
Appeal Decisions

Site visit made on 10 October 2016

by B M Campbell BA(Hons) MRTPI

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

Decision date: 4 November 2016

Appeal Refs: APP/G5750/C/16/3152957, 3152958, 3152959, 3152960 & 3152961

8 Elm Road, Forest Gate, London E7 9HN

- 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 appeals are made by Housing Action Management Limited, Ms N Bourne, Ms H Dillfur, Ms Q Y Lam and Mr Z Demir against an enforcement notice issued by the London Borough of Newham.
 - The enforcement notice was issued on 17 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to five self-contained flats.
 - The requirements of the notice are to:
 1. Cease the use of the property as self-contained flats.
 2. Remove from the property four of the five kitchens, any internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, duplicate signage, and duplicate outside waste bins.
 3. Remove from the property all but one supply of electricity, gas and water.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary matters

2. At the site visit, no representative for the Appellants attended. However, the occupier of the top flat, No.5 answered the front door so that I was able to view the internal communal area to confirm there were 5 numbered front doors and I was able to look inside flat 5. Given that the appeals proceed on ground (f) only, I am satisfied that I have seen sufficient to enable me to determine them.

Reasons

3. 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. In the notice the subject of this appeal the Council has not specifically indicated which of those two purposes it seeks to achieve.

4. Nonetheless in paragraph 4 "Reasons for issuing this Notice", the Council says it seeks to return the land to its former state. Section 173(4)(a) of the Act says the breach might be remedied by restoring the land to its condition before the breach took place. Thus, the purpose of the notice is clearly to achieve the first purpose, that is to remedy the breach of planning control which has occurred (s173(4)(a)).
5. The purpose can only be achieved in this case by the removal of works or items introduced to enable the building to be occupied as a number of self-contained flats. That is what the steps in the enforcement notice do – for example in seeking the removal of all but one kitchen, the property would be put back into its former state as a dwellinghouse. The requirements of the notice do no more than seek to remove what has been done to facilitate the unauthorised change of use, they go no further. Thus the ground of appeal brought under s174(2)(f) must fail as the requirements do not exceed what is necessary to remedy the breach of planning control that has occurred.
6. The Appellants seem to be saying in their statement made under ground (f) that they intend to comply with the notice by retaining only one kitchen in the property and using it for a purpose that would not involve a material change of use. That suggests the intention to comply with the requirements rather than suggesting lesser steps.
7. Arguments brought under the now lapsed ground (a) that the accommodation is of a good standard cannot influence my consideration of the appeals remaining on ground (f) which is simply concerned with whether the steps exceed what is necessary to achieve the purpose of remedying the breach.
8. Upholding the appeal would result in the loss of the occupiers' homes such that their rights under Article 8 of the European Convention on Human Rights would be engaged. However, an appropriate balance between conflicting public and private interests is achieved by giving a period of 5 months within which to comply with the notice which provides an opportunity for alternative accommodation to be sought. As such a disproportionate burden would not be placed on the Appellants.
9. The appeals fail.

B M Campbell

Inspector