



## Appeal Decisions

Site visit made on 9 August 2023

**by Richard S Jones BA(Hons), BTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 October 2023**

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**Appeal A Ref: APP/B5480/C/21/3286888**

**Appeal B Ref: APP/B5480/C/21/3286889**

**The land known as 7 Argus Close, Romford, RM7 8NJ**

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Humera Waheed against an enforcement notice issued by London Borough of Havering.
  - Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nadeem Karim against the same enforcement notice issued by London Borough of Havering.
  - The notice, numbered ENF/850/16, was issued on 5 November 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the two storey side extension known as No.7a (approved under application P1477.00), to a separate unit of residential accommodation (Class C3).
  - The requirements of the notice are to:
    1. Cease using the two Storey side extension known as 7a (approved under application P1477.00), as a separate unit of residential accommodation (Class C3); and
    2. Remove all kitchen and cooking facilities and all the bathroom and bathroom facilities; and
    3. Remove all electricity metres/fuse boxes from the premises except for one which serves the whole premises; and
    4. All materials and debris associated with steps 1, 2 & 3 above, shall be totally removed from the site.
  - The period for compliance with the requirements is three months.
  - Appeals A and B are proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.
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### Decisions

#### Appeals A and B

1. It is directed that the enforcement notice is corrected and varied by:
  - Adding the words 'from the two storey side extension known as 7a' after the word 'Remove' in requirement 5.2.
  - Deleting 3 months and the substituting with 6 months as the time for compliance.
2. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

### Preliminary Matters

3. No 7 Argus Close is a two storey, semi-detached dwelling with two storey side extension granted planning permission in November 2000, under reference P1477.00. The breach of planning control as alleged in the notice is the

material change of use of that two storey side extension, known as No.7a, to a separate unit of residential accommodation (Class C3).

4. The appellants initially made their appeals on ground (b) but later added ground (d). I note the Council's opposition to this but they were advised that the ground (d) appeals had been accepted and were given opportunity to respond to the submissions made by the appellants. I have therefore determined the appeals on both grounds.
5. The appellants and neighbours have made representation on matters including internal and external space provision, privacy, build quality, parking provision, housing need and planning policy. However, I am unable to consider such matters, insofar as they relate to the planning merits, because the appellants have not made an application for planning permission through a ground (a) appeal, which requires payment of a fee.
6. I also note the submission made by an interested party that an alleged loss of privacy amounts to a contravention of the Human Rights Act 1998. However, legal grounds of appeal (b) and (d) are whether or not, as a matter of fact and law, the matters occurred or the matters are immune from enforcement action, and as such do not allow me to consider the effect of my decision on individuals and their rights.
7. For grounds (b) and (d) the onus lies with the appellants to make their case on the balance of probabilities.

#### **Appeals A and B on Ground (b)**

8. A ground (b) appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, the appellants submissions and evidence, which primarily relate to ground (d), seek to confirm that a separate residential unit has been created at No 7a and that it has been used for those purposes.
9. Moreover, the Council state that a site visit on 19 January 2017 found the side extension to include an open plan lounge, kitchen and shower room on the ground floor and two bedrooms at first floor. The Council's photographs of that arrangement are consistent with my own observations, which were obviously after the enforcement notice was issued. I was also able to see at that time that there is no internal link between the main dwelling at No 7 and the extension, which is numbered 7a.
10. Thus, the matters alleged in the notice occurred on the balance of probabilities and the appeals fail on ground (b).

#### **Appeals A and B on Ground (d)**

11. In order to succeed on ground (d), it is for the appellants to demonstrate, to the required standard of proof, that a breach of planning control consisting of the change of use of the two storey side extension known as No.7a to a separate unit of residential accommodation began more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement action, pursuant to s171B(2) of the 1990 Act. The material date is therefore 5 November 2017.

12. The appellants assert that the property has been used as a two bedroom house for ten years. In the appeal form they state that that internal amendments took place on 26 October 2012 to allow a member of the family to reside there. That is generally consistent with the timescales referred to by the Council in the response given to its Planning Contravention Notice (PCN). As no rent was paid and no tenancy agreement issued, it is understandable that no such documentary evidence is provided. However, there is little in terms of explanation, or other evidence, of how the property was initially used and whether it, as a matter of fact and degree, remained part of No 7.
13. The Council question the timing of the building conversion works and raise potential issues of deliberate concealment. Nevertheless, the Council accept that the physical works to the extension had taken place by late 2014 or early 2015 and at that time it was capable of residential accommodation.
14. The appellants have also provided an Energy Performance Certificate for No 7a which describes it as an end of terrace house. The date of the assessment is 8 December 2014. Although that does not evidence use, it adds further weight to the likelihood that, at that time, a new separate unit of residential accommodation had been created.
15. The appellants state that the property was given to the Council and that it was used as an emergency housing unit with continuous payment being received via the Council for over five years. The appellants assert that they have housed a number of such tenants as well as private tenants in need of housing.
16. However, other than reference to the dwelling being used for those purposes by the Council in 2016, no dates are provided of when it was first given over and when the arrangement terminated, or whether it is ongoing. Moreover, no evidence is provided of any payments received or any agreements made with the Council, as may reasonably be expected in such circumstances.
17. The Council state that the enforcement case relating to the use of the two storey side extension as a separate dwelling was opened in December 2016, and that during its site visit on 19 January 2017 the tenant advised that she had moved into the property on 22 November 2016. That is consistent with the response provided to the aforementioned PCN, that a third party – not a relative – moved into No 7a on 22 November 2016 and moved out on 29 January 2017.
18. A domestic electrical installation condition report for letting purposes has been provided for a single dwelling at No 7a, dated 18 November 2016. Although confirming the property to be vacant at the time, that evidence points towards it being prepared for the tenancy commencing on 22 November 2016.
19. An interested party submission states that when the property was sold, No 7a was a garage with two bedrooms above, but was changed almost straight away into a second property. Although no dates are provided he believed this was longer than four years ago.
20. It is therefore likely that the material change of use of the property had occurred by 22 November 2016, at the latest. Prior to that date, very little evidence of actual use is provided.
21. The Council state that No 7 and 7a have only been rated as two residential units for Council Tax purposes since 1 March 2017. Nevertheless, that is prior

- to the material date of 5 November 2017. Moreover, such situations are not unusual and the appellant has confirmed it is the tenant's responsibility to pay Council Tax. That is corroborated by the tenancy agreement provided for No 7a for the term between 8 January 2019 to 7 January 2020. Although not signed, Council records confirm that tenancy and that it lasted 12 months.
22. A Council 'Property Condition Form' has been provided which shows that No 7a was then ready to be let from 20 February 2020. Although that doesn't evidence use at that time, it does point towards an intention for the use to continue. However, the Council highlight that it was filled in by one of the appellants, rather than one its officers.
  23. A second tenancy agreement, which is signed, is provided for the period from 27 July 2020 to 26 July 2021. However, Council's records show that the tenant left the property on 7 December 2020, and no evidence is provided by the appellant to contradict that.
  24. The Council state that the occupant of the main house confirmed during a site visit on the 21 May 2021 that new tenants had moved into No 7a a few weeks earlier and that those tenants called the Council on the same day confirming as much, and that they had been given a tenancy agreement for the side extension as a self-contained residential unit of accommodation.
  25. The Council therefore accept that the property has been rented out on an ad hoc and sporadic basis for emergency temporary accommodation but argue that it has not become lawful by the passage of time. The appellant also acknowledges that the property was only occupied sporadically, more for short term accommodation rather than a permanent accommodation. It is explained that when tenants leave the accommodation, the appellants have a clear out and get the property ready for the next tenants and that these times can vary according to the amount of works that need to be carried out.
  26. Bringing the above together, it is likely that in a physical sense, No 7a had become a self-contained residential property by December 2014. However, it is not enough for the property to be capable of independent use. It is likely, based on the evidence, that actual use as a self-contained residential property did not commence until 22 November 2016, and even then it lasted until only 29 January 2017.
  27. There is then a gap in the evidence of about two years before the tenancy commencing in January 2019. That occupancy continued for about a year but thereafter the evidence points towards a further gap of around six months before the next tenancy commencing in July 2020. That lasted about six months until December 2020. The Council's submissions again point to a further gap in use until around the beginning of May 2021, when new tenants moved in. No evidence is provided to that effect by the appellants, so it is unclear when or if that tenancy had terminated by the time of issuing the enforcement notice.
  28. Therefore, on the balance of probabilities, although the use of No 7a as a separate unit of residential accommodation began more than four years before the date of issue of the enforcement notice, the subsequent gaps in actual use are significant and material.

29. I understand that the appellants have not been professionally advised. I also note they feel that the Council has been difficult to communicate with. Nevertheless, the onus lies with them to make their case on balance of probabilities. For the reasons stated, the appellants have not met that evidential burden and the submissions made are not sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the use of No 7a as a separate unit of residential accommodation continued without material interruption for a period of four years after it had began prior to the material date of 5 November 2017.
30. Consequently, it has not been shown that, on the date that the enforcement notice was issued, it was too late for the Council to take enforcement action. The appeals on ground (d) do not succeed.

### **Other Matters**

31. Requirement 2 of the enforcement notice is to remove all kitchen and cooking facilities and all the bathroom and bathroom facilities. Although an appeal has not been made on ground (f), that is excessive insofar as it could be taken to include those facilities in No 7. I shall therefore correct the requirement to specifically refer to No 7a.
32. Moreover, although an appeal has not been made on ground (g), I am mindful that the time given to comply with the notice is just three months. Given that the property may currently be occupied, that is insufficient time to seek and secure alternative accommodation, particularly if those occupants are vulnerable. Extending the period for compliance to six months would in my view strike a reasonable and proportionate balance between the needs of any occupant and the public interest in this case. I shall therefore vary the enforcement notice accordingly, prior to upholding it, by exercising my powers of variation under s176(1)(b) of the 1990 Act.

### **Conclusion**

33. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation.

*Richard S Jones*

INSPECTOR