

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: 14 December 2016

Appeal Ref: APP/T5150/C/16/3148781
17 and 17A Deacon Road, London NW2 5NP

- 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 Mr Carmi Korine against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 19 March 2016 under ref. E/15/0477.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to nine self-contained flats.
 - The requirements of the notice are set out as follows:
 - "STEP 1 Completely and permanently cease the use of the premises as more than two flats.
 - STEP 2 Remove all kitchens, except ONE, and all bathrooms, except ONE, from the GROUND floor of the premises.
 - STEP 3 Remove all kitchens, except ONE, and all bathrooms, except ONE, from the FIRST floor of the premises.
 - STEP 4 Remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised use of the premises as more than two self-contained flats.
 - STEP 5 Remove all waste materials and debris associated with the unauthorised change of use to multiple flats from the premises."
 - The period for compliance with the requirements is six 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background

2. The appeal property is a two-storey terraced residential building with further accommodation in the loft served by roof lights and a rear dormer. The parties evidently agree that the lawful use of the building is as two self-contained flats – one on the ground floor known as 17A Deacon Road and one across the first and loft floors known as 17 Deacon Road. The site has a rather complex planning history and it appears to be the case that the rear dormer and the roof lights as constructed may not be in accordance with the relevant planning permission (ref. 13/3193). However, the enforcement notice and this appeal are only concerned with the use of the building as such.
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3. The enforcement notice attacks the material change of use of the premises (nos 17 and 17A) to nine self-contained flats. My site visit revealed that the nine flats are essentially studio flats with four (numbered 1-4) located on the ground floor in no. 17A and five (numbered 5-9) located across the first and loft floors in no. 17. Eight of the flats contain an ensuite bathroom and a kitchen area. One flat (numbered 8) has sole use of a kitchen and bathroom that are set slightly apart from the main bedroom/living space. Many of the flats were no longer occupied on the day of my visit.

The appeal on ground (f)

4. The enforcement notice is clearly directed at remedying the breach of planning control; it is not simply seeking to remedy the injury to amenity caused by the breach. The key consideration on ground (f) is therefore whether the steps required to be taken, or the activities required to cease, exceed what is necessary to achieve the purpose of remedying the breach of planning control.
5. The appellant states that: "The removal of all bathrooms except one in the case of both the ground floor and the first floor and second floor would be excessive in order to cease the self-contained use of the existing studios on each floor." This result, it is argued, could be achieved by simply retaining at least a shared kitchen on each of the ground and first floors, and removing the kitchen and cooking facilities in the bedrooms. The appellant also refers to a potential fallback, that in the event of the property being restored to its lawful use as two flats, those two flats could then be converted to two houses in multiple occupation (HMOs) in Use Class C4. The potential fallback is also identified in legal advice (from 39 Essex Chambers) that the appellant has submitted.
6. Plans have been submitted to illustrate a possible arrangement of two such HMOs – one on the ground floor and one across the first and loft floors. The plans show the removal of the existing kitchens and cooking facilities from each of the studio flats. Eight rooms would retain ensuite bathrooms. One other room would have a separate bathroom reserved for its sole use. There would be communal kitchens on the ground and first floors associated with each HMO.
7. The enforcement notice is directed at a material change of use. It is well established that a notice so directed may require the removal of works integral to and installed solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development requiring planning permission. It is evident to me that building operations have been carried out in order to physically subdivide the whole premises into nine flats and that a number of additional bathrooms and kitchens have been installed to provide for independent living. I observed nine kitchen areas and nine bathrooms. No evidence has been submitted to suggest that any of this building work was carried out in connection with the lawful use of the property. A ground floor plan (drawing no. 13/545/PA/01 Rev. A) of the pre-existing flat on that level, for instance, shows the existence of one bathroom and one kitchen.
8. Thus, I do not find any of the steps required by the enforcement notice to be unreasonable or excessive. In my judgement, the retention of nine bathrooms in the property could, as a matter of fact and degree, cast doubt on whether the breach of planning control had been satisfactorily remedied. Put another way, allowing so many bathrooms to remain would make it possible for the

building to be readily adapted for use as multiple flats again in the future, particularly in a situation where the cooking facilities appear to have involved portable ovens.

9. In point of fact, the Council has sought to allow a kitchen and a bathroom to remain on each of the ground and first floors. Whether it was the Council's intention or not, the requirements of the notice do not directly attack the kitchen area and bathroom on the loft floor. That being the case, the upper lawful flat (spread over the first and loft floors) could benefit from two kitchens and two bathrooms in the reinstatement of the property.
10. The appellant's alleged fallback is not straightforward. It has required the input of a legal opinion and is not evidently supported by the Council insofar as I can tell. No lawful development certificate is in place. Moreover, the appellant was denied a lawful development certificate for a proposed change of use to two small-scale HMOs in Use Class C4 under application ref. 15/5344. The appellant does not say whether he has lodged an appeal against that decision. A planning application for the same scheme (ref. 16/1034) was outstanding at the time representations closed on this appeal.
11. Furthermore, the suggested fallback, even if the legal interpretation offered is correct, could only be exercised once the property had unquestionably been returned to the use as two self-contained flats, which is what the enforcement notice is seeking to do. If I were to be persuaded by the appellant's approach, it would be tantamount to solving one breach (two flats to nine unauthorised flats) by creating another breach (nine unauthorised flats to two HMOs in Use Class C4). The other important point is that full compliance with the requirements of the notice would not actually prevent the appellant doing what he is legally entitled to do once the notice has been complied with. The appellant might wish to satisfy himself that he has a lawful development certificate before proceeding to create two small-scale HMOs from two self-contained flats. Such an application would provide the appropriate opportunity to determine that legal issue.
12. As it is, the requirements as a whole do no more than seek the cessation of the unauthorised use and the removal of key items that facilitate the unauthorised use. Only complete compliance with the requirements would give full effect to the notice. It would not be disproportionate to require the appellant to carry out the steps required by the notice.
13. Taking into account all other matters raised in the written representations, I conclude that the appeal on ground (f) should not succeed.

The appeal on ground (g)

14. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. A compliance period of six months has been given in the notice.
15. The appellant refers to eight assured shorthold tenancy agreements (which terminated in September 2016), one private tenancy (which terminated in November 2016), legal advice provided for the appellant by Christopher Mathew Solicitors, the need for the tenants to be rehoused, making allowances for the Christmas and New Year holiday period and allowing one to two months

to complete the physical works required by the enforcement notice. It is argued that it would be more reasonable to allow the appellant, once he has vacant possession of the whole building, to comply with the enforcement notice by around April 2017.

16. It would appear that all the tenancies have now automatically expired. I saw that many of the units are now unoccupied. I agree with the Council that the physical works required by the notice are relatively straightforward and should not take very long to complete. Moreover, simply lodging the appeal has resulted in a situation where the compliance period will now extend well beyond April 2017.
17. It is desirable that the breach of planning control should cease without unnecessary delay in order to address the harm that arises from it. On the evidence available to me, I consider that a period of six months provides sufficient time to comply with the requirements of the notice.
18. In the event of unforeseen circumstances arising, it would be open to the Council, at its own discretion, to extend the period for compliance with the notice under the provisions of section 173A (1) (b) of the 1990 Act as amended.
19. Taking into account all other matters raised in the written representations, I conclude that the appeal on ground (g) should not succeed.

Andrew Dale

INSPECTOR