



Appeal Decision

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd JULY 2020

Appeal Ref: APP/T5150/C/19/3219925

31 Ballogie Avenue, London NW10 1SU

- 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 Lieb Leviison of YCL Properties Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/15/0688, was issued on 19 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to six flats and the erection of a single storey rear extension to the premises.
- The requirements of the notice are:
 1. Demolish the single storey rear extension to the premises, and remove all items, materials and debris arising from the demolition, from the premises.
 2. Cease the use of the premises as flats.
 3. Remove all kitchens and cooking facilities, except ONE, and remove all bathrooms, except TWO, from the premises.
 4. Remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises.
 5. Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms to the first floor and a kitchen, dining room and lounge on the ground floor.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in sections 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 variations in the terms set out below and in the Formal Decision.

Application for costs

1. An application for costs was made by the Council against Mr Lieb Leviison of YCL Properties Ltd. This application is the subject of a separate Decision.

Procedural matters

2. The appeal on ground (a) lapses as the fee was not paid within the specified period, and grounds (b) and (c) were withdrawn by the appellant on 22 May 2020. The appeal is proceeding on grounds (f) and (g) only. Given the appeal grounds now being pursued, the appeal procedure has been changed from Public Inquiry to Written Representations, both the appellant and the Council have agreed to the appeal proceeding on this basis.
3. I consider that this appeal can be determined without the need for a physical site visit given the written submissions and grounds of appeal pleaded. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

4. Full planning permission for the “change of use of premises from unauthorised flats to a 5 room/5 person HMO and partially retrospective permission for the rear extension with proposed alterations” was granted by the Council on 10 April 2019 (the 2019 PP). A copy of the decision notice and relevant plans accompanied the Council’s statement of case.

Ground(f)

5. For the appeal to succeed on this ground, it is necessary to consider whether the steps required to comply with the requirements of the notice are excessive. It is clear from the requirements that its purpose is to remedy the breach of planning control, by restoring the premises to its condition before the material change of use and operational development took place.
6. In this case, the requirements need to secure the cessation of the use as flats, the demolition of the single storey rear extension and restoration of the premises to its condition before the breach took place. The appellant raises no issue with requirements 1 to 4. Requirement 5 relates to the restoration of the premises to the condition before the breach took place. The appellant claims this goes beyond what is necessary as these works could be carried out without planning permission.
7. The appellant argues that he may lawfully change the use from a single dwellinghouse to use as a house in multiple occupation under the permitted development rights granted by Class L of Part 3 of the GPDO¹. There is, as yet, no article 4 direction in place. The Mansi principle is well known in that, further to S57(4), a notice may not deprive the appellant of a use that he could lawfully carry out. The re-configuration of the single dwellinghouse was however undertaken to facilitate the material change of use to flats. The restoration of the original layout is therefore necessary to remedy the breach.
8. I find that the second part of requirement 5, to provide kitchen, dining room and lounge on the ground floor and bedrooms to the first floor, is overly prescriptive. The requirement to “restore the internal configuration to the original layout before the unauthorised change of use took place” is necessary to remedy the breach. I am satisfied that no injustice would result from the deletion of the second part of this requirement from the notice.
9. Section 180 of the Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the 2019 PP has been granted after the service of the notice. If the requirements of the notice were varied to exclude those parts of the development for which planning permission is granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice in so far as it is inconsistent with the 2019 PP.
10. The appeal on ground (f) succeeds to this limited extent, and I shall vary the notice accordingly.

¹ Town and Country Planning (General Permitted Development) Order 2015 as amended

Ground (g)

11. The issue is whether the time for compliance is reasonable.
12. The appellant is seeking a period of 12 months to allow for the termination of tenancies, securing vacant possession and to carry out the works to comply with the requirements of the notice. The current circumstances relating to COVID-19 restrictions may also increase the timescales for securing vacant possession and completing the works.
13. The Council refers to the effect of the 2019 PP as having removed the requirements to demolish the single storey rear extension, remove all but one kitchen and all but two bathrooms and restore the internal configuration. They also refer to information submitted by the appellant in support of the 2019 PP, which they say claims that the premises are "rooms in a house in multiple occupation" and that cooking and cooking facilities are not permitted, other than in the shared kitchen. They consider the remaining requirements of the notice to have no effect on tenants and, as such, compliance could be achieved in the 3 months specified.
14. The 2019 PP plans show that two of the existing flats/bedrooms on the ground floor would be lost to provide the shared kitchen/lounge facilities and that bedroom accommodation on the first floor would need to be reconfigured. The implementation of the planning permission would also see the number of residents reduced from 6 to 5. The internal re-configuration would cause disruption to residents, which could require their vacation of the premises, even if only for a temporary period. The works themselves should not require a significant time to complete. Current COVID-19 restrictions should also have a limited effect on timescales. An increase to 12 months would be excessive but I find it necessary to increase the period for compliance from 3 months to 6 months in order for residents to find alternative accommodation as necessary. To this extent, the appeal succeeds on ground (g).

Decision

15. The appeal is allowed on grounds (f) and (g), and it is directed that the enforcement notice be varied:
 - 1) by the deletion of the words in STEP 5 and the substitution of the following words: Restore the internal configuration to the original layout before the unauthorised change of use took place; and
 - 2) by the deletion of 3 months and the substitution of 6 months as the period for compliance.
16. Subject to these variations the enforcement notice is upheld.

M Madge

INSPECTOR