



## 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: 17<sup>th</sup> November 2020**

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**Appeal Ref: APP/A5270/C/19/3241774**

**31B Hamilton Road, Ealing, London W5 2EE**

- 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 Harbans Singh against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice, numbered EN190052CU(2), was issued on 23 October 2019.
  - The breach of planning control as alleged in the notice is without planning permission: The material change of use of the property to 6 self-contained residential units.
  - The requirements of the notice are:
    - A. Cease the use of 31B as 6 self-contained residential units;
    - B. Remove the kitchens and drainage connections from each of the 6 self-contained residential units;
    - C. Remove the bathrooms and drainage connections from each of the 6 self-contained residential units;
    - D. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the premises as 6 self-contained residential units; and
    - E. Remove all resultant debris from the site.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Application for costs

1. An application for costs was made by the Council against Mr Harbans Singh. This application is the subject of a separate decision.

### Decision

2. It is directed that the enforcement notice is corrected and varied by:

The deletion of the number "6" from the allegation, in paragraph 3. THE BREACH OF PLANNING CONTROL ALLEGED.

The deletion of the number "6" from requirements A to D, in paragraph 5. WHAT YOU ARE REQUIRED TO DO.

The deletion of 3 months and the substitution of 6 months as the period for compliance.

Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

### **Preliminary matters**

3. The allegation, at paragraph 3, and requirements A to D, at paragraph 5, should not specify the number of self-contained residential units 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.
4. The appellant claims that the requirements set out are ambiguous and would leave the property with a nil use. The appellant therefore considers the notice is a nullity as it is not clear, within the 4 corners of the notice, what the appellant has to do to comply with the requirements.
5. S57(4) of the 1990 Act<sup>1</sup> states "where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out". The notice does not specify what use No31B was put to before the breach of planning control occurred and it does not need to do so. The planning history shows the use to be as a single self-contained dwelling. The appellant however claims that it was previously used as 2 flats, whereas third party evidence suggests that it had a mixed use as a house in multiple occupation and a self-contained flat. While there is no agreed preceding use, the evidence suggests it was not in use as a single self-contained dwelling.
6. There is no provision within the 1990 Act for any use, other than a lawful preceding use, to be reinstated following compliance with an enforcement notice. Where the preceding use was not lawful, this can result in a property having a nil use. Such an outcome would not make the notice a nullity.
7. The appellant has failed to provide a statement of case within the agreed extended statutory time period. I have therefore taken their case to be as set out in the appeal form.

### **Ground (e)**

8. This ground is that the notice was not properly served on everyone with an interest in the land.
9. The appellant claims that the notice "was not served on the occupiers of 31a Hamilton Road. It is therefore unknown to the Council what consents would be required to comply with the enforcement notice from the occupiers of no.31".
10. The notice was clearly served on 'The Occupier' of the property as a whole, namely No31. While the notice was not served specifically on the occupier of No31a, from the list of names and addresses provided by the Council, I am satisfied that anyone having an interest in the land was served. The appellant was clearly aware of the notice as this appeal has been made. As such I find that no-one has been substantially prejudiced by the failure to serve notice on the occupiers of No31a and, having regard to s176(5), this failure can be disregarded.
11. The appeal on ground (e) fails.

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<sup>1</sup> Town and Country Planning Act 1990 as amended

### **Ground (d)**

12. For an appeal to succeed on this ground, it is for the appellant to demonstrate that, on the balance of probability, the matters alleged in the notice are immune from enforcement. The main issue is therefore whether the appellant has demonstrated, on the balance of probability, that the material change of use to self-contained residential units occurred on or before 23 October 2015, and has continued without significant interruption for a period of 4 years after the date of change.
13. The appellant claims that the use of 2 of the 6 flats commenced more than 4 years ago. While not confirmed by the appellant, the Council suggest that it is the 2 rooms located at the front of the premises on the first floor that are claimed to be the 2 flats. No substantive evidence has however been provided.
14. The Council advises that extensive building works were carried out between February and August 2017. The Council believes that prior to those works being carried out the layout of No31B was as shown on drawing number P/229/1.02 ("the Plan") submitted with planning application PP/2014/2854. The accommodation shown includes kitchen, 2 bathrooms, 3 bedrooms and a store at first floor level and a further bedroom at second floor level. They suggest that it is the 2 front bedrooms located on the first floor that the appellant claims have achieved immunity.
15. A long term, former resident of No31B, confirms that they were one of a number of tenants that occupied the property as a house in multiple occupation. While they confirm that they occupied one bedroom and made use of the shared kitchen and bathroom facilities, they also suggest that one bedroom may have been a 'studio flat'. Photographs are provided of the property during the building works undertaken during 2017, which show their bedroom and the shared kitchen and some of the bathroom facilities. These photographs do not however show all the accommodation or the 'studio flat'.
16. While there is evidence to suggest that, in 2017, one of the first-floor front bedrooms was occupied as a self-contained residential unit, there is no evidence as to when this use commenced. As such it is not possible to confirm whether that use commenced on or before the relevant date.
17. Evidence provided by the Council, in particular the planning application details, which should be able to be relied on, casts doubt on the appellant's claim that 2 self-contained flats existed at the relevant date. In the absence of any evidence to the contrary, I therefore find the appellant's claim to be less than probable.
18. For these reasons, the appeal on ground (d) fails.

### **Ground (f)**

19. For the appeal to succeed on this ground, the appellant needs to show 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.
20. The appellant claims that the breach of planning control can be remedied by the cessation of the use. He argues that the removal of all of the kitchens and bathrooms is excessive as it would leave the property with a nil use. He also

claims, as an alternative, the layout could be rationalised, but no details are provided.

21. It is clear from the notice, read as a whole, that its purpose is to remedy the breach of planning control. S173(5) states that the notice can require "(a) the alteration or removal of any buildings or works" and it is well established that such works can include those that facilitate the breach of planning control. The kitchens, bathrooms and associated drainage facilitate the breach and as such requiring their removal is justified.
22. The appellant has failed to demonstrate that, on the balance of probability, No31B was used as 2 self-contained residential units prior to the breach alleged in the notice. Having regard to planning history, the last lawful use of No31B was as a 5 bedroom maisonette. Given there has been an intervening use, s57(4) does not apply and any future use of No 31B would need the benefit of planning permission. In the absence of any ground (a) appeal, the internal arrangements could not therefore be rationalised, even if a scheme had been provided. For these reasons the requirements do not exceed what is necessary to remedy the breach of planning control.
23. The appeal on ground (f) fails.

#### **Ground (g)**

24. The issue is whether the time for compliance is reasonable. The appellant is seeking a period of 6 months to allow the existing tenants to be rehoused and undertake the required works. While the Council do not agree to extending the period for the cessation of the use, they would not object to extending the period within which the works have to be completed to 5 months.
25. My decision is likely to lead to some disruption and upheaval to occupants and I acknowledge an extended period would assist in finding suitable alternative accommodation. In addition, the steps required to comply with the notice probably involve specialist building work; that needs to be arranged which is likely to take some time. The Covid 19 pandemic may also affect relocation and work timescales. In these circumstances, extending the period of compliance to 6 months is a proportionate response and strikes a fair balance between the competing interests of the individuals involved and the public interest. I shall vary the compliance period accordingly and the appeal on ground (g) succeeds to this limited extent.

*M Madge*

INSPECTOR