



Appeal Decision

Site visit made on 3 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th November 2020

Appeal Ref: APP/T5150/C/18/3214372

5 Clifford Way, London, NW10 1AP

- 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 Mohammed Reza Hajyfathaliyan against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/17/0592, was issued on 26 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises to three flats.
 - The requirements of the notice are 1) Cease the use of the premises as flats and its occupation by more than ONE household; 2) Remove all kitchens and cooking facilities, except ONE, from the building so that the layout reflects the "Pre-existing plan – AR-18-02revA" as attached to this notice; 3) Remove all other fixtures, fittings and another paraphernalia associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended ("the 1990 Act"). The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by the removal of "and its occupation by more than ONE household" from Schedule 4, Step 1. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Ground (b)

3. To succeed on this ground the appellant must prove that the matters stated in the notice, the material change of use of the premises to three flats, has not occurred.
4. The evidence submitted by the appellant has been contradictory. The property was arranged as three self-contained units and the appellant initially stated there had been tenants in the second-floor studio flat since the works were completed and that no enforcement could be taken. The appellant has more recently said that whilst the works were undertaken in 2014 the second-floor studio flat was only occupied once his sister moved in 2017. In each of these

scenarios the appellant is accepting that the change of use of the premises has occurred as a matter of fact and the appeal on ground (b) cannot succeed.

Ground (d)

5. To succeed on ground (d) the appellant must show on the balance of probability that no enforcement action could have been taken because the premises has been used as three flats for at least four years continuously prior to the issue of the notice. The appellant has given unsworn evidence that the building works were completed in 2014 and has also produced a statutory declaration made by Grzegorz Pawel Tylka who states that he installed two kitchens and a door with a lock on the ground floor between 24 January 2014 and 17 February 2014, as well as receipts for various building materials from about the same time.
6. Regardless of when the building works were undertaken, no corroborating evidence has been submitted to support the claim that the second-floor flat had been rented out separately since 2014. The physical state of the premises is very important when considering whether a material change of use has taken place but it is not decisive and other factors such as actual or intended use may also be relevant.
7. The appellant's statement dated 10 December 2019 does not say that any part of the house was occupied separately until his sister moved into the second-floor studio flat in 2017. This is corroborated by a statutory declaration from Somayeh Haji Fathalian that she has lived in the second-floor studio flat since 5 February 2017. The effective date of alteration to the entry in the Valuation List was 6 February 2017. The appellant states that the second-floor kitchen was for the "potential renting of the converted loft" but that the first floor kitchen was installed and used as convenient for his family who occupied the ground and first floors and that the door in the ground floor hall at the bottom of the stairs was to provide extra security and save energy. However, this explanation is at odds with the appellant's initial case and the planning application submitted for the material change of use to four flats.
8. It is necessary to look at all of the factors in the round when considering whether and, if so, when a material change of use has taken place. Taking into account the physical works to convert the property into three units, and the residential use by the appellant with his family and by Somayeh Haji Fathalian, on the balance of probabilities the material change of use to 3 flats took place when the second-floor studio flat was first used as a separate dwelling i.e. on 5 February 2017. This is less than 4 years prior to the date of the service of the notice and the appeal on ground (d) fails accordingly.

Ground (a) and the deemed application for planning permission

9. The main issues in the ground (a) appeal are whether the development provides acceptable living conditions for the occupants of the appeal premises if used as three flats with regards to:
 - Size and layout; and
 - provision of residential amenity space/outdoor space.

Size and layout

10. The property is located on a residential street and is a semi-detached house with small gravelled area to front and garden to rear with raised decking and lawn which is accessed from the rear of the ground floor open plan kitchen and dining area. The property has accommodation over three floors, the top floor being in the roof with velux windows, with a previous extension to the side at ground and first floor level.
11. The floor plans show a kitchen and at least one bathroom on each floor with associated bedrooms and living areas. During the site visit there were no internal doors in the hall or on either set of stairs separating the floors but there was a door to the studio flat in the attic. Access to the attic is through the first-floor hall which has unrestricted access into all of the rooms on that floor. This is unacceptable access arrangement if the floors are used as separate residential accommodation.
12. The first floor has a large alcove, open to the hall immediately next to the stairs from the ground floor, which contains a galley kitchen including sink, washing machine, oven and cupboard units. The kitchen is open to the hall and the bedrooms and main bathroom are all accessed by separate unlocked doors from the hall which is also used to access the stairs to the second-floor studio flat. This would not provide acceptable living conditions if the second floor were used as a separate dwelling and would be contrary to the Policy 3.5 of the London Plan 2016 and Part 2 of the Housing SPG 2016 which is intended to protect the quality and design of housing developments.
13. The second-floor studio flat has one large room for all living purpose with a small ensuite toilet and shower room leading straight off the kitchen area. The second-floor flat falls well below the minimum space standards as a separate dwelling and is therefore contrary to Policy DMP18 from the Brent Development Management Policies 2016 (which is part of the local development plan) and does not provide acceptable living conditions for the current or any future occupiers.

Outdoor amenity space

14. There is no provision of external private amenity space, for either the second-floor studio flat or the first floor flat, which is a failure to provide acceptable living conditions and contrary to Policy DMP19 which provides that there should normally be 20sqm of outside amenity area per flat.

Conclusion on Ground (a) and the deemed planning application

15. The material change of use of the premises to three flats would not provide acceptable living conditions for the occupiers of the first and second-floor flats for the reason as set out above and would therefore cause material harm. This would be contrary to Policies DM18 and DM19 of the London Borough of Brent Development Management Policies 2016, Policy 3.5 of the London Plan 2016, the Housing SPG and the Framework and, as there are not considerations to outweigh this conflict, I dismiss this ground of appeal and refuse to grant planning permission on the deemed planning application.

Ground (f)

16. For the appeal to succeed on this ground I need to be satisfied that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or the injury to amenity as the case may be. In this case the purpose of the notice is to remedy the breach of planning control which is the material change of use of the premises to three flats.
17. Section 173(5) of the Act gives power to require the alteration or removal of buildings or works, or the carrying out of building or works, for the purposes of remedying the breach. The requirements in the notice require that in addition to ceasing the use of the premises as flats and its occupation by more than one household, all kitchen and cooking facilities apart from one are removed from the building.
18. The additional kitchen facilities on the first and second floors are works necessary to facilitate the unauthorised change of use to flats. It is neither usual nor functionally necessary to have additional kitchen on the first or second floor of a single dwellinghouse when there is a fully equipped kitchen on the ground floor. I am satisfied in this case, taking into account planning application number 17/4333 for change of use to 4 self-contained flats, that the reason for the installation of the additional facilities was to provide for the use of the house as separate dwellings and that allowing such facilities to remain would make the building easily adapted for use as separate dwellings in the future. The lesser steps suggested would not effectively remedy the breach and the requirement in Step 3, to remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises, is sufficiently clear and precise
19. However, the requirement in Step 1 to cease the occupation of the premises by more than one household goes beyond what is necessary to remedy the breach and I have varied the notice to remove this element, prior to upholding it and the appeal on ground (f) succeeds to that extent. The requirements as varied do not prevent the lawful use of the property as a single dwellinghouse.

Ground (g)

20. I have taken into account the personal circumstances of the occupier of the attic flat and given them due weight. However, this does not outweigh the failure to provide appropriate living conditions for the current and future occupiers of the first and second floor flats and 3 months is an adequate time in which to find alternative accommodation and undertake the necessary works to the house. If the occupier of the second-floor studio flat encounters insurmountable difficulties finding alternative accommodation the Council has the power under section 173A(1)(b) of the 1990 Act to extend the compliance period without prejudicing its right to take further action.

Zoë Franks

INSPECTOR