



Appeal Decision

Site visit made on 15 October 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Appeal Ref: APP/H0724/C/19/3223549

11 Moor Parade, Hartlepool TS24 0NN

- 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 Hermanus Jacobus Van Niekerk against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice was issued on 22 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the sub-division of a single dwellinghouse to create two separate flats.
- The requirements of the notice are (i) Remove the partitions / doors that physically separate the property into two flats (as shown highlighted in red on the attached ground floor indicative layout plan); (ii) Cease the use of the property as two separate flats; (iii) Not allow the property to be used other than as a single dwellinghouse.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Preliminary Matters

1. On arriving at the site visit it became apparent that the Council's representative, Mr Ferguson, was known to me. Therefore before the visit commenced, I explained to the appellant that I was professionally acquainted with the Council's representative, having previously been an employee of the Council, but had not had any association with him for many years and was satisfied that a conflict of interest would not arise.
2. The appellant seeks to retain the first partition, closest to the front door, in order to assist with drafts, indicating that this would not serve to sub-divide the property once the second partition is removed. The appellant has not explicitly appealed on ground (f), namely that the steps required by the notice to be taken exceed what is necessary to achieve the purpose, however it seems to me that this point is akin to a ground (f) appeal. I have therefore dealt with this point accordingly in my decision.
3. It is apparent that requirement (iii), as set out above, would go beyond what is required to remedy the breach of planning control in this case and should therefore be omitted. Furthermore, for clarification the words 'two separate' should be omitted from requirement (ii), so that it simply refers to ceasing the use of the property as flats. I am satisfied that the notice can be corrected accordingly without resulting in injustice to the parties.

The appeal on ground (d)

4. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken due to the passage of time. In order to succeed on this ground, the onus is firmly on the appellant to show, on the balance of probability, that the sub-division of the dwelling and the use as two separate flats occurred at least four years before the notice was issued, that is by 22 January 2015. Furthermore it would be necessary to show that the property was in continuous use over this period as two flats, without any material break in occupation.
5. In support of his case the appellant has provided various documents. These include an unsigned letter from a person claiming to have previously occupied 11 Moor Parade between March 2011 and November 2013, stating that, at the time of moving in, the property was physically separated into two self-contained living quarters; a Building Control Inspection note (August 2015) indicating no alterations had been carried out to form two flats; a Council tax note (September 2015), referring to a conversation with Building Control staff indicating the property was not divided into two flats at this time; tenancy / house share agreements (March and May 2016 respectively); housing benefit advice relating to a tenant at the property (June 2016); note of a Council tax related inspection (October 2016) referring to the presence of two flats; a Valuation Office letter (March 2017) confirming an alteration to the valuation list and a Council note recording a statement from the appellant regarding new tenants moving into the property (August 2017).
6. The aforementioned documents present an ambiguous picture of when the use of the property as two-self contained flats first commenced. However, even if the property was partitioned as it is today, following the application of a second partition in the downstairs corridor, and used as two flats as early as 2006, as claimed by the appellant, the information provided fails to demonstrate continuous use in terms of there not having been a material break in occupation thereafter. In particular, even if the Building Control inspection in August 2015 did not accurately record the presence of the flats, there is no evidence before me indicating use as flats during the several months of the key period before this, commencing in January 2015.
7. Reference is made to people lodging at the property, however little detail has been provided. Even if the flats were formed prior to the beginning of the immunity period, the evidence provided tends to indicate intermittent rather than continuous use.
8. Furthermore it is apparent from the evidence provided that a 'House Share Agreement' at the appeal property, dated May 2016, relates to the lease of a designated room in the house, for which there was to be exclusive occupation, whilst other facilities such as bathroom, toilet, kitchen and sitting room would be shared. Around the same time (June 2016) a pre-application enquiry was made by the appellant concerning the change of use of the property to two flats. This evidence serves to undermine the appellant's case that the property has been laid out as two self-contained flats, without any material change to such arrangements, over the key immunity period. However, even if I am wrong in this regard, it does not overcome the concerns I have already raised with regard to continuous use of the flats.

9. Accordingly I conclude that the appellant has failed to demonstrate on the balance of probability that the change of use of the property to provide two flats occurred more than four years before the notice was issued and has been in continuous use as such since this time. I have been provided with various documents relating to the erection of a first-floor timber balcony at the rear of the property. However this information does not lead me to a different conclusion to the one I have already reached. The ground (d) appeal therefore fails.

The appeal on ground (f)

10. The appellant seeks the retention of the partition / door, nearest to the main entrance to the property. It is undisputed that this feature was inserted earlier than the second partition, with the appellant stating that this would not serve to facilitate the breach of planning control once the second partition is removed. The purported ground of appeal is therefore that the steps required by the notice to be taken are excessive. The objective of the notice is to cease the use of the property as two flats and is therefore to return the land to its condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach.
11. Given that the purpose of the notice is to remedy the breach of planning control, it seems to me that this can be achieved by the removal of only one of the partitions / doors identified in the notice, namely that separating the hall from the kitchen, as shown on the ground floor indicative layout plan. I note that the Council has not disputed this suggested alternative. The requirements of the notice therefore go beyond what is necessary to remedy the breach, as described, and are therefore disproportionate. Accordingly the notice needs to be varied and I am satisfied that this can be achieved without resulting in injustice to the parties. The ground (f) appeal therefore succeeds to this extent.

Other Matters

12. The appellant has not appealed on ground (g). However, whilst accepting the principle of the property reverting to a single dwelling in the event of an unsuccessful appeal, he requests the second partition (nearest to the downstairs kitchen) be allowed to remain in place for as long as the existing tenant is in occupation downstairs.
13. Even if this were to be taken as a suggested change to the compliance period, from the information before me there is no definitive end date to the tenant's occupation. The timing of compliance with the notice would therefore be uncertain, and as such could not be acceptable as it would potentially undermine confidence in the planning system.

Conclusion

14. For the reasons given above I conclude that the appeal on ground (d) should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decision

15. It is directed that the notice be corrected by deleting the words "two separate" in paragraph 5(ii); and by deleting paragraph 5(iii) in its entirety.

16. It is directed that the enforcement notice be varied by deleting the following wording in paragraph 5(i):

“Remove the partitions / doors that physically separate the property into two flats (as shown highlighted in red on the attached ground floor indicative layout plan).”; and substituting the following wording instead:

“Remove the partition / door that physically separates the property into two flats (as shown highlighted in red, separating the hall and kitchen and adjoining the staircase, on the attached ground floor indicative layout plan).”

17. Subject to these corrections and variation, the appeal is dismissed and the enforcement notice upheld.

Roy Merrett

INSPECTOR