The Planning Inspectorate

Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/T5150/C/20/3249228
393 North Circular Road, London NW10 0HS

- 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 Claudiu Foamete against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 13 February 2020.
- 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, and its occupation by more than one household. Step 2 - Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets. Step 3 - Restore the internal configuration to that of a typical 4 or 5 bedroom family dwellinghouse use. Ensure that the internal layout reflects that shown on the Plans (Drawing No. PL3/VP/2104 - 04 and Drawing No. PL3/VP/2104 - 03) attached to the enforcement notice. For the avoidance of doubt, this should include a kitchen, dining room, lounge, utility room and WC on the ground floor, three bedrooms, a study and two bathrooms on the first floor (or 4 bedrooms and two bathrooms on the first floor) and a bathroom and one bedroom on the second floor. No more than one bedroom can be located on the ground floor.
- 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.

Decision

1. It is directed that the enforcement notice be corrected by:

   (i) Deleting Step 1 in its entirety and replacing it with the words 'Cease the use of the premises as flats.'

   (ii) Deleting Step 3 in its entirety.

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

Procedural Matters

3. The determination of this appeal relates only to grounds (f) and (g), which are matters of mitigation. As I was able to assess the case from the written evidence alone, it was not necessary for me to carry out a site inspection.

The appeal on ground (f)

4. The enforcement notice alleges the material change of use of the premises to seven flats. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

5. The requirements of the enforcement notice are set out in Schedule 4 under section 173(4)(a) of the Town and Country Planning Act 1990. S173(4)(a) enables the Council to seek to remedy the breach by: making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land; discontinuing any use of the land; or restoring the land to its condition before the breach took place. As the appellant comments on the steps in the order they are given, I shall follow the same format.

Step 1

6. Step 1 requires the cessation of use of the premises as flats and the cessation of its occupation by more than one household. The appellant contends that the restriction to one household effectively removes his permitted development (PD) rights under Schedule 2, Part 3, Class L(b) of the General Permitted Development Order 2015 (GPDO) which allows, as PD, the change of use of a dwellinghouse (Class C3) to small House in Multiple Occupation (Class C4).

7. A number of matters arise in relation to Step 1. Firstly, the current use of the building for separate flats is unlawful, which is undisputed by the appellant. That being the case, the PD rights to change between Use Class C3 and Use Class C4 would only be available to the appellant once the notice had been complied with.

8. I note that in 2019, the Council resolved to issue an Article 4(1) direction removing the permitted development right for the change from Use Class C3 to C4, which will take effect on 1st November 2020. The direction will apply to the appeal site and will remove the appellant's PD rights in any case, unless he complies with the notice and carries out the change of use within the remaining time frame.

9. Secondly, however, a notice should go no further than is necessary to correct the breach. In this case, the breach can be remedied by cessation of the use of the building as flats. Seeking cessation of occupation of the building by more than one household, on the other hand, would go beyond remedying the breach. I have therefore directed that the notice should be varied accordingly, and I am satisfied that no injustice arises as a result.

10. I therefore find that Step 1, as varied, is commensurate with the aims of the enforcement notice.

Step 2

11. Step 2 requires the removal of all internal partitions, items, material and debris associated with the change of use, including all kitchens, ensuite bathroom/shower rooms and toilets.

12. Under section 173(5), a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of

facilitating the unauthorised use, even if such works on their own might not constitute development, or be PD, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.

13. The courts have held that such works must have been integral to or part and parcel of the making of the material change of use. There is no evidence to show that these works were undertaken for any other purpose or for any lawful use, and so it must be assumed that they were carried out to facilitate the unauthorised use of the seven flats. Whilst it may be that the partitions and other facilities could be retained to allow the use of the building as a Class C4 HMO, no such permitted right is currently available, as discussed above.

14. From my reading, the requirement is to remove all the kitchens, ensuite bathroom/shower rooms and toilets that are associated with the unauthorised use. By definition, this would exclude those associated with the lawful use of the building as a family home. I am therefore satisfied that Step 2 is commensurate with the purpose of the enforcement notice.

Step 3

15. As noted above, a notice should go no further than is necessary to correct the breach. In this case, Steps 1 and 2 are sufficient to remedy the breach by ceasing the unauthorised change of use and removing the physical works that have facilitated the unauthorised use.

16. I am concerned that, by seeking the restoration of the building to the layout of a family home, Step 3 goes beyond remedying the breach. In any case, the layout of the dwelling prior to the change of use is not certain. Although reference is made to drawings attached to the planning permission (ref 13/0433), it is unclear whether or not these plans were implemented. It may be that requiring this work to be done would result in a change to the previous condition, and there is no statutory power to require an appellant to undertake anything other than a reversion to the condition the building was in before the breach took place.

17. I therefore conclude that Step 3 amounts to a positive requirement to possibly alter the previous condition of the building and is thus excessive. The appeal on ground (f) therefore succeeds to that limited extent, and I have directed that the enforcement notice be varied to reflect this finding.

The appeal on ground (g)

18. The appeal on ground (g) is that the six month period given to comply with the notice is too short. Instead, the appellant seeks an extension of the compliance period to 12 months.

19. This is on the basis that the current tenants have been in residence, according to the appellant, for a number of years. The tenants have legal tenancy agreements and the flats are their homes. They are said by the appellant to be in the lower income bracket and would find it very difficult to find suitable alternative accommodation in the local area. The appellant argues that this would be a difficult and lengthy procedure that would place a disproportionate burden on both him and the tenants. He seeks 12 months in order to facilitate this process and minimise hardship and difficulties.

20. Although the tenants will be placed in the position of having to leave their dwellings, the responsibility for this situation falls to the appellant, as he did not secure the necessary planning permission before letting out the flats. I have not been provided with copies of the rental agreements held by the tenants at the appeal property or any details relating to the duration of the tenancy agreements and the notice periods required by either side.

21. Notwithstanding the income status of the tenants, the appellant gives no explanation as to why it should very difficult for them to find alternative accommodation. There is no information for me to make any meaningful assessment of why this process should be both difficult and lengthy. It is also unclear what the appellant means by the term 'suitable' accommodation.

22. I am therefore not persuaded, on the information before me, that a period of 12 months is necessary to secure compliance with the notice or that the period of six months specified in the notice is not proportionate to the breach of planning control that has occurred.

Conclusion

23. For the reasons above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with variations.

Elaine Gray

INSPECTOR