



Appeal Decision

Site visit made on 10 December 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Appeal Ref: APP/N5090/C/19/3230596

53 Ridge Hill, London NW11 8PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Malik of Metro Properties (London) Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 9 May 2019.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the property into five self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the property as self-contained flats;
 2. Restore the property to the state in which it was prior to the breach by removing any partition walls or entrances that create self-containment;
 3. Permanently remove all but one set of kitchen facilities (units, sinks, cookers, and food preparation areas) and 3 bathrooms from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice identifies the land and property at No 53 Ridge Hill, including the garden and an outbuilding. It would be helpful to identify the house targeted by the notice with a cross. I am satisfied that I can make this minor correction to the attached plan without injustice as the effect of the notice remains unchanged.
2. For the avoidance of doubt, the planning merits of the development are not before me as there is no deemed planning application. Hence, the comments from neighbouring occupiers regarding the effects of the development on the local area have not been considered. I am obliged to confine my assessment to the grounds of appeal as set out below.

The appeal on ground (f)

3. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach.

4. In this case, the purpose of the notice is to remedy the breach of planning control.
5. The appellant is seeking to retain two separate kitchens as this would enable the house to be let to a Jewish family with strong religious beliefs. I understand that many Jewish households require two separate kitchens.
6. The Courts have ruled that where a notice is directed at a material change of use, and requires that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
7. The question of what is necessary to prevent the unauthorised use depends on the facts. In this case, the use as self-contained flats must cease to remedy the breach. The critical determining factor in deciding whether the use is a self-contained flat is that three basic amenities; toilet, personal washing and cooking facilities are available for the exclusive use of its occupants. I saw from my site visit that all five rooms contained these basic amenities. It follows, therefore, that the kitchens and/or bathrooms are integral to and part and parcel of the making of the material change of use and should be removed to prevent the unauthorised use from continuing.
8. However, if the house were returned to its former use as a single dwellinghouse, the occupants could lawfully install a second kitchen provided this did not result in the creation of an additional separate dwelling. I consider that there is a reasonable likelihood that a second kitchen would be reinstated. Enforcement action is intended to be remedial and not punitive. A requirement to remove all but one set of kitchen facilities, only for one of them to be reinstated, would serve no useful purpose.
9. It is possible to amend the requirements to enable two kitchens to be retained. The notice allows two bathrooms to be retained and I acknowledge the Council's concerns that there would be a risk of a future breach. However, the combined effect of the other requirements would prevent the creation of two self-contained units.
10. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that limited extent.

The appeal on ground (g)

11. The appeal on ground (g) is that the time given to comply with the notice is too short. The appellant is seeking additional time to evict the tenants and carry out the required building works. Dismissal of this appeal will require the tenants to vacate their current home, with no immediate alternative accommodation. This would represent an interference with their home and family life. Consequently, I accept the appellant's request that the time for compliance be extended.
12. However, the 12 months sought by the appellant is akin to granting a temporary planning permission. I consider that nine months, as suggested by the Council, is an adequate length of time for the tenants to find somewhere else to live and for the building works to be carried out.

13. I appreciate the some of the tenants may have a long lease, but there is no evidence that 12 month tenancies remain in place, as of the current date. As such, a compliance period of nine months is considered proportionate and necessary in the circumstances. Consequently, the appeal on ground (g) succeeds to this extent.

Conclusion

14. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Formal Decision

15. It is directed that the enforcement notice is corrected by:

The substitution of the plan attached to the notice with the plan attached to this Decision;

And varied by:

- (i) the deletion of the words "all but one set of kitchen facilities" and their replacement with the words "all but two sets of kitchen facilities" in paragraph 5.3; and
- (ii) the deletion of number "6" and its replacement with the number "9" in paragraph 6.

Subject to the correction and variations, the enforcement notice is upheld.

Debbie Moore

Inspector



Plan

This is the plan referred to in my decision dated:

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

Land at: 53 Ridge Hill, London NW11 8PR

Reference: APP/N5090/C/19/3230596

Scale: NTS

