
Appeal Decisions

Site visit made on 9 October 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal A Ref : APP/T5150/C/18/3215123

Studios 1-5, 47 Woodhey Road, London, NW10 9DE

- 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 David Fallon against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 9 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises to six flats.
- The requirements of the notice are step 1 cease the use of the premises as flats; step 2 remove all kitchens and cooking facilities except one and remove all bathrooms except two from the premises; step 3 remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises; step 4 restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms on the first floor and a kitchen, dining room and lounge on the ground floor.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction and variation

Appeal B Ref : APP/T5150/W/19/3224239

Studios 1-5, 47 Woodhey Road, London, NW10 9DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Fallon against the decision of the Council of the London Borough of Brent;
- The application ref. 18/4405 was refused by notice dated 29 January 2019;
- The development proposed is the change of use from 5 unauthorised self-contained studio flats to a 4/5 person 4 bedroom House in Multiple Occupation.

Summary of Decision: the appeal is dismissed

Applications for costs

1. The Council has made an application for an award of costs against the Appellant. The Appellant has made an application for an award of costs against the Council. These applications are the subject of separate decisions.

Procedural Matter

2. The Council in its representations states that there are a number of issues of fact in dispute between the parties and that it may be appropriate to determine the appeals by way of a public inquiry in order to test evidence under cross examination on oath.
3. I have applied the guidance in Annexe K of the Planning Inspectorate Procedural Guide (March 2019). In this case I find that the planning issues can be clearly understood from the appeal documents and my site visit. The alleged breach and requirements of the notice are clear and I have been able to address the issues raised in both appeals without a need to test the evidence by questioning or clarifying matters. The matters raised are not complex and do not involve highly technical data. I consider that the appeals are appropriately dealt with by written representations and I have determined them accordingly.

Appeal A

Preliminary Matter

4. The notice the subject of this appeal describes the breach of planning control as 'without planning permission the material change of use of the premises to six flats'. The Council in its representations concedes that the reference to six flats is an error and that it should refer to five flats. The Appellant accepts this error and takes no issue with the Council's proposal that the notice be amended.
5. I have the power to correct a notice where doing so causes no substantial prejudice to either party. There is no dispute between the parties as to the error and therefore if appropriate I shall correct the notice to delete the reference to 6 flats and substitute reference to 5 flats.

Ground (b) appeal

6. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
7. The Appellant's argument is that at the time of service of the notice the property was not arranged as five self-contained flats. He does not dispute that for a period of time the property has been in use as five self-contained flats.
8. This ground of appeal concerns whether the alleged breach has occurred as a matter of fact and it is not limited to considering the facts solely at the date of issue of the notice. As there is no dispute that at some time the breach of planning control did occur this ground of appeal must fail.
9. For the reasons given above this ground of appeal does not succeed.

Ground (f) appeal

10. This ground of appeal is that the steps required by the notice are excessive.
11. The steps required by an enforcement notice may serve two purposes – to remedy the breach of planning control or to remedy the injury to amenity

caused by the breach. In this case the notice requires cessation of the unauthorised use and restoration of the land to its condition before the breach took place. Its purpose is therefore to remedy the breach of planning control.

12. The Appellant says that he wishes to retain the two ensuite bathrooms at first floor level. I am not satisfied on the evidence before me that the retention of two ensuite bathrooms is reasonable or justified. It would undermine the purpose of the notice to remedy the breach and restore the property to its condition before the breach took place.
13. For the reasons given above, the ground (f) appeal does not succeed.

Ground (g) appeal

14. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for a three month compliance period.
15. The private rights of the Appellant and occupiers must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interests including bringing the identified harm to an end without unnecessary delay. I consider that a six month period would be a reasonable time in which to expect the requirements of the notice to be undertaken. It would strike an appropriate balance between the conflicting public and private interests and be proportionate so as not to violate individual rights. To this limited extent the ground (g) appeal succeeds.
16. I conclude that a reasonable period for compliance 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.

Appeal B

Main Issue

17. The main issue in the determination of this appeal is the effect of the development on the living conditions of current and future occupiers of the property with particular regard to the adequacy of accommodation.
18. The development plan (including the London Plan, the Core Strategy and the Development Management Policies (the DMP)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development provides acceptable standards of accommodation. Policy DMP1 of the DMP seeks to ensure that (among other things) the layout of new development complements its locality. Policy DMP20 of the DMP provides that proposals for non-self-contained accommodation with shared facilities will be supported where specified criteria are met. Those criteria include development being of an acceptable quality meeting appropriate standards for the needs of its occupants, including external amenity space and appropriate communal facilities.
19. The appeal site is a terraced house in a residential area. The plans submitted in this appeal show a four bedroom HMO with a communal lounge. The communal lounge is extremely small. It is inadequate to enable the proposed number of occupiers to eat, sit and relax outside of their individual bedrooms. The

Appellant draws attention to the fact that current occupiers prefer not to share communal facilities but this may not be the case for future occupiers. The proposal before me also shows a lack of adequate cycling provision. I note that there is an HMO licence for the property but this is not determinative as to the adequacy of accommodation for planning purposes.

20. I have taken into account the potential fall-back position raised by the Appellant. He says that if the appeal is dismissed he will revert to a C3 use of the property for a short period of time and then exercise permitted development rights to change to a C4 use. I have considered the likelihood and feasibility of this happening. My concerns about the identified harm to the living conditions of current and future occupiers contrary to the development plan outweigh the fallback consideration.
21. The Appellant complains about the conduct and language of the Council but this is not a ground of appeal and not a matter that I have taken into account.
22. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions proposed by the Council in the event that the appeal is allowed. I do not consider that conditions could overcome the identified harm.
23. The development causes harm to the living conditions of current and future occupiers with regard to the inadequacy of the communal lounge and it fails to satisfy relevant provisions of the development plan (including policy DMP1 and DMP20 of the DMP) and the Framework.
24. For the reasons given above this appeal is dismissed and planning permission should not be granted.

Formal Decisions

Appeal A

25. It is directed that the enforcement notice be corrected by deleting the reference to 'six flats' and substituting reference to 'five flats'. It is directed that the enforcement notice be varied by substituting six months as the period for compliance. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

26. The appeal is dismissed.

S. Prail

Inspector