



Appeal Decision

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th September 2020

Appeal Ref: APP/N5090/C/19/3243963

Land at Unmarked Flat on Third Floor, Britannia House, 960 High Road, London N12 9RY

- 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 Ms Aga Slecza of Invordan Britannia Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1486/19, was issued on 25 November 2019.
 - The breach of planning control as alleged in the notice is without permission the provision of self-contained flats in the block.
 - The requirements of the notice are:
 - 1) Cease the use as a self-contained flat.
 - 2) Permanently remove all kitchen facilities (including units, sinks, cookers and food preparation areas) from the flat.
 - 3) Revert the property back to the approved layout as marked in red in Drawing no. 462/PL/203 from Planning Application 17/6593/FUL.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(b), (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 and varied by:

The deletion of the words "Without permission the provision of self-contained flats in the block" and the substitution of the words "Without planning permission the material change of use to a self-contained flat" in paragraph 2 of the notice.

The deletion of the words "Revert the property back to the approved layout as marked in red in Drawing no. 462/PL/203 from Planning Application 17/6593/FUL" in paragraph 5.3 of the notice.

The deletion of 6 months and the substitution of 9 months as the time for compliance.

2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

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. Section 173(4)(a) states that the purpose of the notice, to remedy the breach, can be achieved by, amongst other things, "making the development comply

with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the property". Requirement 3 states "revert the property back to the approved layout as marked in red in Drawing no. 462/PL/203 from Planning Application 17/6593/FUL". Clarification was sought from the appellant and Council as to whether Planning Application 17/6593/FUL ("the PP") has been lawfully implemented, whether it remains extant and what use the property was put to before the breach occurred. The Council has confirmed that the PP has not been lawfully implemented, but it remains extant. They also advise that the property was used as toilet facilities ancillary to the former office use that occupied the whole building; the office use having now ceased in its entirety. The appellant has offered no comments within the specified timeframe. I will proceed on the basis that the Council's evidence is correct and will refer to this in more detail below.

5. Neighbouring occupiers have raised issues relating to the planning merits of the development. These could only be considered in respect of a ground (a) appeal, which is not before me.

The notice

6. The notice incorrectly identifies the breach of planning control as "the provision of self-contained flats". It is clear from "within the four corners of the notice"¹ that a material change of use to a single flat has occurred. I am satisfied that the reference to 'flats' in the allegation is a typographical error and no injustice would be caused to the appellant or the Council by my correction of the notice in this regard.

Ground (b)

7. The appellant does not dispute that a single flat has been created. The correction of the typographical error in the notice addresses the appellant's argument that the provision of 'flats' has not occurred as a matter of fact. The appeal on ground (b) fails and the notice is upheld.

Ground (f)

8. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
9. The appellant argues that requirement 2 is excessive as it would prohibit the use of the property as a kitchen, ancillary to the lawful use of the building as offices, which would be contrary to the provisions of S57(4) of the Act². The Council states that the property accommodated toilet facilities, ancillary to the use of the whole building as offices, prior to the building's conversion to flats.
10. The appellant does not claim that the property contained a kitchen before the breach occurred and as such it is reasonable to conclude that the kitchen facilities (including units, sinks, cookers and food preparation areas) were installed to facilitate the use as a self-contained flat. The Council's evidence confirms that there is a history of planning approvals for the use of the former offices as self-contained flats, that the building currently contains 38 self-

¹ Miller-Mead v MHLG [1963] 1 A11 ER 459

² Town and Country Planning Act 1990 as amended

- contained flats and that there are no offices left within the building. This evidence has not been disputed.
11. The purpose of the notice is to remedy the breach of planning control. S173(5) confirms that the notice can require "(a) the alteration or removal of any buildings or works" that facilitated the development. The installation of the kitchen facilities represent works carried out to facilitate the use of the property as a self-contained flat.
 12. The Council has issued enforcement notices in respect of only 7 specific flats, including the one the subject of this appeal. As there are no longer any offices within the building to which kitchen facilities could be ancillary, I am satisfied that requirement 2 does not contravene any rights that the appellant may have under S57(4). The removal of the kitchen facilities is necessary to remedy the breach of planning control, in compliance with S173(5).
 13. It is not disputed that the property was used as toilet facilities ancillary to the office use prior to the breach. Rather than requiring the property to be returned to its condition before the breach occurred, which would serve no reasonable purpose, requirement 3 seeks to "revert the property back to the approved layout as marked in red in Drawing no. 462/PL/203 from planning application 17/6593/FUL". S173(4) makes provision for the development to be altered to comply with an extant planning permission. The PP, at Drawing no. 462/PL/203, provides for the property to form part of a larger flat, identified as Unit 12, which is not the subject of this notice. Requiring the property to become part of another self-contained flat exceeds what is required to remedy the breach.
 14. The Council has confirmed that requirements 1 and 2 address the breach of planning control and that requirement 3 is unnecessary. I am satisfied that no injustice would be caused by the deletion of requirement 3.
 15. The appeal on ground (f) succeeds to this limited extent, and I shall vary the notice accordingly.

Ground (g)

16. For an appeal on ground (g) to succeed, it must be shown that the compliance period specified in the notice falls short of what should reasonably be allowed.
17. The harms arising from this development include the failure to provide an appropriate standard of living accommodation and private amenity space for present and future occupiers, which renders the development unacceptable in residential amenity terms. I have no evidence before me to dispute that these harms have occurred.
18. The appellant suggests that 6 months is too short as the tenant cannot be evicted before the expiry of their tenancy agreement, which they say is made more difficult by section 21 of the Housing Act. Securing quotes, appointing a contractor and carrying out the necessary works would also be impractical within this time frame. A period of 9 months is suggested as a reasonable alternative.
19. While I have not been provided with any substantive evidence for extending the compliance period, such as details of the tenancy agreement or details of the necessary internal works, the Council has confirmed their willingness to

agree to the variation as suggested. Compliance with the notice will result in the resident having to vacate the property and time will be required to comply with the requirements of the notice. I am satisfied that extending the period from 6 months to 9 months would not cause injustice.

20. Accordingly, the appeal on ground (g) succeeds to this limited extent, and I shall vary the notice accordingly.

M Madge

INSPECTOR