



---

## Appeal Decision

Site visit made on 30 June 2020

**by L Perkins BSc (Hons) DipTP MRTPI**

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

**Decision date: 01 July 2020**

---

### **Appeal Ref: APP/A5270/C/19/3243310 28 Grafton Road, London W3 6PB**

- 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 Antonino Ioviero against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 14 November 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property as 8 separate self-contained flats.
  - The requirements of the notice are:
    1. Cease the use of the property as eight self-contained flats;
    2. Remove the kitchen and drainage connections from each of the eight self-contained flats;
    3. Remove the bathroom and drainage connections from each of the eight-self-contained flats;
    4. Remove all internal partitions, doors and locks that facilitate the use of the property as eight self-contained flats; and
    5. Remove all resultant debris from the premises.
  - The period for compliance with the requirements is 3 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.
- 

### **Decision**

1. It is directed that the enforcement notice be varied by the deletion of 3 months as the period for compliance and its substitution with 6 months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

### **Application for Costs**

2. An application for costs was made by Mr Antonino Ioviero against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

### **Reasons**

3. As is stated in section 4.5 of the enforcement notice, the purpose of the notice is to remedy the breach of planning control. The appellant considers requirements of the notice are excessive as they would prevent what he considers is the lawful use of the property as a House in Multiple Occupation (HMO), a use the appellant says has taken place since 1976. In particular, the appellant is concerned by requirements 2, 3 and 4.
4. Section 57(4) of the 1990 Act noted above allows reversion to the last lawful use following the issue of an enforcement notice. However, this right does not

extend to a past lawful use when there has been one or more intervening unlawful uses between it and the use alleged.

5. After being used as an HMO the property was used as 7 flats prior to the use alleged in the enforcement notice. Evidence of this includes the section 191 lawful development certificate which was submitted for an existing use as 7 flats which was received by the Council in October 2018, inspected on site by the Council and refused in July 2019. As such, the use as 7 flats replaced the HMO use, notwithstanding the fact the Council did not consider the use as 7 flats to be lawful.
6. In light of the above points I am not satisfied the property may lawfully revert to the HMO use described by the appellant, or any other use for that matter, without a grant of planning permission. As such, in my judgement, the requirements of the notice, as drafted by the Council, are entirely reasonable for resolving the breach of planning control in this case and no lesser steps have been suggested which would achieve the stated purpose of the notice. Accordingly, the appeal on ground (f) fails.

### **Other Matters**

7. The appellant's evidence states that he did not authorise the application noted above relating to 7 flats. But this makes no difference in terms of the effect of section 57(4).
8. My attention has been drawn to HMO licenses issued for the property. But these have no effect on the lawfulness of a use in planning terms and so these do not change my overall conclusion in this case.
9. Whilst there may be planning policy support for an HMO use, there is no planning application before me so this makes no difference to my overall conclusion either. It is open to the appellant to seek planning permission for such a use if they wish and I have used my discretion to allow time for this in light of there being no reversion right in this case. Accordingly, I have extended the period for compliance with the notice from 3 months to 6 months.
10. The appellant has raised concerns about the Council's behaviour. These include that he was not included in meetings on site, that the Council has not been willing to enter into dialogue to resolve matters, that he was not notified of the alleged breach until shortly before the notice was issued, that a warning letter was not issued, that advice was not put in writing and that no Planning Contravention Notice was issued. However, there is no statutory requirement for any of these, and, whether or not the Council has complied with its own adopted enforcement policy is not a matter for me to consider in the context of an appeal under section 174.

### **Conclusion**

11. For the reasons given above the appeal does not succeed and I uphold the enforcement notice as varied.

*L Perkins*

INSPECTOR