The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/H5390/C/16/3162878
1 Shepherd's Bush Road, London W6 7NA

- 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 Stoneflex Construction Limited against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
- The enforcement notice was issued on 19 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of three self-contained residential flats to ten self-contained residential flats.
- The requirements of the notice are to cease the use of the property as ten self-contained flats and re-instate the use as three self-contained flats.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by: the deletion of '(b)' from line two of the opening paragraph of the notice and inserting '(a)' instead; the insertion of 'material change of use from' before 'conversion' and the deletion of 'conversion of' in paragraph 2 of the notice; and varied by the deletion of 'ten' and 'and reinstate the use as three self-contained residential flats' from paragraph 4.a. of the notice. Subject to these corrections and this variation the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. The Council has issued the enforcement notice on the basis that there has been a breach of planning control under paragraph (b) of section 171A(1) of the Town and Country Planning Act 1990 (the Act). Paragraph (b) states that the failure to comply with any condition or limitation, subject to which planning permission has been granted, constitutes a breach of planning control. However, the allegation stated in paragraph 2 of the notice is, without planning permission, the 'conversion' of the property from three flats to ten flats which is not a failure to comply with any planning condition.

3. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. It is not clear in this case for two reasons. Firstly, the legal basis on which the notice is issued should refer to paragraph (a) of section 171A(1), which is the carrying out of development without the required planning permission. Secondly, works of 'conversion' do not necessarily amount to development that

requires planning permission. Rather it is the making of a material change of use that is defined as development in the Act.

4. These errors by the Council could be grounds for finding that the notice is invalid. I consider though that the appellant has not been misled by the incorrect framing of the notice and the allegation. This is because from his ground (g) appeal it is apparent that he understands the nature of the breach of planning control and what he must do to put it right. These errors can therefore be corrected without causing injustice to the appellant.

5. With regard to the requirements of the notice, the second part of paragraph 4.a. of the notice seeks to limit the future use of the property to a specified purpose. This is an excessive requirement because it could ostensibly prohibit other lawful uses. It is also not necessary to specify the cessation of the use of a particular number of flats as they are already referred to in the allegation. I will therefore vary the notice to delete the reference to 'restoration' and the number of units. This would not result in either injustice or prejudice to the appellant or the Council.

The ground (g) appeal

6. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the time necessary to carry out those requirements.

7. The appellant requests that the nine month period be increased to a year. This is because all the units are occupied and some of the tenants have tenancy agreements that extend beyond the nine month period.

8. The Council have made no comments in respect of this ground of appeal but I note that they have issued the notice because they considered it was expedient to do so and that decision has not been challenged. I consider a compliance period of at least a year would be tantamount to the grant of a time limited planning permission for a development that the Council views as unacceptable due to the poor standard of accommodation. Such a period is not therefore reasonable and is in excess of the period required to carry out the action of ceasing the use.

9. As there is no appeal on any other ground, it has been virtually inevitable, since the appeal was lodged on 28 October 2016 that the unauthorised use of the property would have to cease. By making this limited appeal the appellant has already delayed the date when the notice will come into effect, knowing that its requirements to cease the use will be upheld. During this time there has been nothing to prevent the appellant from making preparations to cease the use while waiting for the appeal to be determined however, at the site visit it appeared that all units remained occupied.

10. In cases involving business operations it is necessary to weigh the interests of the business against the harm caused by the activities the subject of the notice. On the other hand, the use enforced against seriously harms the living conditions of the existing occupiers of the flats. Taking all these matters into account I conclude that the period for compliance is reasonable especially as the step required, which is to cease the use, is straightforward, there being no other requirements. The appeal on ground (g) therefore fails.

Conclusion

11. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice with corrections and a variation.

D Fleming

INSPECTOR