
Appeal Decision

Site visit made on 28 September 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 27 October 2016

Appeal Ref: APP/N5660/C/16/3143260
8 Norwood High Street, London SE27 9NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Gelia Goldman against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 18 December 2015.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the ground floor from a shop (Use Class A1) to two studio flats (Use Class C3) ("the two unauthorised flats"); and the removal of the shop-front and the bricking up of the front elevation, together with the insertion of a door and two windows ("the unauthorised frontage").
 - The requirements of the notice are:
 - a) Cease the use of each of the two unauthorised flats, and remove from the premises all kitchens, gas and electric metres, partitions, and any other fixtures and fittings that facilitate the use of the two unauthorised flats.
 - b) Remove the unauthorised frontage from the premises and reinstate the ground-floor shop-front as it existed prior to the breach of planning control.
 - c) Remove all resultant rubbish and debris from the premises.
 - The period for compliance with the requirements is six months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended (the "Act").
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld as varied in the terms set out in the Formal Decision below.

Procedural Matters

2. The appeal initially included ground (a), that planning permission should be granted for what is alleged to be the breach of planning control. However the appellant subsequently confirmed that this ground was withdrawn.
 3. For the avoidance of doubt and as no injustice would result if I were to do so, I will correct the notice by substituting "meters" for "metres" where it appears in the requirements of the notice, using the powers available to me by virtue of s176(1)(a) of the Act as amended.
 4. Requirement (a) in the notice does not specify the use that should cease. For clarity, it should be varied to require the cessation of the use of the premises for residential purposes. I am satisfied that this would not cause injustice to either party.
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Ground (f) - whether the requirements of the notice are excessive

5. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The Council's enforcement notice makes quite clear in Section 4 that the purpose in this case is to remedy the breach of planning control that has occurred.
6. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose and in this case that purpose is clear and is to remedy the breach. That can only be achieved by restoring the land to its condition before the breach took place, namely by ceasing the use of the premises for residential purposes and removing fixtures and fittings that facilitate the use of the two unauthorised flats, as set out in the requirements of the notice. No lesser steps would achieve the stated purpose.
7. Where no appeal has been brought under ground (a) and consequently there is no deemed application for planning permission, the Act cannot be interpreted as allowing arguments about the planning merits of the development under ground (f). Arguments such as that internal changes could be made to create a satisfactory self-contained residential unit, or that improved refuse arrangements could be made, are therefore of no relevance. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
8. Similarly, an argument that the unauthorised frontage is not harmful to the character of the area is not relevant to the appeal on ground (f). The requirement to remove the unauthorised frontage and reinstate the ground floor shop front as it existed prior to the breach of planning control is a necessary step to achieve the purpose of the notice.
9. No alternative requirements have been suggested that would remedy the breach. The appeal on ground (f) therefore fails.

Ground (g) - that the time given to comply with the notice is too short

10. The appellant states that to allow for work to be carried out, suitable contractors to be employed and any tenancy issues to be resolved, a period of 9 months would be more appropriate than the 6 month period in the notice. Appropriate and qualified building professionals need to be appointed by a reasonable tender process and then time for the builders to move onto site and carry out the work. In addition the current tenancy agreements were entered into on 5 and 15 December 2015 and run for 12 months. A longer period to ensure compliance would allow the tenancies to end and the work to be carried out.
11. No evidence was submitted in regard to human rights or the European Convention on Human Rights. However I acknowledge that to dismiss the appeal would interfere with the tenants' home and family life albeit not that of the appellant. The 6 month period for compliance in the notice will not end until after the tenancy agreements have run their course, therefore the length of the tenancies does not significantly add to the appellant's case. In any event the agreements provide for the landlord to give one month's notice to

the tenants. Although the works require structural alterations the premises are modest in size, and it should take no more than a few months to complete the works.

12. The overall period of 6 months would include adequate time for suitable contractors to be found and appointed. Again, given the scale of the job, an over-elaborate procurement process would not be necessary or desirable.
13. The appeal premises are not lawful development and I am satisfied that the legitimate aims of planning control and enforcement as set out in the enforcement notice can only be properly protected by upholding it (as corrected). On balance therefore I consider that dismissal of the appeal would not have a disproportionate effect on the appellant or tenants of the appeal property.
14. The appeal on ground (g) fails.

Overall Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice with variations.

Formal Decision

16. It is directed that the requirements of the enforcement notice be varied by:
 - a. the deletion of "metres" and the substitution therefor of "meters"; and
 - b. the insertion of "for residential purposes" after "flats" where it appears in Requirement (a).
17. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR