



Appeal Decisions

Inquiry held and site visit made on 19 November 2013

by D. E. Morden MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 December 2013

Appeal Refs: APP/U5360/C/13/2195037 and APP/U5360/C/13/2195038 58 Gloucester Drive, London, N4 2LN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs L Kaufman against an enforcement notice issued by the Council of the London Borough of Hackney.
- The Council's reference is 2009/0262/ENF.
- The notice was issued on 22 February 2013.
- The breach of planning control as alleged in the notice is the erection at the property of (1) an unauthorised dormer roof extension and (2) a rear extension at second floor level.
- The requirements of the notice are as follows:- (1) remove the unauthorised dormer roof extension; either (2A) remove the unauthorised rear extension at second floor level or (2B) re-construct/alter the unauthorised rear extension at second floor level at the property so it conforms strictly with the planning permission reference number 2008/2339 and complies strictly with the conditions therein (as set out in the schedule annexed to this Notice); (3) make good all damage to the property resulting from the removal of the unauthorised dormer roof extension and rear extension at second floor level or reconstruction of the rear extension at the property and restore the relevant parts of the property to the condition they were before the unauthorised dormer roof extension and rear extension were constructed and (4) remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements in paragraphs 1 to 3 of this Notice.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed following correction of the notice in the terms set out in the Formal Decisions at paragraph 18 below.

Procedural Matters

1. The parties agreed that I could correct the Notice to properly describe the unauthorised development if necessary. The appellant felt that there were two dormers on the rear elevation rather than one as set out in the Notice (which in fact did not specify front or rear). Both parties were content that the Inquiry was dealing with the development as carried out and their arguments were based on that as were the representations of the interested persons who came and spoke. In those circumstances there would be no injustice if I considered that the description of works set out in the Notice needed to be corrected (and also any consequent variations to the requirements).
2. The evidence at the inquiry was taken on oath or affirmation.

3. The appellants confirmed, during my opening statement of the Hearing, their withdrawal of the appeals that had been made on grounds (e) and (f).

The appeals on Ground (d)

4. On this ground the appellants claimed that both elements of the development had been substantially completed more than four years prior to the date of issue of the Notice and, therefore, the Council was too late to take enforcement action. It was acknowledged that what had been carried out was not as approved and also that it was not 'permitted development' and, therefore, at the time it was undertaken it was unauthorised.
5. Mr Kaufman produced copies of detailed bank statements amongst which was one which showed a payment by a Mrs G McKellar of £710 on 30 December 2008 and another which showed a payment of £830 by a Mr Salas Blanco on 5 November 2008. There were also numerous tenancy agreements, in particular, one for Mrs McKellar running from 1 December 2008 to 30 September 2009 for Flat 10 and one for Mr Salas Blanco running from 7 November 2008 to 30 September 2009 for Flat 9. These tie in with the bank statements and the evidence of Mr Kaufman that these two flats were completed and occupied before the end of 2008 and that these people were the first tenants.
6. In addition there were sworn affidavits from a number of tenants and ex tenants of the building. Dace Lace occupied Flat 7 from June 2007 until September 2010 and a couple, Thomas Street and Anne Marsden, occupied Flat 1 from March 2007 until January 2010. Both stated that the works started in spring 2008 and were completed and tenants had moved in before the end of 2008.
7. Finally Mr Kaufman referred to a meeting and subsequent correspondence with a Mr Godson the Council's Private Sector Housing Officer at the time who wanted to inspect the property to see if it was a House in Multiple Occupation and if so did it require a licence. Mr Godson's statement however, stated that he did not actually manage to gain access to the property to inspect it until May 2009. That date is less than four years before the issue of the Notice, so confirmation at that time that the works were complete is of no help to the appellants' case.
8. In addition a Mr T Street gave evidence as an interested person (not as a witness of Mr or Mrs Kaufman). He had been an occupant of various flats in the building from late 2004/early 2005 until January 2010. He started off in Flat 1 and then moved to Flat 3 which gave him access to the garden. He recalled the scaffolding going up in 2008 and around Christmas time in 2008 when he was visited by his sister and her grandchildren he recalled the doorbell being rung by a pizza delivery man who had a delivery for Flat 9. He took the gentleman upstairs to show him to the flat.
9. He stated that it had been occupied for some time when the incident concerning the man getting on to the roof of the property and smashing tiles took place. Everyone knew from police reports that that was May 2009 and he had definitely shown the pizza delivery man upstairs before Christmas and before that event took place so at the latest it was Christmas 2008.
10. Against this evidence the Council's case relied mainly on the conflicting statements concerning dates in a returned Planning Contravention Notice (PCN) request in 2008 and in two planning applications that were submitted in 2008 and 2010. The PCN was sent in September 2012 (concerning the unauthorised

rear extension and the creation of additional flats in the building) and the appellants stated that the extension was 'built prior to mid 2008'.

11. There were then two planning applications both submitted by an agent and neither were signed by either of the appellants. Firstly, in September 2008 an application for the second floor rear extension stated that the development had not started. The second application dated January 2010 was submitted after the work had been carried out and sought to retain the second floor extension as built. That application form stated that the development commenced on 10 December 2008 and was completed on 21 March 2009.
12. One of the appellants (Mr Kaufman) stated in evidence in response to this that he had not filled in the forms – this had all been done by the agent. The second application was retrospective as the work had been completed and the agent simply put in earlier dates; it did not actually matter what dates had been set out in that sense so long as they were earlier than the application date. He stated that he had certainly not been asked about dates by the agent at any time.
13. The occupant of a nearby property produced a photograph taken from his rear garden that showed the dormer in the roof still unclad (as completed it has tiles hanging on the outside) which he stated was taken in June 2009.
14. There was no disagreement that scaffolding was there until quite late into 2009 but both Mr Kaufman and tenants stated that it was for refurbishment of bathrooms and other drainage matters and that took place after the extensions had been constructed. Mr Kaufman also admitted that he had made a further alteration to the roof (inserting another velux window) after it had been damaged by the intruder but this was a separate act from the conversion works, extensions and alterations to form the two additional flats. This latter claim was accepted by the Council.
15. There was clearly disagreement about when the flats were substantially completed but the greater documentary evidence came from the appellants, in particular, the bank statements that gave added credence to the tenancy agreements. It seems to me unlikely that people would have paid out those sums of money many months before moving into their flats. There was also the evidence of previous occupiers who were clear under cross examination that flats 9 and 10 (the two in the extensions the subject of the Notice) were there in late 2008.
16. In my view all that evidence is worthy of greater weight than the evidence put forward by the Council which relies mainly on conflicting dates that were entered on various documents. Although a neighbour produced a photograph which shows incomplete cladding on the dormer that does not mean that the development was not substantially completed and no one could say whether or not it was as a result of the intruder on the roof; it would have been at the right time (June is the claimed date of the photograph and the vandalism occurred in May).

Conclusion

17. For the reasons given above I conclude, on the balance of probabilities, that the appeals should succeed on ground (d). Accordingly the enforcement notice will be quashed. In these circumstances the appeals under the grounds set out in

section 174(2)(a), (f) and (g) to the 1990 Act as amended and the applications for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decisions – both appeals

18. I direct that the enforcement notice is corrected by the deletion of the words in paragraphs 3.1 and 3.2 and the substitution of the words 'rear extension at second floor level and the provision of two dormer extensions in the rear roof slope'. Subject to this correction the appeals are allowed and the enforcement notice is quashed.

D E Morden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alvin Alesbury	Counsel, instructed by Mr A Ormonde, Planning & Project management Services
He called	
Mr L Kaufman	Appellant
Mr A Ormonde	Planning & Project Management Services

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson	Counsel, instructed by LB of Hackney
He called	
Mr M Manikowski	Enforcement Officer, LB Hackney

INTERESTED PERSONS:

Mr J Grant	Local resident
Mr M Secker	Current tenant of part of the appeal property
Mr A Kontoyjanni	Manager of adjoining property
Mr T Street	Former tenant of part of the appeal property

DOCUMENT

- 1 Council's letter informing local residents of the inquiry details.

PHOTOGRAPHS

- 1 Bundle of photographs produced by Mr Kaufman
- 2 Bundle of photographs and PC screen-print produced by Mr J Grant.