
Appeal Decision

Site visit made on 28 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/N4720/C/16/3156708

9 Gathorne Terrace, Leeds, LS8 5EZ

- 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 Andrew Vickers against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 19 July 2016.
 - The breach of planning control as alleged in the notice is, without planning permission the making of a material change of use of a dwelling house to mixed use for the purposes of dwelling house and two bed sits in the basement area and the creation of light wells to the front and rear.
 - The requirements of the notice are:
 - Step 1:
Cease the use of the basement as two bed sits.
 - Step 2:
 - i) Remove the kitchens and associated cooking facilities from the basement.
 - ii) Remove the external door from the front elevation of the basement.
 - iii) Remove the light wells
 - Step 3:
Re-instate the window openings in both front and rear elevations, as their existed prior to the unauthorised development taking place.
Re-instate the internal staircase to access the upper floor dwelling.
Make good the elevation walls where the light wells have been removed with materials similar in appearance to the existing.
 - Step 4:
Remove from the site any resulting material, rubbish and equipment arising from compliance with Steps 2 and 3.
 - The period for compliance with the requirements is 6 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. Since the prescribed fee has not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. It is directed that the enforcement notice be varied by:
 - deleting all of Step 2(ii) and Step 2(iii)
 - deleting all of the words in Step 3 and substituting instead the words "Re-instate the internal staircase to access the upper floor dwelling".
 2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.
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Procedural Matter

3. During the appeal process the Council confirmed that they had no objection to the external alterations carried out to the building and that these elements could be removed from the notice's requirements. As such, I consider it would reduce the remedial works required by the notice and hence would be to the appellant's advantage. Since no prejudice to either party would arise from doing so I have therefore varied the notice accordingly as set out in the formal decision.

Appeal site

4. 9 Gathorne Terrace is a traditionally constructed mid-terrace two storey dwelling house with basement. The Council allege that there has been a material change of use of the property to a *mixed use for the purposes of a dwelling house and two bedsits*, and that various works have been carried out as part of that change of use.
5. No appeal has been made on ground (b) that the alleged matters have not occurred, or on ground (c) that the alleged matters do not constitute a breach of planning control. There is also no appeal on ground (a) that planning permission should be granted.

The appeal on ground (f)

6. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged in the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
7. When a ground (f) appeal is made it is essential to understand the purpose of the notice. Section 173(4) of the Act provides that the purpose is to (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
8. Steps 1 to 4 of the (varied) notice require the unauthorised use to cease, the removal of the internal kitchens and associated cooking facilities, and the reinstatement of the internal staircase. It is clear from this therefore that the required steps are intended to restore the use of the building to its previous use as a single dwelling house. Hence the purpose of the notice is to remedy the breach of planning control within section 173(4)(a). The steps in the notice should not therefore exceed that purpose.
9. Insofar as is now required in the varied steps in the notice, the appellant suggests that one basement bedsit could be removed, or alternatively both bedsits removed, but in both cases retaining the existing kitchens.
10. However, it is not disputed that the installation of the kitchen facilities and the removal of the internal staircase was part of, and integral to, the change of use. In such circumstances it is established case law¹ that an enforcement notice can legitimately require removal of internal works, even if not development in their own right. Consequently, since the kitchen installations and staircase removals formed part of the breach of planning control, the

¹ (i) *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598
(ii) *Somak Travel v SSE & Brent LBC* [1987] JPL 630

required reversal of those works go no further than remedying the breach, and hence are not excessive requirements.

11. Other arguments raised as to why lesser steps should be required are based on the merits of retaining elements of the development as part of two alternative revised schemes², relevant policy support for those, and also that the basement meets Building Regulation standards. However, no ground (a) appeal has been made in respect of this appeal, and so I am unable to consider the planning merits of retaining any part of the unauthorised development.
12. It is also argued that the Council have failed to demonstrate harm as a result of the breach of planning control. That is not relevant to an appeal under ground (f). However, for completeness I would point out that the Council's reasons for issuing the notice are at Section 4 of the notice, and provides details of the harm and the conflict with the Development Plan they consider has occurred. Moreover, it is established case law³ that there is no jurisdiction for an Inspector to determine whether or not a Council has complied with its obligation in terms of exercising 'expediency' when issuing an enforcement notice. That is a matter to be dealt with by way of judicial review.
13. For all the above reasons the appeal on ground (f) fails.

The appeal on ground (g)

14. The ground of appeal is that the period for compliance with the notice requirements falls short of what should reasonably be allowed.
15. It is argued that the current occupiers benefit from assured shorthold tenancies (AST) and require adequate notice. The appellant seeks a period of one year to allow tenants sufficient time to find alternative accommodation.
16. However, no copies or details of ASTs have been submitted and so I do not know how long any tenant may have left to run on their AST, or the period of notice required to be given by the landlord. Also, there is no evidence before me that it would be exceptionally difficult to find alternative accommodation. It is also the case that the required remedial works have been reduced due to my variation of the notice, hence it would take less time to complete them.
17. I conclude on balance that the six month compliance period does not fall short of what should reasonably be allowed
18. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR

² As part of planning applications submitted to the Council during the appeal process

³ *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908 (Admin)