



Appeal Decision

Site visit made on 12 October 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2020

Appeal Ref: APP/A5270/C/20/3248713

10 Torrington Gardens, Perivale, Middlesex UB6 7EN

- 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 Aaman Soni against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 19EN1202, was issued on 4 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 3 self-contained residential units.
 - The requirements of the notice are:
 - A. Cease the use of the premises as 3 self-contained residential units;
 - B. Remove the kitchens and drainage connections from the first and second floor self-contained residential units;
 - C. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the premises; and
 - D. Remove all resultant debris.
 - 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 the deletion of the number "3" in paragraph 3. THE BREACH OF PLANNING CONTROL ALLEGED; and the deletion of the number "3" from requirement A in paragraph 5. WHAT YOU ARE REQUIRED TO DO; and varied by the deletion of the words "You are required to complete these actions within 3 months from the date this notice takes effect" and the substitution of the words "*You are required to complete action A within 3 months of the date this notice takes effect and complete actions B, C and D within 4 months of the date this notice takes effect*", in paragraph 5. WHAT YOU ARE REQUIRED TO DO. Subject to the corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary matter

2. While the grounds of appeal included grounds (b) and (c), the appellant has withdrawn those grounds as confirmed by their email dated 1 October 2020. The appeal proceeds on grounds (f) and (g) only.
3. Third party representations have been made. These raise planning issues relating to the development and, as there is no ground (a), these matters are not before me for consideration.

The notice

4. The allegation, at paragraph 3, and requirement A, at paragraph 5 of the notice should not specify the number of flats and I shall correct the notice accordingly. These corrections put the notice in order and do not widen the allegation of the breach. I am satisfied that no injustice would be caused to the appellant or the council by these corrections.

Ground (f)

5. The basis of an appeal on ground (f) is that the steps required exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the breach.
6. The appellant claims that the premises can be used as a house in multiple occupation ("HMO") for up to 6 people. While requirement B requires the removal of the kitchens at first and second floor level, the appellant is seeking to retain the first-floor kitchen, in order to comply with HMO licencing requirements.
7. The Council advise that an HMO licence has not been issued for the premises and, even if it had, it would not require the provision of a first-floor kitchen. The Council's "Overview of kitchen facilities for HMOs" document confirms that "2 complete sets of cooking facilities" are required for HMOs of 6 – 10 occupiers. Cooking facilities are identified as "a cooker with 4 rings or hot plates together with a grill and an oven". There is no requirement for a second kitchen.
8. The proposed future use as an HMO does not, in my view, provide a compelling argument for the retention of the first-floor kitchen facilities. In addition, allowing such facilities to remain would make the premises easily adapted for use as a self-contained residential unit in the future. Therefore, the lesser steps suggested would not effectively remedy the breach, which is the purpose of the notice. The appeal on ground (f) fails.

Ground (g)

9. The appellant suggests that 3 months is insufficient for the tenants to vacate the premises, so that the works can be undertaken. The Coronavirus Act 2020 provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants; 6 months notice has to be given. While no alternative period is suggested, an extension to allow the tenancies to run their course is implied.
10. The Council contend that extending the period into late 2021/early 2022 defeats the purpose of the notice. While the Council do not consider that the period to cease the use should be extended, they suggest an additional month to complete requirements B to D would be acceptable. Furthermore, if the appellant experiences genuine difficulties in complying with the requirements, the Council would consider using its powers under s173A(1)(b), to extend the compliance period.
11. The harms arising from the development include cramped and substandard living conditions, lack of private amenity space for residents and adverse impact upon the amenities of nearby residents, due to the intensification of the residential use. I have no evidence before me to dispute that these harms have

occurred. Extending the compliance period to reflect the end date of the tenancy agreements would be tantamount to a temporary planning permission, which would be inappropriate given the harms identified.

12. I acknowledge that, under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding the enforcement notice will engage that right, as residents are at risk of losing their homes. However, this fact has been weighed against the wider public interest of protecting the environment from unacceptable forms of development. The objections to the development are serious and would be unreasonably prolonged by an extension to the compliance period. On balance, I conclude that, not extending the compliance period in respect of the cessation of the use would not have a disproportionate effect on the residents of the self-contained residential units.
13. While the appellant has not provided any details relating to the necessary works to comply with requirements B to D, the additional month suggested by the Council would not cause injustice and I will vary the notice accordingly.
14. The appeal on ground (g) succeeds to this limited extent.

M Madge

INSPECTOR