



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/T5150/C/23/3317873

137 Llanover Road, Wembley HA9 7LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Sughran Bibi Ullah against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 23 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to two flats ("the unauthorised change of use") AND without planning permission, the erection of a dwelling to the rear of the premises ("the unauthorised development").
 - The requirements of the notice are
 - STEP 1 Cease the use of the premises as flats.
 - STEP 2 Demolish the dwelling in the rear garden of the premises.
 - STEP 3 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the main house including the removal of all kitchens except the ONE, on the ground floor.
 - STEP 4 Restore the internal configuration of the main house to the original layout before the unauthorised change of use took place.
 - STEP 5 Remove all items, debris and materials, arising from the demolition of the unauthorised dwelling from the premises.
 - The period for compliance with the requirements is 6 months
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 ("the Act") as amended.
-

Decision

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

Application for costs

2. An application for costs was made by the Council of the London Borough of Brent against Sughran Bibi Ullah. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal was originally proceeding on grounds (b), (d) and (f). However, the appellant subsequently withdrew grounds (b) and (d) and the appeal is now proceeding on the limited ground (f) only. A site visit was not considered to be necessary to determine the remaining ground of appeal.

An appeal under ground (f)

4. The breach of planning control relates to two matters namely a material change of use of the premises to two flats and the erection of a dwelling to the rear of those premises. The ground (f) appeal is limited to the erection of the dwelling to the rear.

5. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
6. The relevant part of the allegation is the erection of a dwelling to the rear. As the corresponding requirement is to demolish the dwelling, the purpose of the notice is to remedy the breach. The appellant therefore has to show that demolition is excessive to remedy that breach. She maintains that it is excessive to require the removal of the existing building as it has been in place for many years and had a lawful storage use before its renovation and letting in 2020.
7. The proposed amendment would delete the need for demolition and replace it with a requirement to cease residential use so that storage use could be restored and take place in association with the main dwelling. The Council's view is that there is no lawful use to revert back to and proposing an alternative use does not remedy the breach which is the erection of a dwelling.
8. The proposal made by the appellant under ground (f) relies upon the erection of a dwelling having not occurred which is a ground (b) argument. The appellant who is professionally represented had originally pursued a ground (b) appeal and disputed that the 'erection of a dwelling' had occurred. The ground (b) argument was subsequently withdrawn in the early stages of the appeal. In the absence of a ground (b) appeal, the breach of planning control is not a material change of use.
9. As the breach of planning control is the erection of a dwelling, the requirement to demolish is not excessive and cessation of the residential use would not remedy the breach. The appeal under ground (f) therefore fails.

Other Matters

10. The appellant has chosen not to pursue a ground (g) appeal and the compliance period for the notice is 6 months. The appellant has previously indicated that the dwelling to the rear is unoccupied. The flats are occupied by tenants who now have rolling tenancy agreements and will need to find new accommodation. Whilst I am mindful of their situation, I have no information before me to indicate that the timescale of 6 months is not unreasonable to look for other housing or that the notice cannot be complied with in the required timescale.

Conclusion

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

E Griffin

INSPECTOR