
Appeal Decisions

Site visit made on 22 November 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 1 December 2016

Appeal Refs: APP/G5750/C/16/3150783 & 3150784 7 Campbell Road, Stratford, London, E15 1SY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Miss A Lilionyte and Mr V Jurgelionis against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 16/00116/ENFNOT, was issued on 22 April 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the material change of use to a house in multiple occupation (HMO)".
- The requirements of the notice are:
 1. Cease the use as a house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.
 3. Remove the additional kitchen contained within the loft.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
- The period for compliance is three months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Decisions.

Background

1. There is agreement between the parties that the property is currently in use as a HMO without the benefit of planning permission. The statement from the appellants also indicates that it is agreed that requirement to cease this use (as required by the notice) is not excessive. Details of the recent history of use and previous intentions of the appellants are set out in the statement which I will come to below. Given this background the notice will be upheld but it is necessary to consider whether the other requirements are excessive and whether the time period for compliance is reasonable.

Ground (f)

2. The basis for an appeal on this ground is that the steps required exceed what is necessary to remedy the breach or any injury to amenity that may be caused by such a breach. In this instance the appellants argue that the removal of the kitchen in the loft, as specified in the third requirement, is excessive as the use as a HMO could still cease if this kitchen as well as the smaller galley kitchen on the ground floor is retained. It is also asserted that it is unclear what has to be done to comply with the requirement to remove any additional mattresses and beds.

3. I was able to carry out an inspection of all the rooms in the property including the loft area which comprises a large open-plan fitted kitchen with integral lounge. There is also a smaller galley-style kitchen at the rear on the ground floor which appears to have been created by the installation of a partition splitting what was a larger back room.
4. The appellants contend that as a matter of law the notice can only require steps which are for the purpose of remedying the breach of planning control and that to go beyond this would be excessive. They argue that the kitchen in the loft was installed before the material change of use to an HMO took place and was intended to serve the lawful use of the property as a single dwellinghouse. Details are then given of the chain of events.
5. The property was purchased on 15 October 2015 with the intention that the appellants move in as they are currently renting out their main place of residence. It was also intended that their mother would live there as well as she requires care and to this end the loft conversion took place in December 2015 having obtained the required Building Regulation consent. However, around this time the mother moved back to her home country for medical reasons. As a result the appellants have not occupied the property but have rented it out from January 2016 to unrelated tenants having applied for an additional HMO rented property licence on 18 January 2016. My understanding is that this use has continued to the present day and copies of Assured Shorthold Tenancy Agreements with different named tenants, expiring on 17 January 2017, have been supplied.
6. Taking these background circumstances into account it seems clear that since the kitchen in the loft was installed it has only been used by the tenants occupying the property as a HMO. Whilst it may have been the intention to use it in connection with the lawful use as a single dwellinghouse, either by the appellants and their mother or another family, this has not happened. So what has actually taken place is that the loft kitchen has been used to facilitate the breach of planning control. This may well have not been the original intention but from what is before me, including the appellants' own explanation of events, this appears to be what has actually occurred. Consequently I find that it is not excessive or unlawful to require the removal of the kitchen to remedy the breach.
7. In reaching this conclusion, I am aware of the High Court decision in *Bowring v SSCLG & LB of Waltham Forest* [2013] EWHC 1115 referred to by the appellants. However the circumstances in the present case appear to be different as the kitchen created in the loft has only been used in connection with the HMO, the accepted unauthorised use, and not the lawful use as a single dwellinghouse. It is therefore by the appellants own admission part and parcel of the material change of use.
8. The appellants also argue that the small kitchen on the ground floor is inadequate to serve a 4 bedroom family dwelling and that it is unreasonable to expect them to do so. Additionally it is asserted that the presence of two kitchens is not unusual in single dwellings and that if their mother returns the extra kitchen would be required as planned originally. I do not agree that 4 bedroom houses would typically have two kitchens and that one is the norm. However, I do accept that the existing galley kitchen is small and below the size that would normally serve a property of this size.

9. In these circumstances I consider that requiring the removal of the larger, better equipped kitchen in the loft is excessive and that a lesser, proportionate step would be to require the removal of one of the kitchens so that only one remains. This would be consistent with remedying the breach. If the wording of the requirement was altered to this effect it would give the option to the appellants to decide which kitchen they kept to serve the dwelling. This could be the one in the loft or the galley kitchen on the ground floor. If it were the latter then it would also be possible to remove the partition which separates it from an existing bedroom and create a larger kitchen in what appears to be the original bigger back room.
10. I have had regard to the appellants claim that requiring the removal of the kitchen would constitute unlawful interference with their possessions contrary to the rights conveyed by Article 1 of the first Protocol of the European Convention on Human Rights. On the basis of the variation of the requirement as described above and the substitution of alternative wording allowing one kitchen of the appellants' choice to remain, I consider the step would be reasonable and any interference under this Article proportionate in terms of remedying the breach and would not amount to a violation of the appellants' human rights.
11. As to the wording of the second requirement concerning the removal of "any additional mattresses and beds" I agree it is not clear what this means or what is expected. Requirements need to be clear on their face so that the persons on whom the notice is served know what is expected of them in order to achieve compliance. Moreover if the house ceases to be used as a HMO and reverts to a single dwellinghouse there would be nothing to prevent any number of beds or mattresses being present provided the property was not used as a HMO. For this reason I agree that the words in question should be deleted and it is sufficient to leave the remainder of the second requirement as accepted by the appellants. Bringing these points together there is partial success on this ground and I will vary the requirements of the notice in line with the above reasoning.

Ground (g)

12. The appellants argue that a period of 3 months for compliance is too short given the need to serve notice to quit on the existing tenants and then carry out the necessary works. It is argued that under the terms of the tenancies the earliest date on which such a notice could be served by the landlord is 9 November 2016. Due to the passage of time since the appeals were lodged this date has now passed so there would be no reason why such notices could not be served giving 2 months to vacate as required under the terms of the current Housing Act. Moreover this may not even be necessary as the tenancies are due to expire 17 January 2017 and I am not aware that any new tenancies have been agreed. This date would fall well within 3 month period for compliance which is taken from the date of this decision. Such a period would also allow adequate time to appoint a contractor and for the works required by the notice to be carried out before the compliance period expires. I have taken account of the appellants' point that an enforcement notice relating to another property in the Borough gave 5 months for compliance but I am not aware of the detailed circumstances. Furthermore for the reasons set out above I consider that the period of three months is reasonable to achieve compliance and that a period of 8 months requested is not justified.

Conclusions

13. For the reasons given above I conclude that some of the requirements are excessive and I am varying the terms of the enforcement notice accordingly, prior to upholding it. The appeals under ground (f) succeed to that extent. For the reasons given above the appeals under ground (g) do not succeed.

Decisions

14. The appeals are allowed on ground (f) and the enforcement notice is varied as follows:

By the deletion of the words "...and any additional mattresses and beds." at the end of Requirement/Step 2.

By the deletion of the wording in Requirement/Step 3 in its entirety and the substitution of the following wording: "Remove one of the kitchens so that only one remains within the property."

The appeals on ground (g) are dismissed.

Subject to these variations the enforcement notice is upheld.

NP Freeman

INSPECTOR