



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2020

Appeal Ref: APP/T5150/C/19/3243247

79 Ivy Road, London NW2 6XL

- 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 is made by Mr Salim Al Khalil of Zaba Properties against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 7 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to seven flats.
- The requirements of the notice are:
 - STEP1 Cease the unauthorised use of the premises as flats and its occupation by more than ONE household.
 - STEP2 Remove all kitchens, except ONE, and all bathrooms, except THREE, from the premises and remove all partitions, doors, facilities, fixtures, fittings and equipment that facilitate the unauthorised use of the premises, so that the internal layout of the premises reflects a layout of single family dwellinghouse as it was before the unauthorised development took place.
 - STEP3 Remove all items, waste materials and debris, arising from compliance with Steps 1 to 3, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

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

FORMAL DECISION

1. It is directed that the enforcement notice is corrected and varied by:
 - (1) The deletion of the words 'and its occupation by more than ONE household' in STEP1, so that it reads: *STEP1 Cease the unauthorised use of the premises as flats.*
 - (2) The deletion of 'a' and substitution with 'the' and the addition of 'a' before 'single' and deletion of the word 'family' in STEP2, so that it reads: *STEP2 Remove all kitchens, except ONE, and all bathrooms, except THREE, from the premises and remove all partitions, doors, facilities, fixtures, fittings and equipment that facilitate the unauthorised use of the premises, so that the internal layout of the premises reflects the layout of a single dwellinghouse as it was before the unauthorised development took place.*

- (3) Substituting nine (9) months for six (6) months as the period for compliance.
2. Subject to the corrections and variations above, the enforcement notice is upheld.

Preliminary Matters

3. In response to travel restrictions as a result of the COVID-19 pandemic the file was reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because I have been able to reach a decision based on the information already available given the grounds of appeal and points in dispute. Both the appellant and the Council were given an opportunity to comment on this approach and I have taken any responses into account.
4. Whilst ground (g) has not been pleaded, the appellant nevertheless stated that the compliance period is unreasonable and therefore I have addressed the appeal as though that ground was pleaded. Both main parties were given the opportunity to comment on this matter, with particular regard to any impact the current pandemic may have, and any comments received have been taken into account.

The Notice

5. The lawful use of the property is as a single dwellinghouse therefore the reference in step 2 to 'family' is not necessary and I shall delete it. There are also some minor errors which have no material effect on how the notice is read and understood but which I shall correct. Having regard to s176(1) of the Act, I am content that these corrections would cause no injustice to any party.

The appeal on ground (f)

6. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use as seven flats to cease and the layout of the property to be returned to reflect that of a single dwellinghouse, I consider the purpose is to remedy the breach of planning control.
7. The appellant's case is that they propose to use the property as a six-bedroom (Class C4)¹ House in Multiple Occupation (HMO) and that this could be achieved by replacing the porter's room with a shared dining room/kitchen. They argue that removing all of the items required would result in noise pollution and waste building materials.
8. Arguments relating to the planning merits of the proposed HMO development are not relevant to this appeal which is concerned with the development subject of the enforcement notice. The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
9. Whilst a change of use from a Class C3 dwellinghouse to a Class C4 HMO would be permitted under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO), it is not permitted

¹ Schedule to The Town and Country Planning (Use Classes) Order 1987 as amended.

development to change the use from flats to a Class C4 HMO and such a use could not be lawfully implemented.

10. In order to return the building to its previous lawful state and remedy the breach of planning control, the necessary requirements are to cease the use as flats, as well as to remove those items associated with the unauthorised change of use so that the layout of the premises is returned to the position which it was before the unauthorised change of use took place.
11. The definition of an HMO contained in the Housing Act 2004 states that a building or a part of a building meets the standard test (and is therefore an HMO), subject to a number of criteria including - if the living accommodation is occupied by persons who do not form a single household.
12. Therefore, the requirement in step 1 that the property be occupied by no more than one household would, in effect, prevent the appellant from exercising those permitted development rights set out in Part 3 Class L(b) of the GPDO, once the notice was complied with and the property returned to the previous lawful use. In this respect the requirement is excessive. I shall therefore vary the requirement to remove reference to the occupation by more than one household. Consequently, there is nothing to prevent the appellant from implementing those permitted development rights once the lawful use has been resumed. To this limited extent the appeal on ground (f) succeeds.

The appeal on ground (g)

13. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
14. Whilst the appellant did not make an appeal on this ground, in light of the current pandemic both parties were asked for comment on the effect of this on the compliance period.
15. The appellant stated that there are vulnerable elderly tenants in the property who would need time to find a new room and vacate and that they have lost over three months of preparation time, due to the pandemic, in respect of tendering for any necessary remedial works. They also stated that they have submitted an application to the Council for the change of use of the property into a six bedroom/six person HMO with communal kitchens and dining areas and included a validation letter from the Council in respect of the application. They did not however specify what they consider a reasonable compliance period to be.
16. The Council commented that it would be reasonable to add a further three months to the compliance period, the effect being that the appellant would have nine months in which to comply with the requirements.
17. The appellant has provided little substantive evidence about the occupiers' circumstances nevertheless, this is an important consideration. Whilst it is never possible to guarantee that occupiers can find somewhere new to live, it is reasonable to ensure anyone who will be deprived of their home is given a reasonable period of time to look for other housing.
18. In respect of the planning application, I do not have any indication about the likelihood of success however, nine months would be a sufficient period of time

for the application to be determined and if approved, the works to be implemented or, the requirements of the notice to be complied with.

19. Consequently, taking these matters into account and in light of the current pandemic, I conclude that it is reasonable and proportionate to extend the period from six to nine months. To this extent the appeal on ground (g) succeeds.

Other Matters

20. Whilst the Council have granted a license for the use of the property as an HMO, such a licence is granted under a separate legislative regime and does not confirm the use of the premises as a HMO under planning legislation.
21. The appellant's misgivings about the Council's approach to the investigation have no bearing on the grounds subject of this appeal.

Conclusion

22. 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 appeal on grounds (f) and (g) succeed to that extent.

Felicity Thompson

INSPECTOR