



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/T5150/C/19/3243948

2 Linacre Road, London NW2 5BB

- 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 Hasan Ramzan against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered EN/19/0605, was issued on 21 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:
 - STEP 1 Cease the use of the premises as flats.
 - STEP 2 Remove all kitchens, except ONE, and all bathrooms, except THREE, from the premises.
 - STEP 3 Remove all partition walls, doors, facilities, fixtures, fittings and equipment that facilitate the unauthorised use of the premises as flats.
 - STEP 4 Remove all items, waste materials and debris, associated with compliance with Steps 1 to 3, from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit which was scheduled to take place on 28 April 2020. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute. The parties were contacted on 27 May 2020 and subject to the agreement of both parties, the appellant was invited to submit photographs of the site. The appellant had no objection to this approach and has confirmed that photographs were submitted within the appeal statement and he does not wish to submit any new photographs. The Council has also not raised any objection to the approach.

4. The appeal has not been made under ground (a) therefore the merits of the appeal scheme are not before me and I am unable to give consideration as to whether deemed planning permission (DPA) should be granted.
Notwithstanding the comments made by the appellant in respect of the impact of the use in terms of the demand for on-street parking, the adequacy of amenity space and bin and cycle storage, and the loss of a family dwelling it is not possible for me to recognise ground (a) as a 'hidden ground' because the necessary fee for the DPA has not been paid.
5. The Council says that a copy of the enforcement notice is attached to its statement of case as Appendix 1. However, the attachment relates to another site. It has not been necessary for me to seek a copy of the correct notice as this was provided with the Questionnaire.

Ground (b)

6. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
7. The appellant asserts that the property has not been converted into flats but is a House in Multiple Occupation (HMO). He says that all of the bedrooms have en-suites and that of these, five of the six rooms also have kitchenettes. He provides photographs of examples of rooms which show the facilities provided in two ground floor bedrooms (marked (1) and (2)) and two other bedrooms (marked (4) and (6)).
8. The submissions by the Council also include photographs of the interior of 2 Linacre Road (No.2) (marked as Flats 1 to 7). Those relating to Flats 1 and 2 are consistent with the ground floor bedrooms (1) and (2) shown on the appellants photographs. Flat 3 equates to bedroom (4), but none of the flats are laid out exactly as bedroom (6). However, the photographs also show kitchenettes in two other rooms which provides evidence of six rooms in total having kitchenettes, contrary to the figure of five stated by the appellant.
9. The photographs of room 7 provided by the Council show plumbing and electrical fittings which are inconsistent with the use of this space as a bedroom but would lend themselves to the installation of a kitchenette. Room 7 also has an en-suite shower room.
10. In terms of communal facilities, the appellant refers to a hallway/staircase, which is shown on a photograph and a communal kitchen/dining room on the first floor and a shared bathroom on the landing, photographs of which are not shown. Again, there is a discrepancy with the evidence provided by the Council which it says shows the communal kitchen area occupied as Flat 4 and the shared bathroom used exclusively by the occupiers of Flat 4.
11. The appellants have offered no response to the Council's evidence regarding the use of the communal space as separate living accommodation or an explanation of the kitchen facilities which are available to the occupiers of Room 7 in the light of this. However, it follows that in the absence of any alternative kitchen facilities the occupiers of Room 7 have no option but to cater for themselves, be that through the installation of the cooker, hob and sink which would be facilitated by the plumbing and electrical fittings which are visible on the Council's photographs or by some other means.

12. The Council's photographs are all dated 24 September 2019, which is within two months of the date on which the notice was issued, 21 November 2019, which is the relevant date for the consideration of evidence in an appeal on ground (b). The appellant does not dispute the photographic evidence provided by the Council and admits that kitchenettes have been installed. Furthermore, the appellant's photographs are not dated.
13. Case law has established that a distinctive characteristic of a dwelling-house is its ability to afford to those who used it the facilities required for day-to-day existence (*Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307). This is clearly the case for flats 1 to 6 at No. 2 and by default flat 7 given the absence of any alternative communal facilities.
14. Drawing all of these strands together, whether or not it was the appellants intention to provide accommodation that was beyond what is required as an HMO, the works that he has carried out have resulted in the conversion of No. 2 into seven self-contained flats. The arguments which he has made do not provide the proof, on the balance of probabilities, that a material change of use of the premises to seven flats has not occurred as alleged in the notice.
15. For the reasons set out above the appeal under ground (b) fails.

Ground (f)

16. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
17. The appellant has suggested two options. The first is the removal of all of the kitchenettes from the bedrooms but retention of the en-suites and the second would involve the retention/formation of communal space through internal changes, again retaining the en-suites. He considers that this would facilitate the retention of the use of No. 2 as a large HMO.
18. S57(4) of the Act is an important provision which allows reversion to the last lawful use following the issue of an enforcement notice. In this case, although a copy of the licence for use as an HMO for 10 persons is before me, there is no evidence to demonstrate that the property has the benefit of planning permission which would be needed for a large-scale HMO. Therefore, I am unable to conclude that this was the last lawful use, and it is not necessary to vary the steps required by the notice to allow for this use.
19. Turning to the potential for use of No.2 as a small-scale HMO, the steps required by the notice would not necessarily preclude this use if it can be demonstrated that the previous use was either a small-scale HMO or a single dwellinghouse. In the absence of evidence to establish the last lawful use of the property, this is a matter between the Council and the appellant once the use as flats has ceased.
20. It has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons the appeal fails on ground (f).

Ground (g)

21. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of 6 months is too short to allow residents to find new affordable housing or to enable the appellant to fund the remedial works. He requests the compliance period be extended to 12 months.
22. There is no information before me regarding the availability of alternative accommodation, nevertheless as the building is occupied as residential accommodation, the notice would cause the loss of someone's home or other accommodation. Therefore, the right set out under Article 8 of the Human Rights Act 1998 is engaged. However, save for the disruption that finding alternative accommodation would cause the residents, with which I have great sympathy, there is no evidence before me to suggest that such accommodation could not be found within the 6-month compliance period of the notice. As the Council states it has the power to extend the compliance period should this prove necessary.
23. Similarly, there is no information before me to establish the costs of the works necessary to comply with the notice or the constraints upon the appellants ability to fund such works within the 6-month compliance period.
24. I find that the 6-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Conclusion

25. For the reasons given above I conclude that the appeals should not succeed, and I shall uphold the enforcement notice.

Sarah Dyer

Inspector