



Appeal Decision

Site visit made on 11 July 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2019

Appeal Ref: APP/Y5420/C/18/3211057

45 Meads Road, London N22 6RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Milan Beader against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 8 August 2018 under ref. HMO/2017/00192.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the material change of use of the property from a House in Multiple Occupation (Use Class C4) to a mixed use comprising of 3 self-contained flats and a House in Multiple Occupation."*
 - The requirements of the notice are to:
 - "1. Cease the use of the property other than as a House in Multiple Occupation (use class C4).*
 - 2. Remove from the self-contained flats and HMO rooms within the property, all kitchens, including items, but not limited to, all cooking equipment, cabinets, drawers, worktop areas, sinks, drainage areas and washing machines."*
 - The period for compliance with these requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (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 varied, following the success of the appeal on ground (f), by deleting requirement 2 in paragraph 5 in its entirety and replacing it with the following requirement:

"2. Remove all cooking equipment from the 3 self-contained flats within the property (ground floor front, first floor front and second floor)."

2. Subject to this variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

The appeal site and the enforcement notice

3. Meads Road is a residential street of predominantly terraced, 2-storey properties. No. 45, one such property, has further habitable space in the loft. There is no dispute that the lawful use of the property is considered to be as a House in Multiple Occupation (HMO) in Use Class C4. A certificate of lawfulness for the existing use of the property as a C4 HMO for 3-6 people was issued in April 2018 under ref. HGY/2018/1042.

4. At the time the enforcement notice was issued, the appeal building had been configured internally to provide 3 self-contained flats and 3 HMO rooms with a shared kitchen, lounge and rear garden. Two of those HMO rooms (ground floor middle and first floor rear) were once evidently self-contained flats but were subsequently classified by the Council as HMO rooms in the notice after the private cooking facilities (electrical hobs built into the kitchen worktops and microwaves) were removed. That remained the situation on the day of my visit such that those HMO rooms do not have all the facilities necessary for private, self-contained domestic existence.
5. I had little difficulty in identifying those parts of the property given over to 3 self-contained flats and those given over to HMO use and I consider that the 10-year rule on time limits set out in the notice has been correctly applied to what is a mixed use (flats and HMO) of the property. The enforcement notice is sufficiently clear and from reading the appellant's original grounds of appeal he did not seem to be confused about the notice in terms of what it was he was alleged to have done wrong or about what he needed to do to put it right. There is no basis to quash the notice on the grounds that it is a nullity or invalid in some way.

The appeal on ground (e)

6. Ground (e) arises where an appellant wishes to argue that copies of the enforcement notice were not served as required by section 172 of the 1990 Act as amended.
7. The key issue is whether the notice was served properly on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. If it was not served properly, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
8. Section 176(5) of the 1990 Act as amended gives the Secretary of State or the appointed Inspector power to disregard any failure to serve the notice on anyone as required, if neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve him or her.
9. The appellant is the proprietor of the appeal property. Having regard to the records held by HM Land Registry on 10 May 2017 and more particularly on 10 August 2018 and to the Council's list of those served with the enforcement notice, it seems to me that copies of the enforcement notice were served correctly in accordance with section 172. The case of *London Borough of Newham v Miah [2016] EWHC 1043 (Admin)* is authority for the view that the use of HM Land Registry records is a proper approach for a local planning authority to follow when serving enforcement notices.
10. When the notice was issued, the Council could not have taken into account the HM Land Registry records from 23 April 2019 which showed a different home address for the appellant and the involvement of a lender, Paragon Bank PLC. The appellant does not clarify the date when this lender came to hold an interest in the property and has not forwarded any direct concerns

from this lender. If applications or correspondence had been sent to the local planning authority by the appellant quoting this different home address, the local planning authority might have used this information or other knowledge about the appellant and the appeal property to further clarify the appellant's home address and could have considered serving a planning contravention notice. Even so, the HM Land Registry record of 10 August 2018 still recorded his home address as 45 Meads Road. Given the court case noted in paragraph 9 above, the Council's approach to the service of this enforcement notice was sound enough.

11. No explanation is provided as to exactly how and when the appellant came to be aware of the enforcement notice or as to when he was first able to instruct his agent (Edgeplan). As it is, an appeal has been made against the notice and written representations made 3 days before the date the notice was first due to take effect. Further detailed written representations were made during the course of the appeal. It has not been made clear how the appellant has been substantially prejudiced by the alleged failure to serve a copy of the notice upon him at his correct home address. So, even if there has been a failure of service in accordance with section 172, I am satisfied that this has not caused substantial prejudice to the appellant and I exercise my power to disregard it.
12. In the light of all this, the appeal on ground (e) fails.

The appeal on ground (f)

13. An appeal on ground (f) is that the steps required to comply with the notice are excessive and lesser steps would overcome the objections.
14. The gist of the appellant's case is that the second requirement in paragraph 5 of the notice goes beyond what is necessary to remedy the breach of planning control. It is explained that the lesser step of simply removing just the cooking facilities, one of the basic amenities, from the 3 self-contained flats would be sufficient and reasonable. It is argued that this would have the effect of returning the whole premises to its lawful C4 HMO use as all occupiers would share the cooking facilities on the ground floor.
15. The Council contends that the notice was also issued to remedy any injury to amenity which has been caused by the breach – the new unauthorised mixed use – and considers that the removal of all the kitchen items from the flats and HMO rooms is required to address the injury to amenity, that being the provision of undersized and low quality housing.
16. The Council refers to various case law. The court judgments in *Murfitt v SSE [1980] JPL 598* and *Somak Travel v SSE [1987] JPL 630* provide authority for the view that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the breach took place.
17. Consequently, requirements to remove separate fixtures and fittings may be appropriate according to the circumstances. However, what remedial works

are necessary to prevent the unauthorised use depends on the facts of each particular case, and the courts have held that to be a matter for the Inspector's judgment (see *Hereford CC v SSE & Davies [1994] JPL 448*). The National Planning Policy Framework explains that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. It is likely that the minimum necessary to remedy the breach would be proportionate (see *Kestrel Hydro v SSCLG [2015] 1654 (Admin)*).

18. On ground (f), it is necessary to first establish what it is the Council is seeking to achieve by the notice. Paragraph 4.i of the notice does not explicitly state its purpose; it simply records that "...steps should be taken to remedy the breach by Section 173 4(a) or to remedy any amenity or injury (sic) which has been caused by the breach." When read as a whole, I judge that the notice is primarily directed at remedying the breach of planning control since it seeks to return the property to its lawful use and what must be considered is whether the requirements exceed what is necessary to achieve that objective.
19. The Council accepted through its drafting of the breach that the removal of the private cooking facilities from the ground floor middle room and the first floor rear room rendered them being classified as part of the HMO. It seems to me that if the private cooking facilities are similarly removed from the 3 remaining self-contained flats they too would become HMO rooms and the whole premises could then be in use as a C4 HMO for 6 residents with 6 main rooms plus a shared kitchen, lounge and/or dining area and garden areas. Whilst the cooking facilities could be readily reinstalled, the same could be said for the remainder of the kitchen-type facilities. The appellant would be liable to prosecution for failure to comply with the terms of the enforcement notice if the same cooking facilities were reinstalled or different cooking equipment was introduced in the main rooms. The Council could also arrange for inspections from time to time. The property may also require a HMO licence which would introduce further opportunities for inspection and control.
20. The Council's concerns about the injury to amenity through the provision of undersized and low quality housing are noted. I have, however, carefully studied the Council's Planning Enforcement Notice Delegated Report where the planning assessment focussed on the size of the 3 remaining self-contained flats. Whilst the presence of the HMO rooms would have prevented the enlargement of those flats, I have read nothing to suggest that any of the 6 main rooms would be deficient in floor space or in qualitative terms when assessed as HMO rooms, with the benefit of shared facilities (including cooking) elsewhere in the building. From what I saw, the retention (where they are present) of a range of cabinets and drawers, a worktop, a sink and a washing machine would not materially impinge on the available and usable floor space and many HMO occupiers may actually welcome such facilities as an enhancement to their overall living conditions.
21. On the facts and circumstances of this case, I exercise my judgment that it would be sufficient to retain the first requirement (which has not been disputed) and vary the second so that all cooking equipment is removed from the 3 self-contained flats within the property (ground floor front, first floor front and second floor), as suggested by the appellant. Accordingly, the appeal on ground (f) succeeds.

The appeal on ground (g)

22. This ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is 5 months.
23. The essence of the appellant's case on this ground of appeal is that certain parts of the property are let on the basis of an Assured Shorthold Tenancy with the tenants expecting a 12-month period of tenancy. It is said that compliance with the notice would unduly impact on the lives of the tenants involved. The appellant will need to wait for those tenancies to expire. A period of 12 months is sought, with the appellant stating that the latest finishing current tenancy at the property is 19 April 2020. Confusingly, the appellant's enforcement appeal statement (paragraph 7.3) ends by stating that the minimum period for compliance should be extended to no less than 6 months.
24. It is the responsibility of all persons having interests in the property to comply with the terms of the notice. No tenancy agreements were submitted with the appellant's enforcement appeal statement and any that might have been entered into after the enforcement notice was issued would attract very limited weight. I have no information about break clauses or potential grounds for possession. There is no conclusive evidence to show that the 5-month compliance period is not an adequate period of time for any affected tenants to seek alternative accommodation or to adapt their lives to the altered accommodation arrangements at the appeal property or for the undertaking of the very straightforward physical steps required by the notice, as now varied.
25. In such circumstances and on the evidence available to me, I am not persuaded that the period of 12 months sought by the appellant is justified, or indeed that there is any need to extend the period for compliance with the notice. I am satisfied that the period of compliance of 5 months stated in the notice is a proportionate response to the breach of planning control that has occurred. However, in the event that the appellant is able to convince the Council that a longer period is necessary if genuine difficulties are encountered, the Council is aware that it has the 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. In the light of all this, the appeal on ground (g) fails.

Andrew Dale

INSPECTOR