d)

4. An appeal on this ground is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The appellants must prove on the balance of probabilities that the single storey rear extension has been used as a separate dwelling for a substantially uninterrupted period of 4 years prior to 20 May 2021. The parties accept that the structure of the rear extension existed prior to this time and that it was

used in connection with the residential use of the host property, 67 Belgrave Road.

5. The appellants case is that the rear room had previously been used as a garage and that they installed a kitchen, bathroom and toilet in 2016, and a separate electricity meter in April 2017. They state that they were asked to pay two years of council tax arrears for the unit in 2018/19 and have paid council tax for the unit known as Flat E ever since. The appellants have not provided details of when occupation began in the unit or its terms, who the occupiers were or whether it has been used as a separate dwelling throughout this time.

6. The Council's record show that an enforcement investigation found that there was no breach in the use of the garage on 21 November 2018. An inspection for the purposes of council tax assessment took place on 4 November 2019 and the notes record that the occupier spoken to said that he had moved in about one month earlier and that the other tenant had moved in about 3 weeks prior to the inspection. The person spoken to did not provide a tenancy agreement. The Council's records therefore cast substantial doubt on the appellants' version of events.

7. Section 171B(2)provides that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach of planning control consisting in the change of use of any building to use as a single dwellinghouse. The parties accept that there has been such a change of use but the appellants have not provided sufficient details regarding the period, nature and duration to prove the necessary 4 year substantially uninterrupted period on the balance of probabilities. The corroborative evidence provided by one of the occupiers of another unit in 67 Belgrave Road, and by a visitor to the appeal property in 2016 do not address whether the unit was in fact occupied on those dates, never mind whether it was continuously used as a separate dwelling throughout a 4 year period.

8. For the reasons as set out above, the appellants have not proved their case on the balance of probabilities and the appeal on ground (d) fails.

Zoë Franks

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W5780/C/21/3277097	Mr Ravinder Basi
Appeal B	APP/W5780/C/21/3277098	Mrs Barinderjeet Kaur Basi (Mr Ravinder Basi)