
Appeal Decision

Site visit made on 23 August 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 05 September 2017

Appeal Ref: APP/Y5420/C/16/3162014

33 Lothair Road South, London N4 1EN

- The appeal is made by C Kaydas under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: FCV/2014/00661) issued by the Council of the London Borough of Haringey on 28 September 2016.
 - The breach of planning control alleged in the notice is "the material change of use to five self-contained flats".
 - The requirements of the notice are as follows: -
 - i) Cease the use of the property as self-contained flats.
 - ii) Remove the kitchen facilities from each flat.
 - iii) Removal the internal partitions which facilitates the use as flats [*sic*].
 - iv) Remove any resultant debris resulting from compliance steps above [*sic*]."
 - The period for compliance with these requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g).
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Decision

1. It is directed that paragraph 5 of the enforcement notice be varied by (a) replacing "from each flat" in sub-paragraph ii) by "from all but one of the flats", (b) deleting sub-paragraph iii), (c) replacing the words in sub-paragraph iv) by "Remove any debris resulting from compliance with Requirement ii)" and (d) replacing "Four (4) months" by "Six months".
2. Subject to these directions, the appeal is dismissed and the enforcement notice is upheld as varied.

Reasons for the decision

Ground (f)

3. The purpose of an appeal on ground (f) is to maintain that the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control alleged in it and any injury to amenity caused by the breach. The appellant states that the requirement to remove all internal items is excessive since the house has not been in single-family use for many years and its previous use as a house in multiple occupation ("HMO") could be reinstated.
 4. The appellant and several neighbours have submitted representations about the planning merits of single-family use and HMO use of the house, but these representations cannot be dealt with in this appeal because there is no planning application or ground (a) appeal before me. In addition, the
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- enforcement notice could not impose a requirement to resume a previous use, since this would exceed what is necessary to remedy the breach of planning control alleged in the notice.
5. Section 57(4) of the 1990 Act states, "Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out".
 6. The appellant has not produced sufficient evidence in this appeal to establish that the previous use as a licensed HMO for eight persons (a 'large' HMO) was also lawful for planning purposes within the meaning of section 57(4) and he has not claimed in this appeal that the change from the previous use to the use as flats did not require planning permission. However, during the course of the appeal the Council have granted planning permission for the change of use of the property to an HMO for six persons (a 'small' HMO). The requirements of the enforcement notice should not conflict with the right to implement this permission.
 7. I am authorised by section 176(1) of the 1990 Act to correct any defect, error or misdescription in the notice, and to vary its terms, if I am satisfied that this will not cause injustice to the parties.
 8. Requirement ii) of the notice is "Remove the kitchen facilities from each flat". The notice can properly include a requirement to remove works that have been carried out solely to facilitate an unauthorised use as five self-contained flats, but Requirement ii) is excessive because it would leave the house with no kitchens at all. This would be incompatible with both single-family use and with the authorised small HMO use. I have therefore varied this requirement so that one kitchen will be left.
 9. Requirement iii) of the notice states, "Removal the internal partitions which facilitates the use as flats". I did not see any such partitions on my inspection of the flats and the Council's representative was unable to identify any. There are rooms with lockable doors, but they do not appear to have been installed as part of the works carried out to create the flats and they would not be inconsistent with the authorised use as a small HMO. Requirement iii) is excessive in these circumstances and I have therefore varied the notice by deleting it.
 10. Requirement iv) - "Remove any resultant debris resulting from compliance steps above" - needs variation to clarify its terms and to reflect the variations made to the other requirements.
 11. The variations I have made are set out in paragraph 1 above. I am satisfied that I can make them without causing injustice to the parties. The appeal has therefore succeeded on ground (f) to this extent.

Ground (g)

12. The appellant seeks an extension of the compliance period, to allow sufficient time to obtain possession of the flats, which are all occupied by tenants, and to carry out the works required. The Council consider that four months is a long

enough compliance period, taking into account the time that has already elapsed since planning permission for the flats was refused.

13. Although it has taken a long time for matters to get to this point, the appellant is still entitled to assume that this appeal may be successful and he is entitled to a reasonable period for compliance after the notice has taken effect on the date of my decision. He may also wish to establish what rights he has by virtue of section 57(4). The tenants, at least two of whom have infants, may need more time to relocate.
14. After taking all these matters into consideration, I have concluded that six months would be a reasonable compliance period. The notice has therefore been varied and the appeal has succeeded on ground (g) to this extent.

D.A.Hainsworth

INSPECTOR