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# Appeal Decision

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

**an Inspector appointed by the Secretary of State**

**Decision date: 22 May 2020**

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**Appeal Ref: APP/N5090/C/19/3233164**

**Land at Alexandra Arms Court, 1 Cromwell Road, London N10 2AF**

- 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 Onyema of Springchild Investments Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice was issued on 10 June 2019.
  - The breach of planning control as alleged in the notice is – The conversion of the property into 8 No flats, following the formation of a new mansard roof including dormers, and the construction of single storey rear extensions; alterations to fenestration; and parking spaces to the front and rear of the building; without complying with conditions 1 (in accordance with the approved plans), 5 (parking) and 11 (hard and soft landscaping) of planning permission references B/00264/11, dated 30 March 2011.
  - The requirements of the notice are:
    - 1) Either (a) Comply with conditions 1, 5 and 11 of planning permission reference B/00264/11, dated 30 March 2011, by providing the proposed garden/lawned area, all the parking spaces, and the hard and soft landscaping, as shown on either Plan number 4057\_Plan\_Con 8 to 12 (Amended and received 04/01/2012) of permission reference B/03821/11, dated 20.01.2012; or Plan number 1622-09 Rev D of permission reference 18/0337/CON, dated 22.02.2018.  
Or (b) Restore the land back to the state it which it was prior to the breach, by ceasing its use as 8 No. flats, and returning the building back to its form as per existing site plan, drawing number 4057/02; existing floor plans, drawing number 4057/03; and existing elevations, drawing number 405[7]/04, of planning permission reference B/00264/11, dated 30 March 2011.
    - 2) Permanently remove all constituent materials resulting from the works in 1) above from the property.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the 1990 Act as amended.
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## Decision

1. The enforcement notice is quashed.

## Preliminary Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellant and the Council have not objected to the appeal proceeding on this basis.

## The Enforcement Notice

3. The appeal relates to a former public house which has been converted into eight flats pursuant to planning permissions Ref B/00264/11<sup>1</sup>, B/0382/11<sup>2</sup>, 17/7180/FUL<sup>3</sup> and 18/0337/CON<sup>4</sup>. The Council alleges that the development has been built in breach of condition no 1 (in accordance with the approved plans), no 5 (parking) and no 11 (implementation of landscaping scheme) of planning permission reference B/00264/11, which was the first relevant permission for the building conversion.
4. The converted building is sited within an irregularly shaped parcel of land. The planning permissions show that the parts of the site to the north and south were to be laid out as parking or amenity space. However, the Council states that a site inspection carried out on 18 June 2019 revealed that, although the building had been converted, the land to the north was undeveloped (the northern land). Crucially, the garden and parking spaces approved on that part of the site had not been provided. The notice requires the parking and landscaping as shown in either of two approved plans to be provided, or the land returned to its former condition.
5. Notwithstanding the requirements, the notice identifies the land to which it relates as Land at Alexandra Arms Court, 1 Cromwell Road, London N10 2AF, shown edged and hatched in black on the attached plan. The edged and hatched land excludes the northern land, presumably due to the ownership matters. I understand a Land Registry Search revealed the site has been divided and the northern land sold on 29 March 2016.
6. Every enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise; s173(10) of the 1990 Act as amended and ENAR4(c)<sup>5</sup>. As stated above, the notice specifically excludes the land to the north of the building as shown by the boundaries defined in the attached plan. This presents several difficulties. The requirements of the notice seek the implementation of approved parking and landscaping schemes on the land to the north. Therefore, in order for the requirements of the notice to take effect, this land should have been included in the notice and the owner of that land served in accordance with s172(2) of the 1990 Act as amended. Instead, the Council chose to exclude this land and send a copy of the enforcement notice to the owner "for information only". In consequence, the notice contains a defect which would need correction.
7. I have considered whether I could correct the plan attached to the notice to include the northern land. The Courts interpret the power to correct notices under section 176(1)(a) of the 1990 Act as amended very widely, provided this would not cause injustice to the appellant or to the local planning authority.

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<sup>1</sup> Conversion into 8 No flats following formation of new mansard roof including dormers and construction of single storey rear extensions. Alterations to fenestration. Parking spaces to the front and rear of the building, dated 30 March 2011.

<sup>2</sup> Submission of details of Conditions 3 (Materials), 4 (Site Levels), 6 (Method Statement & Construction), 8 (Refuse), 9 (Means of Enclosure), 10 (Landscaping Details), 13 (Education/Libraries/Health Obligations), 17 (Impact of Noise – Noise Assessment), 18 (Air Quality) pursuant to planning permission B/00264/11, dated 20 January 2012.

<sup>3</sup> Installation of new boundary wall and railings, installation of secure access gates and incorporation of one additional car parking space and reinstatement of two spaces, dated 8 January 2018.

<sup>4</sup> Submission of details on condition 4 (Landscaping) pursuant to planning permission 17/7180/FUL dated 22 February 2018.

<sup>5</sup> The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

8. If I were to correct the plan to include land not owned by the appellant, it would cause injustice as I would be broadening the scope of the notice, thereby making it more onerous. Although the owner of the northern land is aware of the notice and has appealed<sup>6</sup>, their land is not subject to the notice at present. Alternatively, I could delete the plan but this would result in ambiguity within the notice itself as it would not specify the precise boundaries of the land to which it relates. Therefore, I am presented with an incorrect notice that I do not consider to be correctable, which renders it invalid.
9. In addition, the appellant claims that a number of parties with an interest in the land have not been served with the notice, in particular, it has not been served on the apartment occupiers of Nos 1-8 Alexandra Arms Court. As a result, it is argued that the occupiers of the dwellings affected by the notice have been prejudiced by not being served with the notice and thus denied the opportunity to appeal.
10. The Council submits that the notice was served to all who had an interest in the land by hand or recorded delivery. The certificate of service shows that, among others, the notice was served on "The Owner" and "The Occupier" at Alexandra Arms Court, but not on the occupiers of the individual flats. This is at odds with the agreed recommendation in the Council's delegated report, which sought authority to take enforcement action – "to issue an enforcement notice and to serve copies thereof on the owners and occupiers of the premises". The Council explains that notices were not served on the occupiers of the individual flats due to the nature of the breach, as is indicated that compliance with the requirements is the responsibility of the freeholders, as opposed to any leaseholders or occupiers.
11. However, this is not the correct approach. Section 172(2) of the 1990 Act as amended provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the authority, is materially affected by the notice. Although occupier is not defined in the 1990 Act as amended, it is apparent that persons who reside on the land affected by the notice should have been served notice in accordance with s172(2).
12. The Council has provided information from a Land Registry search which explicitly includes reference to eight individual flats at the appeal site. However, there is no evidence of a Planning Contravention Notice or Requisition for Information prior to service, which would have enabled the Council to discover who the relevant occupiers and persons with interests are.
13. S176(5) gives the Inspector power to disregard non-service, provided that neither the appellant nor that person has been substantially prejudiced by the failure to serve him or her. In this case, the occupiers of the individual flats have not been served, by the Council's own admission. In view of the requirements of the notice, which could have a very significant impact on the occupiers of Nos 1-8 Alexandra Arms Court, I find that those occupiers have been substantially prejudiced. This is not a case when I can exercise the power to disregard the non-service in accordance with section 176(5) of the 1990 Act as amended. Therefore, had I not found the notice to be invalid as set out above, the appeal would have succeeded on ground (e).

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<sup>6</sup> Ref APP/N5090/C/19/3232853.

## **Conclusion**

14. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
15. In these circumstances the appeal under grounds (a), (e), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered. In view of this, the planning merits of the proposal are not before me and I cannot take the related comments from interested people, who have objected to the development, into account.

*Debbie Moore*

Inspector