



Appeal Decisions

Site visit made on 17 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal A Ref: APP/C5690/C/19/3234423

Appeal B Ref: APP/C5690/C/19/3234424

Appeal C Ref: APP/C5690/C/19/3234425

Land at 16-18 Deptford High Street London SE8 4AF

- 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 A is made by Mr Arshad Mahmood, Appeal B is made by Mr Mahmood Hussain, and Appeal C is made by Mr Mohammed Hussain, against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice, numbered ENF/18/00287, was issued on 5 July 2019.
- The breach of planning control as alleged in the notice is the material change of use of the upper floors of the property to 7 no. self-contained flats.
- The requirements of the notice are:
 - (1) Cease the use of the property as more than two (2no) self-contained flats.
 - (2) Remove all bathroom fixtures and fittings; all kitchen fixtures and fittings; and, all internal partition walls, which facilitate the residential use of the property as more than two (2no) self-contained flats
 - (3) Remove all waste, materials, equipment, and debris from the property resulting from compliance with the above requirements of this notice.
- 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 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.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Decision for Appeal A, Appeal B and Appeal C

1. It is directed that the enforcement notice be varied by: the deletion of 6 months and the substitution of seven (7) months as the time for compliance.

Preliminary and background matters

2. The Council served the enforcement notice, following an investigation that found that the property had been converted into seven self-contained flats. All three appeals relate to the notice that was issued on 5 July 2019. The grounds of appeal, grounds (f) and (g), and the evidence provided are also the same. For this reason, I have annotated them, Appeal A, B and C and intend to consider all three together.
3. The appeal site comprises a three storey property with shops at street level and residential above, on the first and second floors. The site is located on

Deptford High Street which is a busy core shopping street. It is located within the Deptford High Street Conservation Area.

Ground (f)

4. In appealing ground (f) the appellants need to demonstrate that the requirements of the notice exceed what is required to remedy the breach of planning control, or injury to amenity, depending on the purpose of the notice.
5. The wording of the notice makes it clear that its purpose is the remedy the breach of planning control. This is achieved by requiring the use of the property for more than two flats to cease, and the removal of all bathroom and kitchen fixtures and fittings, and internal partitions that facilitate the use.
6. It is the appellant's case that modifications and a reduction in the number of flats, may be sufficient to overcome the Council's objections to the development. They have not however, advanced any details about how this could be achieved and how it would affect the matters targeted by the notice. Furthermore, they have not advanced details of any other lesser steps they consider would fulfil the purpose of the notice. I have no evidence that the fixtures and fittings, together with the internal partitions have been provided for any purpose, other than to facilitate the unauthorised use.
7. It is well established in case law that the notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating an unauthorised use. Accordingly, I find that the remedial nature of the notice can only be achieved by ceasing the unauthorised use and the removal of all facilitating works, including the equipment introduced to enable the operation of that use. Consequently, I conclude that the requirements are not excessive and the appeal on ground (f) fails.

Ground (g)

8. For an appeal under ground (g) it is necessary to consider whether the compliance period, of six months, is too short. The appellants have indicated that they intend to submit a planning application to try to overcome the Council's concerns. To this end they have provided a letter dated 13 September 2019 that sets out the timescales they consider they will need for the preparation and determination of that application. However, the letter is unclear these seem to range from 14 weeks from preparation to decision to 28 weeks.
9. I am mindful that the determination of any planning application by the Council is outside the control of the appellants although the periods suggested to prepare and submit a planning application seem to me excessive. I am also conscious that the decision I have made, will result in disturbance and upheaval for the existing residents.
10. Overall for the above reasons I consider that a small extension of time is reasonable. Increasing the period of compliance to 7 months will provide an appropriate compromise, to meet the competing needs of the parties. I conclude that this will allow sufficient time for the submission and consideration of any alternative scheme, the relocation of residents and carrying out of works in accordance with the notice. The appeals on ground (g) therefore succeed in this regard.

Conclusion for Appeal A, Appeal B and Appeal C

11. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Hilary Orr

INSPECTOR