



Appeal Decision

Site visit made on 20 November 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2024

Appeal Ref: APP/Z5060/C/22/3307961

Land and premises at 100 Glenny Road, Barking IG11 8QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Daniel Marku against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The notice was issued on 30 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of the rear outbuilding as a self-contained unit of accommodation.
 - The requirements of the notice are to:
 - Cease the use of the outbuilding as a self-contained unit of accommodation.
 - Remove all alterations and fixtures enabling the creation of the self-contained unit.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The Notice

1. Before considering the ground of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. Part 1 of the notice states that there has been a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. As the notice does not allege a material change of use of the building, it follows that the allegation would not constitute development for the purposes of section 55(1) of the 1990 Act.
3. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.

4. Having regard to the notice as a whole, it is clearly directed at a material change of use of the outbuilding in question from one use to another. Having regard to the grounds of appeal made, I am satisfied that a correction to the notice to include reference to a material change of use of the outbuilding to a use as a self-contained unit of accommodation would not cause injustice in this case. Neither would removing the word 'unauthorised' from the allegation. It is unnecessary as the allegation is of development without planning permission.

Ground (c)

5. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice, as corrected as I intend, do not constitute a breach of planning control. The burden of proof is on the appellant.
6. Whilst during the appeal process the appellant changed his ground of appeal from ground (a) to ground (c), he has not provided any written statement to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
7. He has provided a copy of the decision notice relating to the planning application reference 22/00803/FULL. The description of development is stated as 'Retrospective planning application for construction and letting of a flat to the rear of 100 Glenny Rd Barking IG11 8QQ'. If the application subject of this decision relates to the appeal building, it does not assist the appellant in this case. This is because the decision notice informs that planning permission is refused for the development.
8. I have not been made aware of any reason why the material change of use of the appeal building in question would not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act. Neither does the evidence before me demonstrate that the necessary planning permission has otherwise been granted. The appellant has failed to discharge the burden of proof that is upon him. Accordingly, the ground (c) appeal must fail.

Conclusion

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

Formal Decision

10. It is directed that the enforcement notice is corrected by the deletion of the words 'unauthorised use of the rear outbuilding' from part 3 and their replacement with the words 'material change of use of the rear outbuilding to a use'.
11. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR