



Appeal Decisions

Site visit made on 28 January 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal A Ref: APP/M3835/C/19/3234863

Appeal B Ref: APP/M3835/C/19/3234864

54 Rowlands Road, Worthing, West Sussex BN11 3JT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Andy Babbyan of DB Sussex Investments Ltd (Appeal A) and Miss Laura Dwyer-Smith (Appeal B) against an enforcement notice issued by Worthing Borough Council.
- The enforcement notice was issued on 27 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the building, as shown on attached plan (plan "B") for identification purposes, consisting of the following:
 - Ground floor comprising four bedsitting rooms with cooking facilities and one separate self-contained flat.
 - First floor comprising three bedsitting room with no cooking facilities; two bedsitting rooms with cooking facilities; two separate toilet facilities; two separate shower facilities which have been converted to ten self-contained micro-flats, as shown on attached plan (plan "C") for identification purposes, all with their own basic amenities as follows:
 - Ground floor comprising four bedsitting rooms with basic amenities (a) toilet, (b) personal washing facilities, (c) cooking facilities and one self-contained flat.
 - First floor comprising five bedsitting rooms with basic amenities (a) toilet, (b) personal washing facilities, (c) cooking facilities; one shared bathroom facility with one shared laundry facility.
- The requirements of the notice are:
 - Either – revert the development back to the previous layout, consisting of ten single bedsitting rooms with two shared bathrooms and two shared toilet facilities as per attached plan B (plan "B")
 - Or – Permanently remove one or more basic amenities; toilet and personal washing facilities or cooking facilities from each room and in order to create separate basic amenities of toilet and personal washing facilities or cooking facilities which must be situated within the dwelling at 54 Rowlands Road, enabling access to all of the occupants.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 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.

Decision

1. The enforcement notice is quashed.

The Notice

2. I have a duty to ensure that the notice is in order.
3. The alleged breach of planning control refers to the existing layout as shown on plan "B", and goes on to list the pre-existing bedsitting rooms, toilet and shower facilities. It identifies that three of the five bedsitting rooms on the first floor did not have cooking facilities. However, two of them are shown on plan "B" to have a small kitchen area within the room, and one is shown to have access to its own kitchen, therefore only two of the bedsitting rooms did not have cooking facilities. There is therefore an inconsistency between the layout shown on plan "B" and the description of it in the allegation.
4. There is a further problem with the notice in relation to its requirements. The 'either' element requires that the development reverts to the previous layout, but describes it as ten single bedsitting rooms, whereas plan "B" indicates nine bedsitting rooms and one self-contained flat. This is compounded by the inconsistency between plan "B" and the description of the existing layout contained in the allegation, as I am not satisfied that plan "B" represents an accurate description of the previous layout. The requirements therefore exceed the works that are necessary to remedy the breach by requiring the removal of the self-contained flat. It is also unclear how the appellant could comply with the 'either' element of the requirement due to the inconsistency.
5. Under section 176(1)(a) of the Act I have the power to correct, vary or amend the notice provided I am satisfied that there is no injustice caused to either party. However, in this case a correction to the allegation and the requirements may change how the parties present their cases and give rise to other grounds of appeal. This could cause injustice to both parties. Furthermore, I have insufficient information regarding the previous layout to be able to correct the notice.
6. I am therefore left with no option but to quash the enforcement notice on the basis that it is beyond correction.

Conclusion

7. For the reasons given above and having regard to all matters raised, I conclude that essential corrections to the enforcement notice cannot be made without causing injustice to the parties. Accordingly, the notice will be quashed and the appeal against it on ground (c) does not fall to be considered.
8. Should the Council wish to continue to pursue enforcement action, it may consider doing so by means of a replacement notice framed in the proper terms, having regard to the 'second bite' provisions of section 171B(4)(b).

N Thomas

INSPECTOR