
Appeal Decisions

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal A Ref: APP/M5450/C/20/3250038

Appeal B Ref: APP/M5450/C/20/3250039

40 Waltham Drive, Edgware, London HA8 5PE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Sumitra Jariwala and Appeal B is made by Meera Jariwala against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 26 February 2020.
 - The breach of planning control as alleged in the notice is :Without planning permission, the unauthorised change of use from Single family dwelling house (Use Class C3) to mixed use comprising of two (2) separate residential flats and a House in Multiple Occupation ("Unauthorised Use").
 - The requirements of the notice are
 - 1.Cease the Unauthorised Use of the Land as a mixed used comprising a House in Multiple Occupation and as two (2) self-contained flats
 - 2.Remove all kitchens except one (1) from the Land
 - 3.Remove all bathrooms except two (2) from the Land
 - 4.Remove all internal partitions and doors that enable the Unauthorised Use
 - 5.Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the Notice.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting Paragraph 4.1 from the notice and replacing it with " It appears to the Council that the above breach of planning control of the Unauthorised Use has occurred within the last 10 years."
 - Deleting the word "separate" from the breach and replace with" self-contained."
2. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

3. I considered that the appeal can be determined without a physical site visit due to the nature of the grounds of appeal and the evidence before me. The Council and the appellant did not object to the appeal proceeding on this basis.
4. The reasons for the notice refer to the breach of planning control of the Unauthorised Flats having occurred within 4 years. However, the breach of planning control referred to in the notice and the requirements refers to an Unauthorised Use consisting of a mixed use of two self-contained flats and an HMO. The relevant time period for establishing immunity from enforcement action is ten years under Section 171B(3) of the Act as 4 years refers only to use as a single dwellinghouse which is not the case here as a mixed use is alleged. The Council's delegated report does refer to the relevant period for a mixed use being 10 years rather than 4 years.
5. Although the reason refers to "Unauthorised Flats" rather than the "Unauthorised Use", it is clear from the notice that the breach relates to a mixed use namely HMO use and as separate flats. The appellants are not appealing on the grounds that the alleged mixed use took place over four years ago. I can therefore correct paragraph 4.1 of the notice to refer to 10 years rather than 4 years and the " Unauthorised Use" rather than "the Unauthorised Flats."
6. The requirements should flow from the breach. The breach refers to two separate residential flats whereas the requirement refers to self-contained flats, I shall therefore correct the breach to match the requirement by deleting the word " separate" and replacing it with "self- contained." I am satisfied that these corrections do not cause injustice to any party.

The appeal under ground (f)

7. This ground relates to whether the steps required by the notice exceed what is necessary. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. I do consider the overall purpose of the notice is to remedy the breach of planning control.
8. The corrected notice requires the appellants to cease the Unauthorised Use of the Land as a mixed used comprising a House in Multiple Occupation and as two (2) self-contained flats, remove all kitchens except one (1), remove all bathrooms except two (2), remove all internal partitions and doors that enable the Unauthorised Use and remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the Notice.
9. The appellants consider that the requirements are excessive and essentially wish to convert the appeal property to a 5 person HMO by removing the extra kitchens in the self-contained flats. The appellant states that one kitchen has been removed already and the other kitchen will be removed leaving one communal kitchen for all remaining occupants. However, removing the extra kitchens to leave one kitchen would achieve only partial compliance with the notice as the other requirements would remain outstanding.

10. The other requirements include requiring the mixed use of HMO use and the use as self-contained flats to cease. Whilst, the appeal property could revert to a previous lawful use, the notice refers to a change of use from a single family dwelling house (Use Class C3) and there is no evidence before me to indicate that the previous lawful use of the appeal property was as a HMO. Requiring the mixed use including HMO use to cease is therefore not excessive as converting the property to a 5 person HMO would not remedy the breach.
11. The notice requires all but two bathrooms to be removed but the appellants wish to retain the five existing bathrooms. However, it has been established¹ that 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 permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place. As there is no evidence before me to indicate that five bathrooms were present when the appeal property was in use as a single family dwelling, I am satisfied that removing three of the existing five bathrooms is not excessive as the extra bathrooms did facilitate the unauthorised mixed use. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The ground (f) appeal must therefore fail.

The appeal under ground (g)

12. This appeal relates to the period allowed for compliance with the notice which is 6 months. The appellants initially referred to allowing sufficient time to serve eviction notices in accordance with the legislation but subsequently requested a period of 9 to 12 months due to the ongoing Covid crisis. The current position under the Coronavirus Act 2020 is that 6 months' notice is required for any notices served up until March 2021. However, no details have been provided of any tenancy agreements and the appellant indicates that one self-contained flat is vacant. The Council does however have powers under Section 173A of the Act 1990 as amended to extend the compliance period should there be justifiable reasons to do so which would include compliance with the statutory provisions of the Coronavirus Act 2020. On the limited evidence before me, the period for compliance is reasonable. The ground (g) appeal fails.

Other Matters

13. The appellants have provided a letter from their managing agents which refers to various matters including parking, fly tipping and the quality and need for the appeal property to provide accommodation. However, as there is no ground (a) appeal before me, which would have included the planning merits of the appeal property, these are not matters before me for consideration. Although the letter refers to the property as a 5 bedroomed HMO that is not the breach of planning control referred to in the notice.

Conclusion

14. For the reasons given, subject to correcting the notice, I shall uphold the enforcement notice and dismiss the appeals.

E. Griffin INSPECTOR

¹ Murfitt v SSE (1980) 40 P & CR 254