

Appeal Decision

Site visit made on 4 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/X5210/C/16/3149928

Land at 122 Drummond Street, London NW1 2HN

- 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 Julia Pyper against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 31 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the basement from retail storage (Class A1) to a self-contained studio flat (Class C3).
 - The requirements of the notice are:
 - 1) Cease use of the basement as a self-contained residential flat.
 - 2) Remove all fixtures and fittings relating to the residential use including bathroom and kitchen fittings.
 - 3) Make good any damage to the building as a result of the works.
 - The period for compliance with the requirements is three months.
 - 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.
-

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matter

1. The breach of planning control as alleged in the notice is the unauthorised change of use of the basement from retail storage (Class A1) to a self-contained studio flat (Class C3). However, the first requirement is to cease the use of the basement as a self-contained residential flat. There is, therefore, a slight difference in the terminology used in these two parts of the notice. I am satisfied that this does not affect the meaning of the notice and, having regard to the grounds of appeal, that the appellant fully understands what is required of her in order to comply with it. Nevertheless, in the interest of consistency, I consider that the requirements of the notice should correlate precisely to the allegation. Because the word "studio" in the allegation at paragraph 3 is open to interpretation, I consider that the use of the word "residential" to describe the flat is more accurate and appropriate. I shall therefore correct this slight discrepancy in the notice by substituting the word "studio" with "residential" in the allegation at paragraph 3. I am satisfied that neither the appellant nor the Council would be caused any injustice by me doing so.
-

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice include to cease use of the basement as a self-contained residential flat and to remove all fixtures and fittings relating to the residential use, including bathroom and kitchen fittings. The purpose of the notice must therefore be to remedy the breach.
3. As part of my site inspection, I was able to view inside the residential flat. I noted that the kitchen is fully equipped with modern equipment, including a conventional oven, a microwave oven, a hob, and a fridge with a freezer compartment. This equipment is housed in purpose-built kitchen units, including a sink and work surfaces. The bathroom is similarly well appointed with modern facilities, including a shower, toilet and hand wash basin.
4. The remainder of the flat provides the main living space, with a sofa and shelving on the walls. The shelving on one wall includes a fold-down table, and this section revolves to provide a built-in retractable fold-down bed.
5. The courts have held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence¹. The living space together with the well-appointed kitchen and bathroom provide all the facilities required for day to day private domestic existence. The appellant contends that it is not necessary to remove all of these facilities for the basement to fall outside the definition of a dwellinghouse. The appellant considers that all that is necessary is the removal of the built-in retractable fold-down bed.
6. I fully accept that the provision of a toilet and, by association, a hand wash basin may be considered appropriate in a retail unit. Indeed, the Workplace (Health, Safety and Welfare) Regulations 1992 (1992 Regulations) require the provision of a separate room containing conveniences and the associated Approved Code of Practice stipulate a minimum of one toilet and one basin in units where the number of employees is less than five. Removal of the toilet and hand wash basin would render the retail unit non-compliant with the 1992 Regulations, and therefore ineffective as a retail unit. Consequently, there are sound reasons why the toilet and hand wash basin should be retained rather than removed, and I shall vary the requirements of the notice accordingly.
7. However, the bathroom in this basement residential unit also includes a shower cubicle as part of a fully fitted bathroom suite. The provision of the shower provides one of the facilities required for day to day private domestic existence in terms of providing bathing facilities. The retention of this bathroom suite as an entity would facilitate the continued use of the basement as a dwellinghouse and would not achieve the purpose of the notice.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

8. Moreover, I have not been advised that there is any requirement in the 1992 Regulations or the associated Approved Code of Practice in terms of bathing facilities in retail units of this size. I recognise that staff at the retail unit may wish to cycle to work and that cycling is encouraged both locally and nationally as a sustainable mode of transport. I also recognise that staff choosing to cycle to work would wish to freshen up prior to commencing their duties and that the retention of the shower would encourage cycling as the preferred choice of transport. However, in the absence of any requirements in the 1992 Regulations and unlike the toilet and hand wash basin, there is no legislative imperative to retain the shower and I therefore need to balance the benefit in that respect with the purpose of the notice. In weighing that balance, I consider that there is a risk that the retention of the shower could facilitate the continued use of basement as a dwellinghouse and therefore not achieve the purpose of the notice. In my view, this outweighs the unquantifiable benefit resulting from the retention of a shower that may or may not be used by the small number of staff that may be employed in the retail unit. Consequently, I consider that the shower should be removed in its entirety.
9. I can understand that some cooking facilities on site would enable a lone employee to continue working throughout the day and thereby take maximum advantage of any passing trade. However, whilst this would clearly be a benefit, there are other solutions including taking food to work at the beginning of the day. Furthermore, many businesses close for short periods for lunch even if only to enable staff to purchase food to take back to the premises. In this context, I note that there are many food outlets close to the appeal site, such that the premises would need to be closed only for a short period. I therefore consider that there is not a compelling argument to allow the retention of the kitchen for the benefit of the retail use.
10. Furthermore, the kitchen in this basement residential unit is fully equipped with modern equipment and is designed to provide one of the facilities required for day to day private domestic existence. The retention of this kitchen would facilitate the continued use of the basement as a dwellinghouse and therefore fail to achieve the purpose of the notice. For these reasons, I consider that the kitchen should be completely removed.
11. I therefore conclude that the requirements of the notice are excessive, but only insofar as it requires the removal of the toilet and hand wash basin. Accordingly, the appeal on ground (f) succeeds to that limited extent.

The appeal on ground (g)

12. The ground of appeal is that the period specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
13. The essence of the appellant's case is that it is difficult to obtain builders at a reasonable price in London. The appellant considers that a period of 12 months would be reasonable.
14. The appellant has provided no evidence to show that there is a shortage of suitably qualified and affordable builders in London at this time. Moreover, the appellant has not shown that compliance with the notice would require any specialist skills, such that a longer period of compliance would be necessary.

15. Accordingly, the appeal on ground (g) fails.

Conclusion

16. For the reasons given above I conclude that the requirements of the notice are excessive and I am varying the enforcement notice accordingly, prior to upholding it.

Formal Decision

17. The appeal is allowed on ground (f) and it is directed that the notice:

- be corrected by substituting the word "studio" in the allegation at paragraph 3 of the notice with the word "residential", and
- be varied by adding the words "With the exception of the toilet and hand wash basin" at the start of Requirement 2) in paragraph 5 of the notice.

Subject to this correction and variation, the enforcement notice is upheld.

Paul Freer

INSPECTOR