



Appeal Decisions

Site visit made on 13 August 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal A: APP/Y1945/C/19/3218960

Appeal B: APP/Y1945/C/19/3218961

4 Kingsfield Road, Watford WD19 4PS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Ms Grace Lightbody and Appeal B by Mr Y Peng against an enforcement notice issued by Watford Borough Council.
 - The enforcement notice was issued on 28 November 2018.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the conversion of the property from a mixed use: single family dwellinghouse and clinic, to a mixed use: clinic and four self-contained residential units.'
 - The requirements of the notice are:
 1. Cease the use of the three smaller residential units 1, 2 and 3 as self-contained residential dwellings.
 2. Remove the kitchen appliances, kitchen cupboards, wall and floor units and all associated fixtures and fittings, including all plumbing from units 1, 2 and 3.
 3. Remove the shower, toilet and hand basin as well as all associated fixtures and fittings, including all plumbing from units 1, 2 and 3.
 4. Remove/reinstate internal walls and doors in units 1, 2 and 3 as required to revert the ground floor of the dwellinghouse to the layout labelled 'Existing Ground Floor Plan' on drawing PL-002 for the approved planning permission reference 18/00098/FULH.
 5. Remove from the land and dispose of all rubble, waste materials and debris in relation to compliance with Steps (2), (3) and (4).
 - The period for compliance with the requirements:
 - 'Step(1) within three calendar months from the date this Notice takes effect.
 - Step (2), (3) and (4) within six calendar months from the date this Notice takes effect.'
 - The appeals are 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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Formal Decisions on Appeals A and B

1. The appeals on ground (g) are allowed and it is directed that the enforcement notice be varied by the deletion at paragraph 7 of the words:
 - 'Step (1) within three calendar months from the date this Notice takes effect.
 - Step (2), (3) and (4) within six calendar months from the date this Notice takes effect'And the substitution of the words 'Within six months of this Notice taking effect'.

Subject to these variations the enforcement notice is upheld.

Appeals under ground (f)

2. The Council have confirmed that the purpose of the notice is to remedy the breach of planning control¹.
3. A ground (f) 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 in planning control.
4. The appellants record in their grounds of appeal their intention to pursue alternative developments. The lesser steps put forward by the appellants are to remove two of the toilets and two of the sinks from units 1, 2 and 3 and all the kitchen appliances in the form of cookers and microwaves. It is proposed that a single toilet within units 1, 2 and 3 would remain and a sink as well as kitchen units in unit 2. It is stated that these could be used for the house or in terms of storage associated with the dwellinghouse use.
5. In relation to the requirements 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 may be permitted development or be immune from enforcement so that the land is restored to its condition before the change of use took place. The kitchen furniture, household electricals and bathroom fixtures and fittings in each of the units 1, 2 and 3 all facilitate the unauthorised use. Within unit 4 there is a ground floor toilet, a kitchen and three bathrooms on the first floor. There is also a toilet within the clinic area. None of the toilets, bathrooms or kitchen fittings and fittings within the area occupied currently by unit 4 or the clinic are required to be removed by the Notice.
6. The appellants state that the existing kitchen in unit 2 was always there but was not used by the family. They also state that the appliances were upgraded and that when a permitted planning permission is implemented for an extension that the kitchen in unit 2 will be used at that time. Reference is also made to their daughter using the kitchen and adjacent bedroom to enable her to gain independent living. However, it is for the appellants to demonstrate on the balance of probabilities, that facilities and fixtures existed prior to the unauthorised material change of use. There is no substantiated evidence to demonstrate the kitchen in unit 2 existed prior to the unauthorised material change of use. The existing plan (reference ALD301 PL-002 submitted as part of the planning application for the extension) does not indicate any kitchen within what is unit 2, although a room is indicated to be a utility room. The exact layout of facilities and fixtures within that utility room has not been demonstrated or substantiated. Therefore, on the balance of probabilities, I consider the appellants have failed to substantiate that the kitchen that exists now, with cupboards, appliances etc is that which existed in this location prior to the material change of use.
7. While I understand that the appellants are seeking to minimise what is required to be removed to comply with the Notice, it has not been demonstrated, on the balance of probabilities, that any of the fixtures and fittings required to be removed were in existence prior to the unauthorised material change of use. As such, these fixtures and fittings clearly facilitated the material change of

¹ Paragraph 4.5 of the Council's statement.

use. Thus, the removal of these fixtures and fittings is legitimate as a requirement of the Notice and is, in my view, together with the cessation of the use and disposal of rubble/waste/debris the minimum necessary to remedy the breach of planning control.

8. For the reasons stated above the appeals on ground (f) fail.

Appeals under ground (g)

9. This ground of appeal is that the time given to comply with the Notice is too short. The Council has given three months for compliance with paragraph 5.1 i.e. ceasing the use. Six months is allowed for compliance with the other requirements.
10. The appellants do not specify a period but do state that a six month compliance period for a residential use to cease is more common and this period is considered a much fairer and appropriate time period.
11. The Council state that as the appellants have proceeded to appeal on grounds (f) and (g) only that the tenants have had the whole appeal time period to look for alternative accommodation. As such, three months is adequate to cease the use of units 1, 2 and 3.
12. However, it is not clear from the evidence whether or not the tenants are still residing at the property or whether they have an understanding of the process. There is no information about who lives in the three smaller units or whether it is their only home. In my view, it would be reasonable to allow a six month period, which would allow a reasonable period for any tenants that may be affected by the requirements of the Notice to look for alternative accommodation. I see no justification for extending the compliance period in relation to the other requirements as the works required are not significant and would be unlikely, in my view, to require much time to carry out once any tenants had vacated units 1, 2 and 3.
13. For the reasons given above I conclude that a reasonable period for compliance with all the requirements would be six months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusions

14. The appeals succeed in part on ground (g) only. I will direct that the Notice is upheld as varied in the terms set out in the Formal Decisions.

Hilda Higenbottam

Inspector