

Appeal Decision

Site visit made on 15 November 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 17 November 2016

Appeal Ref: APP/T5150/C/16/3149149

76 Villiers Road, London NW2 5PJ

- 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 Maria St John against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 18 March 2016 under ref. E/15/0622.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to seven flats.
 - The requirements of the notice are set out as follows:
 - "STEP 1 Cease the use of the premises as seven self contained flats.
 - STEP 2 Remove all kitchens and cooking facilities, except ONE, from the premises and remove all associated debris and materials arising from this removal from the premises.
 - STEP 3 Remove all bathrooms and bathroom facilities, except TWO, from the premises and remove all associated debris and materials arising from this removal from the premises.
 - STEP 4 Return the use of the premises to a single family dwellinghouse."
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by: (i) deleting from Step 1 in Schedule 4 the word "seven"; and (ii) deleting Step 4 in Schedule 4 and the associated text that Step 4 contains in its entirety.
2. Subject to those variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

3. I visited the site at the appointed time. The Council's representative was present. Even though the front door of the appeal property was open, neither the appellant nor her agent was there. I was able to see the communal entrance, hallway and stairway from the front door and the comings and goings of the occupiers. I have noted that the appellant indicated on the appeal form
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that she did not think that it was essential for an Inspector to enter the site to check measurements or other relevant facts. Having studied the contents of the written representations received from the parties, including third parties, and the site photographs taken by the Council on 6 November 2015 and 12 January 2016, I consider that I have sufficient information to determine this particular appeal without a further site visit being arranged. I am satisfied that neither the appellant nor the Council would be prejudiced by this course of action.

The enforcement notice

4. The appeal building is a terraced residential property. It has been converted into seven self-contained flats. The last lawful use of the property was as a single family dwelling house.
5. Where a property that was formerly a single family dwelling house has been changed to a use for self-contained flats, a requirement simply to cease the use is sufficient. A specific and positive requirement to return the use of the premises to a single dwelling house, as set out in Step 4 of the enforcement notice, is excessive. It is also the case that under section 57(4) of the 1990 Act as amended, following the issue of an enforcement notice there are rights to revert back to the former lawful use. Step 4 of the notice can be omitted.
6. A requirement to cease a use as seven self-contained flats, as set out in Step 1 of the enforcement notice, presents problems. It introduces confusion as to whether it could allow use as six or eight flats. The appropriate wording is to simply cease the use as self-contained flats. Step 1 of the notice can be altered accordingly.
7. I have made variations to the enforcement notice in the decision above to reflect the points raised in paragraphs 5 and 6 above and I am satisfied that the variations would not cause injustice to the parties.

The grounds of appeal

8. The appeal is proceeding solely on ground (a) – that planning permission ought to be granted for what is alleged in the enforcement notice.
9. The appeal on ground (a) is based on the sole assertion that the appellant "... has evidence to support that the flats have been in existence in excess of 4 Years and is claiming Established use". Read with section 171B(2) of the 1990 Act as amended, the claim made more properly falls under ground (d) – that, by the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The claim does not relate to the planning merits of the alleged breach of planning control.
10. The appellant was invited to formally add an appeal on ground (d) but this option has not been pursued. I shall deal with the matter raised under the heading "The implied appeal on ground (d)", before considering the ground (a) appeal.

The implied appeal on ground (d)

11. If the appellant had formally pursued an appeal on ground (d), the onus would have been on the appellant to demonstrate on the balance of probabilities that

at the time the enforcement notice was issued on 18 March 2016, it was too late to take enforcement action against the matters stated in the notice. Thus, the appellant must show that, by then, the appeal property had been used continuously as seven flats for at least four years (section 171B(2) of the 1990 Act as amended). The material date in this case is therefore 18 March 2012.

12. The appellant's claim that the development is lawful through the passage of time is nothing more than an assertion. No relevant, clear and unambiguous evidence of any sort has been submitted by the appellant.
13. On the other hand, the Council produces evidence of its own to contradict the appellant's claim by reference to Council Tax records, correspondence from neighbours, the Council's housing benefit database and the electoral register. Taken together this evidence would suggest that the conversion of the premises to seven flats took place between 2014 and 2015.
14. The appellant has not discharged the onus of proof. The seven flats were not therefore immune from enforcement action by reason of the passage of time from when the enforcement notice was issued. Accordingly, the implied appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

15. The appellant has made no attempt to justify the assertion that planning permission ought to be granted for the use of the premises as seven self-contained flats.
16. The lawful use of the appeal property is as a single family terraced dwelling house. The seven-flat scheme has had the following negative planning consequences:
 - i) the loss of a family-sized dwelling
 - ii) failure to provide family-sized accommodation in the conversion scheme
 - iii) an overly intensive use of the property and the site that results in poor living conditions for the occupiers, noise and disturbance for neighbouring occupiers, additional demands for on-street parking and unacceptable arrangements for the disposal of rubbish.
17. These key drawbacks are clearly set out within the reasons for issuing the enforcement notice. They bring the development into conflict with several development plan policies as referred to in the notice. No material considerations have been advanced to justify a grant of planning permission. The appeal on ground (a) and the deemed planning application cannot therefore succeed.

Andrew Dale

INSPECTOR