



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/U5360/C/20/3248890

Land at 21 Queen Elizabeth's Walk, Hackney, London N16 5UZ

- 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 Moses Schwartz of Lencity Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 12 February 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the ground floor of the property into 3 self-contained units.
- The requirements of the notice are:
 - (1) Cease the use of the ground floor of the property as more than one self-contained unit.
 - (2) Remove all but one kitchen from the ground floor of the property.
 - (3) Remove all but one bathroom with toilet from the ground floor of the property.
 - (4) Make good all damage to the property resulting from the removal of the unauthorised works.
 - (5) Remove from the property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
- The period for compliance with the requirements is six 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.

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

Preliminary Matter

1. 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.

FORMAL DECISION

2. It is directed that the enforcement notice is corrected and varied by:
 - (1) The addition of the word *residential* in section 3 of the enforcement notice, the breach of planning control alleged, so that it reads: *without planning permission the material change of use of the ground floor of the property into three self-contained residential units.*

- (2) The addition of the word *residential* after self-contained and before unit, to step (1) of the requirements, so that it reads: *(1) Cease the use of the ground floor of the property as more than one self-contained residential unit.*
 - (3) The deletion of six (6) months and the substitution of twelve (12) months as the time period for compliance.
3. Subject to the corrections and variation above, the appeal is dismissed, and the enforcement notice is upheld.

The Notice

4. The allegation lacks clarity in respect of referring to the change of use to self-contained units without specifying what type of units however, the appellant clearly understood the intent behind the issued notice. On the basis of the appellant's submissions it is evident that they are not in any doubt as to what is being enforced against. Furthermore, it is evident from section 4 of the notice, the reasons for issuing the notice, that the allegation relates to residential use and the Council correctly refer to the four-year immunity period. Having regard to s176(1) of the Act, I am content that the correction would cause no injustice to any party and I shall therefore correct the allegation and step (1) of the requirements.

The appeal on ground (f)

5. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the unauthorised use of the property should cease, and all but one kitchen and bathroom be removed. I therefore find that the purpose of the notice is to remedy the breach of planning control.
6. The appellant's case in respect of this ground of appeal is limited. They stated that they don't think there is a need to remove all the bathrooms and have submitted a proposed plan showing an amended layout.
7. The appellant provided no further justification as to why more than one bathroom is required to serve one self-contained residential unit. It appears to me that the number of bathrooms in the premises have facilitated the unauthorised use and in the absence of any evidence to the contrary the removal of all but one bathroom is necessary, along with the other steps, to secure the cessation in the use of the premises as three self-contained residential units. It follows that I do not find the steps required by the notice to be excessive and the appeal under ground (f) fails.

The appeal on ground (g)

8. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that as there are three tenants living in the units, they will need one year to make the property vacant and carry out the works.
9. Whilst the Council dispute how many of the units are occupied, in their statement they commented that Hackney residents are living in two of them

and that in light of the current public health emergency, they consider a six-month extension of the compliance period not to be unreasonable. The effect being that the appellant would have twelve months in which to comply with the requirements.

10. 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. Consequently, in light of the COVID-19 pandemic and agreement between the parties, I conclude that it is reasonable and proportionate to extend the period from six to twelve months. The appeal on ground (g) therefore succeeds.

Conclusion

11. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it.

Felicity Thompson

INSPECTOR