
Appeal Decision

Site visit made on 2 November 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Appeal Ref: APP/T5150/C/20/3259772
65A-D Townsend Lane, London NW9 8BP

- 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 Daniel Octavian Albu against an enforcement notice issued by the Council of the London Borough of Brent (the LPA).
 - The enforcement notice was issued on 13 August 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of the metal shipping containers and outbuilding at the premises AND without planning permission, the material change of use of the rear garden of the premises to the storage of building material and building equipment.
 - The requirements of the notice are:
 1. Demolish the unauthorised outbuilding to the rear of the premises.
 2. Remove all items, materials and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 3. Remove the containers to the rear of the premises.
 4. Cease the use of the premises for storage of building materials and builder's equipment located in the rear garden of the premises.
 5. Remove all building materials, waste and materials associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The appellant's case on ground (c) has been made on the basis that the alleged storage of building material and building equipment upon the Land is ancillary to the residential use of the flat and its garden. It is said that the appellant is a builder and therefore needs to store various tools and materials. This matter goes to the heart of a wider issue which is whether the enforcement notice correctly describes the alleged use which was taking place on the Land at the date the notice was issued. Whilst there is no appeal on ground (b), that the matters alleged have not taken place, it is incumbent on me to get the notice in order where necessary. I have written to the parties on this matter and submissions have been made.

3. The yard area to the rear of the property was previously separated by a fence from the garden. There is little evidence regarding the previous use of the yard prior to the alleged storage use. It is said that the appellant brought two storage containers onto the yard area to keep his tools and materials in. Thereafter the appellant says he clad the containers and installed a fibreglass roof between them to create a covered storage area. The appellant then says he installed a roof between the back of the storage containers and the fence separating the yard from the garden, installing a toilet and a sitting area. The space is said to be jointly used as his office for his business and for residential purposes as an area to watch TV and relax.
4. I saw from my site visit that both containers, and the covered yard area, contained a wide range of building materials and tools. Materials were in parts neatly stored, organised and arranged. The quantity of tools and materials exceeded that which would typically be expected for a person employed in the building trade to keep at their home for ease of access when travelling daily to and from jobs. In those situations, one would expect a person to collect building materials such as paint, wood or hardware, or indeed larger tools or machinery from a central storage place, or from stores which hire or sell such items to the trade. In contrast, it seems to me that tools and materials being stored on the Land here are of a quantity and nature that they would essentially form a depository for the business to draw upon. In essence, I find the quantity and nature of materials and tools goes beyond that which would typically be expected to be kept at a residential property and thus that which I would consider to be ancillary to the residential use. As a result, I consider that a material change of use to the storage of building material and building equipment has taken place.
5. Nonetheless, I was able to see from my site visit that the building referred to in the notice as the "outbuilding" showed signs of being used as both an office for the operation of the building business to which the storage use relates and for residential purposes. The building contained a desk area with a computer, along with the arrangement of a filing system and paperwork. In addition, it also contained a sofa, a TV and coffee machine. Moreover, it is apparent that the storage area between the containers contains various items of domestic storage such as bicycles and gardening equipment. Importantly, one is able to obtain free access between the rear garden of the property and the storage area by going through the outbuilding. Indeed, it is the only way of accessing the storage area from the property without going out onto Sunnymead Road and through the rear gates.
6. The question then, which I have raised with the parties, is whether the Land to which the notice relates as a whole, comprises a single planning unit in a mixed use of storage and residential, or whether a separate planning unit has been created and has been put to a storage use.
7. In *Burdle*¹, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. As I have set out above, the unit of occupation is the entirety of the Land to which the notice relates, that being the property of 65B Townsend

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

Lane, its rear garden and yard area. It is occupied and leased solely by the appellant and the evidence suggests it is in single ownership.

8. The appellant's case is that the Land comprises a single planning unit where the unit of occupation has one primary use as residential and the storage activities are incidental or ancillary. In contrast, the LPA's case is that the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. One residential, one storage. They thus should be considered as a separate planning unit.
9. As I have set out above, the appellant's case fails on the basis that I consider the storage use goes beyond what is ancillary or incidental. I find as a matter of fact and degree that the storage activities comprise a primary use of Land in their own right.
10. On the other hand, there is no clear functional separation between the two uses. The outbuilding is partly used for activities ancillary to the storage use whilst also used for activities incidental to the residential use. Likewise, part of the storage area within the yard is used for the storage of domestic paraphernalia, not associated with the storage of building material or tools. There remains an intrinsic functional relationship between the two uses. I am therefore also unpersuaded by the LPA's argument that a new planning unit has been created and the notice should be corrected to reduce the area of Land to which it relates through the substitution of a new plan.
11. Consequently, it seems to me that the Land to which the notice relates comprises a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another.
12. In mixed use cases, the allegation should refer to all the components of the mixed use, even if only one is required to cease. Where there is a mixed use, it is not open to the LPA to decouple elements of it. The use is a single mixed use with all its component activities.
13. It is open to me to correct the notice so it refers to the material change of use of the Land to a mixed use of residential and use of the rear garden for the storage of building material and building equipment. However, it is only open to me to correct the notice where I am satisfied doing so would not lead to injustice to the appellant or the LPA.
14. The appellant's case on ground (d) relates solely to the building operations element of the breach, which the appellant says were substantially complete four or more years before the notice was issued. They do not seek to argue that the material change of use to storage took place 10 or more years before the issue of the notice and subsisted for ten years thereafter without interruption. The correction of the notice to a mixed use would not change the 10 year period for immunity which would need to be demonstrated to succeed on ground (d) in respect of the use element of the breach.
15. In terms of the ground (a) appeal and the deemed application, the terms of the deemed application derive directly from the allegation in the notice. The correction would thus mean the deemed application seeks planning permission for the mixed use of residential and storage. The LPA's main reasons for issuing the notice in respect of the use is that it is alleged to be detrimental to the

living conditions of neighbouring residents by reason of noise and visual impact. The appellant's case on ground (a) addresses the interplay between the residential and storage uses in the context of residential living conditions. I see no reason how the correction to a mixed use would affect how the appellant makes their case in respect of the appeal on ground (a). Similarly, the appellant has sought to argue for the retention of the building operations on the basis that they serve both the storage and residential uses. As a result, the appellant's case on ground (a) would be unaffected by the correction. I am satisfied therefore that no injustice to the appellant would arise.

16. However, there appears to be some confusion and disagreement between the parties on whether the lawful use of the yard area is residential. The LPA state that the lawful use of the Land in its entirety is residential. In contrast, the appellant argues that the yard area to the rear of the garden has never been used for residential use. The 2009 permission² to convert the property to flats showed the yard area as parking spaces. However, the appellant says the parking area was never brought into use for any purposes associated with the residential use of the remainder of the Land. It is said that that the separate access from the pavement as shown on the plans was never provided and the yard area was not included in the leases of the flats. Indeed, I note the appellant sought a separate lease for the yard area from the landowner subsequent to his lease of the flat. I cannot therefore conclude on the evidence before me that the lawful use of the Land as a whole, particularly the yard area beyond the rear garden, is residential.
17. In that situation, if I were to correct the notice to allege a mixed use of storage and residential, and then varied the notice to include the requirement to cease the residential use of the Land, that would result in injustice to the appellant as it would widen the scope of the notice. In contrast, to not vary the notice and omit any requirement to cease the residential use of the Land would potentially be prejudicial to the LPA, since the effect of section 173(11) of the Act would be to grant an unconditional planning permission for residential use. If the residential use of the Land were lawful, then section 173(11) would be of no effect. However, as I have set out above, I cannot conclude whether that is the case. Thus, injustice in either scenario arises to either the appellant or the LPA.
18. As a consequence, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It therefore does not comply with the requirements of section 173(2) of the 1990 Act. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
19. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (d), (a), (f) and (g) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

J Whitfield

INSPECTOR

² LPA Ref 09/0334