The Planning Inspectorate

Appeal Decision

Site visit made on 29 January 2020

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 6th February 2020

Appeal ref: APP/D5120/C/19/3237255
2 Maida Road, Belvedere, Kent DA17 6JP

- The appeal is made by B2L Investments Limited under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Bexley Council.
- The notice was issued on 22 August 2019; reference No. 18/00179/ENF.
- The breach of planning control was: Without planning permission, the material change of use of the property shown in the approximate location outlined in red on the plan attached to the notice to create 1 x 1 bedroom and 1 x 2 bedroom self-contained flats.
- The requirements of the notice are:
    1) Cease the use of the property in the building shown in the approximate location outlined in red on the plan attached to the notice as two self-contained flats.
    2) Remove all kitchen appliances, cupboards, and sinks from self-contained flats within the building shown in the approximate location outlined in red on the plan attached to the notice.
    3) Remove all resultant materials from the site.
- The period for compliance with the requirements is 3 months.
- The appeal was made on grounds (a) and (f) as set out in the amended Act. As the fees payable for the application for planning permission deemed to have been made was not paid in time, that application and the ground (a) appeal lapsed, (s.177(5A) of the Act).

Summary of decision: The enforcement notice is varied and upheld

Appeal property

1. The appeal property, No. 2 Maida Road, Belvedere, is a terraced 2 storey house that has been divided into 2 self-contained flats.

Nullity

2. Within the Appellants' ground (f) appeal, it was suggested that the enforcement notice was a nullity. That was said to be because of the inclusion of the requirement to remove all kitchen appliances, cupboards and sinks from each self-contained flat. That was excessive as the property had historically been used as two flats. That use was said to be lawful.

3. The Appellants said there was no requirement for the property to revert to a single family dwelling. There would be no kitchen as all the appliances, cupboards and sinks would have been removed. The notice was fundamentally

flawed. It was not capable of revision without prejudicing the Appellants. It was therefore a nullity.

4. In my view, where there has been a change of the lawful use of a single dwelling, a requirement simply to cease the unlawful use is sufficient. A positive requirement to restore the use as a single dwellinghouse would be excessive. Indeed, an enforcement notice cannot require a former use to be resumed. The case of *Lipson v SSE [1976] 33 P and CR 95* is authority for that position. If a requirement to cease the unlawful use of land or building is complied with, the previous lawful use may resume, (s.57(4) of the Act).

5. An enforcement notice can be a nullity, (not an enforcement notice – just a piece of waste paper), if for instance, it is missing some vital element and so is defective on its face, (*R v Wicks [1996] JPL 743 (CA)*). Also, in *South Hams DC v Halsey [1996] JPL 761 (CA)* it was held that nullities should be confined to the situation where there is a patent defect on the face of the enforcement notice. That is not the situation here. The complaint amounts to concern about the possible effects of compliance with the requirements that can be considered when dealing with the ground (f) appeal. The enforcement notice does not lack any vital element. The description of the breach of planning control in the notice is clear. The notice is not a nullity.

Lawfulness

6. It was put forward, albeit without substance or evidence, that use of No. 2 Maida Road as 2 flats was lawful. However, it was accepted there was no certificate of lawfulness to that effect. There was no appeal on ground (c) or on ground (d). Nothing more than a brief assertion was made. If the matter were to be pursued, it should be by means of a formal application to the Council.

The appeal on ground (f)

7. Requirements of a notice to remove fixtures and fittings such as separate kitchens, WCs or meters may be appropriate in some circumstances; (*Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115 (Admin)*). It is a matter of judgement. The notice's requirement to cease the use of the property as two self-contained flats was not contested. Particularly bearing in mind the extent of Class C3 of The Town and Country Planning (Use Classes) Order 1987 and the difficulty providing precisely relevant wording to the notice's Requirement 2) that would not adversely affect the lawful use of the appeal property, I consider it appropriate to delete that requirement from the notice. It follows that requirement 3) should also be deleted. To that extent, the appeal on ground (f) succeeds.

FORMAL DECISION

8. It is directed that the enforcement notice be varied by the deletion of Requirements 2) and 3) in para. 5. on page 3 of the notice. Subject to that, the appeal is dismissed and the varied enforcement notice is upheld.

John Whalley

INSPECTOR