
Appeal Decision

Site visit made on 29 July 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 August 2020

Appeal Ref: APP/T5150/C/19/3240417
112 Priory Park Road, London NW6 7UU

- 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 Ali Mohamed against an enforcement notice issued by London Borough of Brent.
 - The enforcement notice was issued on 25 September 2019.
 - The breach of planning control as alleged in the notice is : Without planning permission, the material change of use of the premises to six self-contained flats.
 - The requirements of the notice are
 - Step 1 Cease the use of the premises as six self-contained flats
 - Step 2 Remove all kitchens from the premises, except for one which shall be located on the ground floor
 - Step 3 Remove all bathrooms from the premises, except two.
 - Step 4 Remove from the premises all waste and debris arising from compliance with the above steps.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b)(c)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the word "six" from Step 1 of the requirements so that it reads "Cease the use of the premises as self-contained flats". The enforcement notice is also varied by the deletion of the words "3 months" from the period of compliance and the substitution of the words "4 months".
2. Subject to that correction and variation, the enforcement notice is upheld and the appeal is dismissed.

Procedural Matters

3. Although the appellant ticked ground (a) on the appeal form, no fee was paid in respect of the ground (a) appeal. A deemed application for planning permission and the planning merits of the development are not therefore matters before me for consideration. The appellant subsequently clarified that he was not appealing on ground (a) but wished to appeal on grounds (b)(c) and (f). I have also considered it appropriate to address ground (g) which relates to the period for compliance and have asked for and received comments from the parties on that ground. I do not consider that any injustice is caused to any party in determining the appeal on these grounds.

4. The requirements of the notice refer to ceasing the use of the premises as six self-contained flats. However, that wording is subject to potential interpretation problems and could for example allow the premises to be used for any number of flats apart from six. I will therefore delete the word "six" from the requirements at Step 1. I am satisfied that the correction does not cause any injustice as the parties were clearly aware of the intent and purpose of the notice from the evidence that has been submitted.

The appeal under ground (b)

5. With an appeal under ground (b), the onus is on the appellant to show that the matter stated in the notice has not occurred as a matter of fact on a balance of probabilities. The matter stated in the notice is the material change of use to 6 self-contained flats. The appellant stated in an email to the Council on 6 September 2019 'I now realise that the property has been changed from ensuite rooms to self-contained units. I understand the kitchens were added to each unit recently.'
6. The Council had visited the appeal building on 3 September 2019 and found that the building was made up of 6 self-contained flats as there were no shared bathroom or cooking facilities. All of the flats that the Council was able to view had shower rooms with sink, showers and toilets and cooking facilities. From the photographs provided by the Council, the kitchen facilities included cooking hobs and microwaves and standard kitchen units.
7. Whilst what matters is what existed at the time that the notice was issued, from my site visit, I saw nothing to suggest that the use was not self-contained flats. All occupied flats had shower rooms with showers, sinks and toilets and cooking facilities with a combination of cooking hobs and microwaves. Work appeared to be ongoing to alter the internal layout of unoccupied flats including the removal and alteration of kitchen facilities. Whether or not the alteration to the layout to remove the ground floor kitchen and create a separate unit and install other kitchens was made by the agent without the appellant's permission, the issue before me is has a material change of use occurred.
8. The appellant refers to previous HMO or houses in multiple occupation use(HMOs). HMOs are generally occupied by one or more households and who share one or more basic amenities (which is a toilet, personal washing facilities or cooking facilities), or the accommodation is lacking one or more basic amenities.¹ The units of occupation do not fall within the definition of HMO use as irrespective of meeting other criteria, occupants are not sharing basic amenities. The allegation relates to the material change to self-contained flats and the appellant does not dispute that a change to self-contained flats has occurred. The appellant has not therefore established on the balance of probabilities that the matter alleged in the notice, the change of use to six self-contained flats has not occurred as a matter of fact. The ground (b) appeal must therefore fail.

The appeal under ground (c)

9. In pursuing an appeal on this ground, the onus of proof is upon the appellant to show that the matter stated in the notice did not constitute a breach of

¹ Section 254 of the Housing Act (2)

planning control. Section 55(1) of the Act includes a material change of use in the definition of the word "development" for planning purposes. Section 57 of the Act then states that planning permission is required for development subject to listed exceptions. Section 55(3) of the Act states that "the use of two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it so used." The single dwelling house has been converted into six dwellings which is a material change of use as set out in Section 55(3) of the Act.

10. Although the appellant refers to historic HMO use, there is no evidence that there was an extant planning permission for the material change of use of the property from a single dwelling house to an HMO. Nor is there any evidence that such use has become lawful by virtue of immunity from enforcement action. The Council indicates that an application for a Certificate of Lawful Use was made in October 2019 but had not been validated. In the absence of any further evidence, the previous lawful use of the building is as a single dwelling house. The granting of a HMO licence in November 2019 does not remove the need to comply with planning legislation. A material change of use to self-contained flats or dwellings from a single dwelling house use has occurred for which no planning permission exists which constitutes a breach of planning control. The appeal under ground (c) therefore fails.

The appeal under ground (f)

11. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The notice alleges a material change of use to 6 self-contained flats. The steps required under the corrected notice are to firstly cease the use of the premises as self-contained flats. Further, to remove all kitchens from the premises except for one which shall be located on the ground floor, remove all bathrooms from the premises, except two and to remove from the premises all waste and debris arising from compliance with the above steps. The purpose of the notice is therefore to remedy the breach of planning control.
12. The appellant considers that it is unreasonable for the Council to dictate how many bathrooms can remain and that the bathrooms have always been there and are not structural changes. However, the Courts have held that where internal fixtures and fittings have been provided as part of and integral to an unauthorised material change of use of a building and have thereby facilitated that change of use then those fixtures and fittings can also properly be required by an enforcement notice to be removed in remedying the breach of planning control. The appellant has provided no evidence to show when the bathrooms were installed or that they were installed in connection with a lawful use. It seems to me that the additional bathrooms have played a part in facilitating the unauthorised change of use.
13. The appellant has also referred to being happy to apply for planning permission for a common kitchen on the side of the house if the occupants do not wish to give up their kitchens. However, having a common kitchen whilst retaining individual kitchens and bathrooms is not going to achieve the purpose of the notice of ceasing the use of the premises as self-contained flats.

Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The ground (f) appeal must therefore fail.

The appeal under ground (g)

14. The appellant did indicate in his appeal form that the time to comply is far too short and it is within my powers to consider the compliance period. I do consider it to be appropriate to do so particularly in view of the current Covid-19 pandemic. I have asked the parties for their comments on the compliance period and the parties have responded. The appellant has stated that he will be removing the extra kitchens as and when remaining tenants decide to leave. However, a breach of planning control has occurred and it is necessary to fix a set period for compliance with the notice rather than to allow the breach to continue indefinitely.
15. I have not been provided with any details of remaining occupants' circumstances or notice periods under any agreements by the appellant. The Council has referred to Section 173(1)(b) of the Act which gives it powers to extend the compliance period should it consider that it is appropriate to do so. The Council has referred to regularly utilising its power where circumstances outside the appellant's control prevent compliance with the notice and has given the example of where a tenant refuses to leave. Whilst the Council's power is discretionary, it would allow for some flexibility particularly with the current Coronavirus situation and in the absence of details of current occupants and their circumstances.
16. Nevertheless, until the 30 September 2020 under the Coronavirus Act 2020, landlords have to give all renters three months' notice if they intend to seek possession. With the statutory minimum notice of 3 months overriding any lesser period that may have applied, it is unlikely that compliance with the notice can be achieved in 3 months. The appeal under ground (g) therefore succeeds to the extent that I consider 4 months to be a reasonable period.

Other Matters

17. The appellant has been critical of the Council's investigation and has made a number of allegations about the Council's behaviour, most recently in his response to the ground (g) appeal. However, these are not matters that are before me for consideration as my remit is to determine the appeal on the grounds that are before me.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall correct the notice and also vary the notice to allow for a compliance period of 4 months rather than 3 months and uphold the enforcement notice as corrected and varied.

E. Griffin

INSPECTOR