The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2023

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

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/G5750/C/21/3288662
329 High Street North, Manor Park, London, E12 6PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeal is made by Mr Mushtaq Hussain against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice, numbered 21/00209/ENFC, was issued on 10 November 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of part of the ground floor of the property to a financial and professional services business.
- The requirements of the notice are to:
  1. Cease the use of the ground floor front of the property (as shown in the approximate location edged in blue on the attached plan) as a financial and professional services business.
  2. Remove all fixtures and fittings that solely facilitate the use as a financial and professional services business, including (but not limited to) all office furniture and advertisements.
  3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is: three months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Act.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. To succeed on ground (b) the appellant must demonstrate on the balance of probabilities that the use of the land identified in the notice, in particular, part of the ground floor of the property, had not changed to a use of the land as a financial and professional services business on or before the date when the notice was issued.

3. It is the appellant's case that the property is primarily in use as a dwellinghouse albeit one room of the property, namely the ground floor front room, is used for the purposes of 'working from home'. The same room is also stated to be partially used for 'family purposes'. In these circumstances, section 55(2)(d) of the Act states that "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, does not constitute development". Section 336 of the Act clarifies that "building" includes any part of a building. In these circumstances, if no material change of use has occurred, then planning permission to work from home is not required.

4. However, planning permission would be required in order to institute a use if the change of use will be “material” in planning terms. The onus is on the appellant to show that a material change of use has not occurred, the relevant test of the evidence being on the balance of probability.

5. Within the appeal form, the appellant states that the business is ‘*mostly computer based*’ and indicates that interactions with business clients are carried out through email. However, the inclusion of the word ‘mostly’ indicates that not all the appellant’s business is conducted by electronic means and there is no information to clarify and quantify the extent of the appellant’s business that is not carried out in this manner. Nonetheless, it is put to me that the appellant is ‘working from home’, I take the view that home working, in the literal sense of a person who lives in the dwelling also working there, is incidental to the enjoyment of the dwellinghouse and it is therefore materially different from a use as a financial and professional services business, which will entail visits by customers or clients. For the purposes of this ground, it is therefore necessary to determine whether there has been a material change of use of the part of the building identified in the notice.

6. At the time of my site visit, I noted that the ground floor room positioned at the front of the property had been laid out with some six office-type chairs arranged in a manner akin to a waiting area. The room also contained a large L-shaped desk, several filing cabinets and a printer. Whilst the layout of the room and its contents may have changed since the date of the enforcement notice, the layout of the room leads me to the view that it had been set up to facilitate face to face meetings. Although it is stated that the same room serves a dual purpose, there were few items within the room which corroborate that the room is partially used for family purposes, as is suggested by the appellant.

7. Moreover, I observed there to be little activity of residential use within the rest of the property. Albeit one first floor room was in use as a bedroom, the other rooms of the dwelling were empty. Consequently, with the availability of several other rooms within the property, I find this raises doubt about any residential use also extending into the room the subject of the appeal.

8. Similarly, the submitted evidence fails to show that the appellant’s interaction with customers is computer based. The presence of signage within both ground floor front windows and door to the property advertises the presence of the business together with listing the services that are capable of being provided. Whilst a telephone number is shown on the advertisement, the absence of a web address does not support the appellant’s claim that customer contact is conducted via computer. It is more likely than not the adverts are there to increase awareness of the business and make it more likely that anyone wishing to visit the premises would be able to find their way.

9. There are discrepancies within the appellant’s evidence. The room is large in size and although it is suggested by the appellant that the property has not been altered and it is in its original state, the plans submitted by the appellant as part of an earlier application for planning permission[1] in February 2021 (the ‘earlier application’), do not support the view that the property has remained unchanged. The drawings submitted as part of the earlier application clearly show a room labelled as an ‘A2 unit’ at the front of the property with a further room labelled as ‘living’ to its rear. A solid structure is shown to separate the

[1] Planning Reference: 21/00455/FUL

two rooms. In my view, whilst there is no evidence to confirm when this wall was removed, its removal has enabled the two rooms to be combined to provide the larger space identified in the enforcement notice.

10. In the absence of any explanation to justify a larger room for the purposes of working from home and taking into account that the business use is taking place within the largest ground floor room of the property, I take the view that the increased size can comfortably accommodate a business use and individuals visiting the property for that purpose. Given the payment of business rates for a room of the property in addition to the payment of council tax for the residential use, I consider that it would be unusual for business rates to be paid for a use which is stated to be incidental to the enjoyment of the dwellinghouse such as working from home. This is further evidence of a material change of use having occurred.

11. An earlier application for planning permission which sought to 'regularise a use of the premises as a financial and professional services and residential use together with the construction of a shopfront and associated internal alterations' was withdrawn by the appellant. The application form details the existing use as "part Ground Floor: A2 financial and professional service" and the supporting planning statement also mentions this situation. The application form is ticked to confirm the work or use has already commenced and it has been completed.

12. Taking everything into account, I am not persuaded that there hadn't been a material change of use on or before the date the notice was issued. The business use being undertaken at the property would be significant enough to be a material change of use of part of the ground floor of the property to a financial and professional services business. The activities carried out in relation to the financial and professional services are materially different to those undertaken in a typical dwelling, in that there are likely to be an increased number of comings and goings associated with the premises and a consequent increase in noise and disturbance to those living nearby.

13. It has been put to me by the appellant that there is no harm to the neighbourhood or the property. However, as a planning application is not before me as part of this appeal, these are not matters I can consider.

14. Accordingly, I take the view that the matters stated in the notice, namely an unauthorised change of use of part of the ground floor to a financial and professional services business have occurred as a matter of fact. The appeal on ground (b) fails.

Conclusion

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

E Brownless

INSPECTOR