

Appeal Decision

Site visit made on 15 November 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/Q5300/C/16/3148000

18 Chiswick Road, London N9 7AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ismail Kirdag against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The notice was issued on 16 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of the Premises into 2 separate units of accommodation.
 - The requirements of the notice are
 - 5.1. Cease the use of the Premises as 2 separate units of accommodation;
 - 5.2 Remove all kitchen, cooking facilities and white goods installed in each unit of the Premises except for one;
 - 5.3 Remove all internal doors and partitions which facilitate the separation of the Premises into separate units of accommodation
 - 5.4 Remove all gas meters except for one;
 - 5.5 Remove all electricity meters except for one;
 - 5.6 Remove all resulting materials from the Premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) & (g) of the Act as amended.
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The Notice

1. The requirement to cease the use of the premises as 2 separate units of accommodation is unsatisfactory as it could be argued there would be compliance if a third unit were to be formed. The Notice should therefore be varied so that '2' is deleted from Step 5.1. Given the Appellant's submissions he would not be prejudiced by such a variation.

Decision

2. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of 3 months and the substitution of 5 months as the period for compliance, and by the deletion of '2' from Step 5.1. Subject to these variations the enforcement notice is upheld.

Ground (f) appeal

3. Section 173(4) of the Act says the steps required by an enforcement notice are to achieve one of 2 purposes. These are either to remedy the breach of planning control that has occurred, or to remedy any injury to amenity that has been caused by the breach. An appeal under ground (f) is contending that the required steps exceed what is necessary to remedy the breach of planning control or the injury to amenity, whichever the case may be.
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4. In this case the Appellant accepts the requirements of Steps 5.1, 5.2, 5.3 and 5.6. However, he is seeking to retain the all existing gas and electricity meters (contrary to Steps 5.4 and 5.5), contending that their removal is unnecessary and would also result in part of the property being without those 2 services. Indeed he is of the view that the requirement to use the building as a single unit could be achieved merely by vacating one of the flats.
5. However, the requirement of the Notice is not to use the property as a single dwelling but rather to cease its use as separate units. Moreover, the installation of the meters is part and parcel of that unauthorised development, as a single use for a building of this size cannot be expected to have multiple gas and electricity supplies. When remedying this breach of planning control it is reasonable and proportionate to require the removal of the fixtures and fittings that facilitate the use as 2 flats so as to restore the building to its condition before the breach took place. Indeed to retain the meters could well encourage the unauthorised use to start again at a later date and could also discourage the resumption of the lawful use. I accept that taking out the meters, reconfiguring the building's electricity and gas systems and losing rent during the works could well involve the owner in expense. However, that often results from having to comply with a Notice and so in itself is not a reason to allow this appeal.
6. In the absence of any other justification I conclude that the requirements of the Notice do not exceed what is necessary to remedy the breach of planning control, so the appeal under ground (f) fails.

Ground (g) appeal

7. Appealing under ground (g) the Appellant contends that the period for compliance falls short of what should reasonably be allowed. Rather, he says the period should be 6 months so as to allow the units to be vacated and the works then undertaken.
8. I understand the tenants are on 2 months' notice, and so the period for compliance allows little opportunity for the various works to be undertaken after they have left. To my mind it is therefore reasonable to lengthen the period of compliance to 5 months.
9. The Appellant has also implied there should be time allowed for having to make an application for possession to the Courts. However, it is unrealistic to incorporate such matters into the compliance period as firstly it cannot be assumed this would be necessary, and secondly, if an allowance is to be made for the legal steps to secure possession there is little certainty as to how long such steps would take. In any event, the local planning authority has powers to extend the period of compliance if it considered such an action was justified in the light of the circumstances that had unfolded.
10. Accordingly I conclude the appeal under ground (g) succeeds.

J P Sargent

INSPECTOR