



Appeal Decision

Site visit made on 16 January 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/N5090/C/23/3321216

Land at Warwick Court, Birkbeck Road, London NW7 4BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Roger Childs against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 24 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of an extension to the side, roof and rear (as approximately edged yellow in the plan attached to the enforcement notice).
 - The requirements of the notice are to:
 - 1 Demolish the extension to the side, roof and rear as approximately edged yellow in the plan attached to the enforcement notice.
 - 2 restore the property to the state in which it was prior to the breach as per drawing 20/215-01 submitted under application reference 21/2249/FUL (appeal reference APP/N5090/W/21/3286279)
 - 3 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) 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 deleting requirements 1 and 2 in section 5 of the enforcement notice (what you are required to do) and replacing them with the following requirements:
 - 1. Demolish the extension to the side, roof, and rear as approximately edged yellow in attached plan and restore the property to the state in which it was prior to the breach as per drawing 20/215-01 submitted under application reference 21/2249/FUL Or,*
 - 2. Carry out alterations so that the development complies with the terms of the planning permission 21/2249/FUL dated 7 July 2022 including the conditions subject to which that permission was granted.*
2. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

3. The appellant's case under ground (c) essentially relates to whether the enforcement notice is a nullity. This appears to be on the basis that they consider the allegation is not accurate, although matters relating to the requirements and reasons for issuing the enforcement notice are also raised.

4. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall include. This includes s173(1)(a) the matters which appear to the local planning authority to constitute the breach of planning control and s173(3) the steps which the authority require to be taken.
5. Section 173(2) says that an enforcement notice complies with s173(1)(a) if it '*enables any person on whom a copy of it is served to know what those matters are*', being the matters alleged to constitute the breach. The test is as described in *Miller Mead v MHLG* [1963] 1 A11 ER 459, namely whether the enforcement notice tells the recipient fairly what they have done wrong and must do to remedy it.
6. In this case, the allegation is the construction of an extension to the side, roof, and rear, as approximately indicated by a plan attached to the enforcement notice. The enforcement notice identifies the alleged breach of planning control and states what must be done to remedy it. A correction to the allegation is not necessary and in respect of the requirements, there is no uncertainty about what the appellant is required to do. I therefore find the enforcement notice is not a nullity. Arguments relating to whether the requirements are excessive are relevant to the ground (f) appeal.
7. The enforcement notice includes reasons why the local planning authority considered it expedient to issue the enforcement notice. Whilst the appellant may not agree with those reasons, that is an argument which relates to and requires consideration of planning merits. In the absence of an appeal on ground (a) there can be no consideration of planning merits.

The appeal on ground (c)

8. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
9. The appellant does not argue that the development benefits from planning permission. I saw that the extension has not been built in accordance with and is not therefore permitted by either permission reference 17/8034/FUL or 21/2249/FUL.
10. Accordingly, since the development is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) fails.

The appeal on ground (f)

11. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
12. As the enforcement notice requires the extension to the side, roof and rear to be demolished, I find the purpose is to remedy the breach of planning control. As defined in s173(4)(a), the breach of planning control could also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land.

13. The appellant's case on this ground is that the requirements should be varied to enable them to modify the extension in accordance with planning permission reference 21/2249/FUL.
14. The enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
15. Since planning permission reference 21/2249/FUL is extant, the appellant should be given the option to either demolish the extension or alter the development in accordance with the planning permission, since either step would remedy the breach in accordance with s173(4)(a).
16. I will therefore vary the notice accordingly prior to upholding it. The appeal on ground (f) succeeds.

The appeal on ground (g)

17. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of 15 months, largely based on the time it would take to carry out the necessary preparatory work, source and appoint contractors and find suitable alternative accommodation for tenants.
18. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be carried out. The appellant's submission largely relates to the time before works can commence.
19. Whilst the appellant's concerns are understandable, in the absence of substantive explanation about the availability of contractors and how many occupants would, and why they would have to be displaced, I consider the period of six months as specified in the notice, is proportionate to the breach of planning control that has occurred. The appeal on ground (g) fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Felicity Thompson

INSPECTOR