

Appeal Decision

Site visit made on 27 July 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 08 August 2017

Appeal Ref: APP/N5090/C/16/3159467

Land at 246A Station Road, Edgware HA8 7AU

- 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 Echo Verwaltungs c/o Ironstone UK Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 23 August 2016 under ref. ENF/01863/14.
 - The breach of planning control as alleged in the notice is: "Without planning permission the sub-division (sic) of the property in (sic) five studio flats".
 - The requirements of the notice are to:
 - "1 Cease the use as five self-contained flats
 - 2 Permanently remove all but one set of kitchen facilities (units, sinks, cookers and food preparation areas) from the property".
 - The period for compliance with the requirements is five 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. It is directed that the enforcement notice be corrected and varied by:
 - (i) Deleting the text pertaining to paragraph 3 in its entirety and substituting therefor: "Without planning permission, the making of a material change of use of the property to use as five self-contained flats."
 - (ii) Deleting the word "five" in the first requirement at paragraph 5.
2. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Background

3. The appeal concerns the top two floors of a three-storey building in Edgware town centre. The Hollywood restaurant and café occupy the ground floor. The top two floors are arranged as five self-contained studio flats, all of them containing one main room and a bathroom.
 4. On the day of my visit, flat 5 was unoccupied. Two flats (numbered 2 and 4) contained a freestanding conventional cooker in the kitchen area. Four flats (numbered 1, 3, 4 and 5) contained a microwave cooker. For the avoidance of doubt, flat 4 had conventional and microwave cookers. There are no
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communal facilities such as a shared living room, shared kitchen, shared bathroom or shared laundry/utility area.

5. The building stands next to Station Road, Penshurst Gardens and Stream Lane, the narrow lane to the rear from where access to the flats is gained via an external stairway.

Grounds of appeal and procedure

6. By email dated 21 February 2017 the appellant withdrew the appeal on ground (c) – that there has not been a breach of planning control – and the appeal on ground (d) – that at the time the notice was issued, it was too late to take enforcement action against the matter stated in the notice. Shortly after, the procedure for the appeal changed from an inquiry to written representations.

Matters concerning the enforcement notice

7. The notice alleges that there has been a “sub-division” (sic). The term subdivision is imprecise and does not amount to development for the purposes of section 55 of the 1990 Act as amended. When read as a whole, it is clear that the notice is directed at the use of the property. In correcting the allegation to refer to a material change of use, I take the opportunity to also refer to “self-contained” flats rather than “studio” flats so as to match the wording of the notice’s first requirement which is also more accurate.
8. It is also necessary to vary the first requirement of the notice as it is not essential to specify that use as five flats should cease. The appropriate requirement is to simply cease the use of the property as separate self-contained flats. The exact residential layout of the upper two floors before the breach took place is not clear but such a variation would also be consistent with the notice’s second requirement which seeks only one set of kitchen facilities in the property.
9. I am satisfied that the correction and variation outlined in paragraphs 7 and 8 above will not alter the notice in substance, make it more onerous to comply with or cause any injustice to the parties.

Nullity arguments

10. An enforcement notice is a nullity if it is missing some vital element such as the requirements or a date for compliance and so is defective on its face. The subject notice is not vulnerable in this regard.
11. An enforcement notice can also be a nullity if it is hopelessly ambiguous and uncertain but for this to apply much must be wrong with it. The appellant’s approach here seems in part to rely on a number of the arguments being made under ground (f) and some are better considered under that ground, but I do not find the requirements of the notice to be hopelessly unclear in themselves.
12. On a plain reading of the second requirement, to which the appellant directs the arguments about nullity, all “cookers” should be removed whether they are conventional hob cookers or microwave cookers. Three of the five flats do not contain a hob cooker yet they obviously function as self-contained flats with basic cooking facilities being provided by microwave cookers. The list of

facilities to be removed is written as a closed list; it would not attack nor would I expect it to attack such items as kettles or toasters. The notice does not require the removal of any bathroom facilities, but at the same time the Council is not obliged to provide a full set of requirements that would suit a future possible use such as a house in multiple occupation. The future use of the property should be a matter for discussion with the local planning authority. The requirements seek to extinguish an unauthorised use and they would do that clearly enough. The requirements are not hopelessly ambiguous or uncertain. The notice is not a nullity.

The appeal on ground (f)

13. 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.
14. The appellant considers that a hob cooker is a basic requirement for a kitchen in a self-contained dwelling and that the provision of kitchen units, a sink and food preparation areas would not in themselves allow a room to be used as a self-contained flat. It is suggested that the second requirement should be removed or at least be amended to only require the removal of all but one set of hob cookers (covering both gas and electric). Reference is made to a certificate of lawfulness issued by the same Council on 9 October 2015 for the change of use of a single dwelling to a six-unit house in multiple occupation with a shared kitchen which permitted, through an informative note, a fridge, microwave and sink in the kitchen units located within the rooms. Commentary is also provided on washing/dryer facilities, on the appellant's approach of upgrading the property in liaison with the Council's environmental health officer and on how the requirements could restrict the creation of good quality accommodation in a house in multiple occupation.
15. It was apparent to me that the three of the five flats without conventional hob cookers could still function as self-contained dwelling units. The appellant's suggested amendment would therefore have no impact on these flats and thus would not fully remedy the breach of planning control.
16. I would not place too much reliance on the single certificate of lawfulness referred to. This was for a different development where a shared kitchen was to be provided. The informative note added in that case is somewhat risky and is not a good example to follow. Three of the five flats in the case before me evidently provide sufficient facilities for day-to-day living including cooking, with the kitchen areas being based on a fridge, microwave cooker and sink.
17. The appellant suggests that living independently in each of the units would not be possible without access to communal washing/dryer facilities. However, such a facility is not a basic amenity. The occupiers may well make use of a laundrette in the shopping parade below. The point being made here has little relevance to a ground (f) case.
18. I have noted the liaison with the environmental health officer. However, on the information provided there is no lawful development certificate in place to cover the lawful use of the building or its possible future use as a house in

multiple occupation. It seems to me that even if there is any potential lawful fallback to one house in multiple occupation, it could only be exercised once the property had unquestionably been returned to use as a single unit of residential accommodation which is what the enforcement notice seeks to do.

19. If I were to be persuaded by the appellant's approach to have regard to the requirements as they may impact on a future use, it would be tantamount to solving one breach (five self-contained flats) by creating another breach (five self-contained flats to a house in multiple occupation, presumably 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 apply for a lawful development certificate before proceeding to create a small-scale house in multiple occupation at the property.
20. As I see it, compliance with the notice would leave no more than one flat or residential unit, five small bathrooms, one set of kitchen facilities and the communal entrance, corridor and stairs. As I explained earlier, the future use of the building from that starting point would be a matter for discussion with the local planning authority.
21. 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.
22. 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)

23. 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 five months has been given in the notice.
24. The gist of the appellant's case is that securing the termination of the tenancy agreements and the vacation of the flats can take considerably longer than five months. A period of nine months is requested in order to take account of any court action that may have to be taken in order to gain vacant possession of the whole building.
25. However, in my experience a five-month period is not unreasonable for this type of unauthorised development. It should allow time for notice to be given to the tenants in order to cease the use, time for the tenants to find a new home and time for the physical works to be carried out once the flats are vacated. There may be occasions where difficulties arise or court action is required. In the event of such circumstances, 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.
26. The possible worst-case scenario advanced by the appellant should not be assumed and used to justify extending the compliance period at this stage. It is desirable that the breach of planning control should cease without any

unnecessary delay in order to address the harm that arises from it. Determining the time needed to comply with the terms of an enforcement notice will always be a case-specific exercise and I find that the five-month compliance period given here is reasonable in the light of the information put before me.

27. 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