



Appeal Decision

Site visit made on 21 September 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 05 December 2022

Appeal Ref: APP/T5150/C/21/3286375

55A-D Tokyngton Avenue, Wembley, HA9 6HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Devonshire Properties Ltd against an enforcement notice issued by Council of the London Borough of Brent.
 - The enforcement notice, numbered E/20/0103, was issued on 28 September 2021.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 96/1240 granted on 25 September 1996.
 - The development to which the permission relates is: Erection of single-storey double garage at rear of garden and provision of vehicular access to Derek Avenue.
 - The conditions in question are Nos 4 and 8 which both state that: "The garages hereby approved shall be used solely for the housing of private vehicles. No business or industry shall be carried out therein nor shall the garages be adapted or used for additional living accommodation."
 - The notice alleges that the conditions have not been complied with in that: the garages have been adapted and used for additional living accommodation.
 - The requirements of the notice are to:
 1. Cease the use of the former garages in the rear garden as a separate residential use.
 2. Remove all fixtures and fittings associated with the unauthorised change of use, including the kitchen and bathroom, from the former garages in the rear garden of the premises.
 3. Remove all associated waste, debris and materials arising from the compliance with the above steps from the premises.
 4. Remove the fence, separating the rear garden and the outbuilding, installed to facilitate the change of use.
 - The period for compliance with the requirements is: six months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Act.
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Decision

1. The enforcement notice is quashed.

The enforcement notice

2. I have a duty to ensure that the notice is in order.
3. The notice alleges a breach of conditions 4 and 8. These conditions are almost identical and they stipulate that the garages shall be used solely for the 'housing of private vehicles'. The appellant's evidence is that the building has been used by *'the handymen who maintain the letting properties of the appellant to store space furniture, building materials and appliances'*. On this basis, it demonstrates that the building has been used for a purpose other

than, and therefore not solely for, the housing of private vehicles and therefore the conditions are breached.

4. The notice alleges that the garages have been adapted and used for additional living accommodation. This is disputed by the appellant on the basis set out above.
5. However, it would appear to me that a storage use in connection with the appellant's landlord function would amount to 'business' which is expressly prohibited by the conditions. Accordingly, it appears to me that both of these uses, residential accommodation or storage associated with the appellant's business, are precluded by the conditions and importantly, the issue here is that the building was being used other than 'solely for the housing of private motor vehicles' and, this matter has not been disputed by the appellant.
6. Taking the Council's statement of case, it appears to me that the Council have accepted the appellant's claim of the building being used for landlord's storage. In this respect, the enforcement notice is wrong and would need to be corrected to reflect that the garages have been adapted for additional living accommodation and used for a purpose other than for housing of private motor vehicles, rather than narrowing it to a residential use.
7. Wide powers are available to me to correct a notice under section 176(1) of the Act. However, they only apply if I am satisfied that the correction will not cause injustice to the appellant or the Council.
8. In this instance, if I were to correct the notice in the manner suggested to catch any use other than 'housing private motor vehicles', this would include the use of the building for landlord's storage. Given the appellant's claim that the use of the building for storage has occurred for in excess of 10 years, it would be open to the appellant to pursue a ground (d) appeal on the basis that at the date 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 alleged in the notice. No such evidence has been provided as part of this appeal and therefore an appeal under ground (d) would be likely to fail.
9. However, it may not have been clear to the appellant in bringing this appeal that I could vary the notice in the manner described above. To my mind, I take the view that in correcting the notice to capture the storage use, an appellant claiming 10 years of use of the building as landlord's storage would be likely to want an opportunity to provide some evidence of this matter. To amend the notice in the manner that is necessary would deny the appellant an opportunity of providing such evidence. I therefore cannot be certain that the appellant would not be caused injustice if I were to do so.

Conclusion

10. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance.
11. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused to the appellant were I to do so. The enforcement notice is invalid and will be quashed.

12. In these circumstances, the appeal on the ground set out in section 174(2)(b) of the Act does not fall to be considered.

E Brownless

INSPECTOR