



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH November 2020

Appeal Ref: APP/G5750/C/20/3250359

Land at 1 Bawley Court, 1 Magellan Boulevard, Beckton, London E16 2FU

- 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 Parvez Hossain (S&Z Paradise Homes Limited) against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 6 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are:
 1. Cease the use as a Use Class C4 house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is three 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.
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Formal Decision

1. It is directed that the enforcement notice is varied by substituting six (6) months for three (3) months as the period for compliance. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because I have been able to reach a decision based on the information already available given the grounds of appeal and points in dispute.

The Enforcement Notice

3. The appellant claims that the enforcement notice is so imprecisely worded, specifically in respect of the requirements, that it is a nullity.
4. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test derived from caselaw is whether a notice is *hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or in what respect it was alleged he had failed to comply with the condition or again, that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches*.

5. I find that the enforcement notice is clear in stating the breach of planning control alleged, and in specifying the means of remedying that breach, subject to considerations which might arise under ground (f). Therefore, I find it to be a valid enforcement notice.

The appeal on ground (f)

6. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use as a C4 HMO to cease and the removal of those fixtures and fittings which facilitate the use, I find the purpose is to remedy the breach of planning control.
7. The appellant's case is essentially that the requirement to remove fixtures and fittings which facilitate the material change of use is ambiguous and excessive.
8. It is a well-established principle 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. Consequently, it is not unusual nor ordinarily excessive for a notice directed at a material change of use to use as a C4 HMO to require the fixtures and fittings which enable its use as such to be removed.
9. Whilst the appellant contends that locks on doors do not facilitate use as a C4 HMO, they have provided no evidence which demonstrates that there were previously locks on all the bedroom doors nor that all rooms except the kitchen and bathrooms were previously used as bedrooms.
10. In my view, it would be unusual for a dwelling occupied by a single household to include locks on bedroom doors and such a situation is more commonly associated with unrelated individuals occupying a property, to provide a degree of security and privacy.
11. Additionally, in a dwelling occupied by a single household it would be typical for there to exist a lounge or some sort of communal area. Consequently, in the absence of contrary evidence, it is likely that in order to return the layout to its previous state there would be a need to remove beds and mattresses.
12. The third requirement seeks to ensure that any debris arising from the works required by steps one and two is removed from the site. Whilst there may be little, if any debris, this is not unreasonable or excessive.
13. In order to return the property to its previous lawful state and remedy the breach of planning control, the necessary requirements are to cease the use as a C4 HMO, as well as to remove any fixtures and fittings including internal locks on bedroom doors and any additional mattresses and beds associated with the unauthorised change of use, so that the layout of the premises is returned to the position which it was before the unauthorised change of use took place.
14. It is not necessary for the Council to be more specific, since it is an established principle that the landowner, in this case the appellant, will be the person with the best knowledge of what that previous position was.
15. The appeal on ground (f) therefore fails.

The appeal on ground (g)

16. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
17. The appellant stated that the flat is let to tenants on assured shorthold tenancy agreements (ASTs). Once the initial term expires, the Housing Act requires that the landlord give at least two months' notice, with the notice served on a rent due date. They therefore request that the time period for compliance with the requirements of the notice be extended to 12 months as they would like to give the tenants as long as possible to find alternative accommodation.
18. The appellant has provided little substantive evidence about the occupiers' circumstances nevertheless, this is an important consideration. Whilst it is never possible to guarantee that occupiers can find somewhere new to live, it is reasonable to ensure anyone who will be deprived of their home is given a reasonable period to look for other housing.
19. Whilst I acknowledge the Council's powers under s173A(1)(b) to extend any period for compliance, at their discretion, without prejudicing their right to take further action, the time for completing the requirements should be what is reasonably considered necessary to complete them.
20. There is no evidence to support the appellant's request that the period for complying with the notice is extended to 12 months. However, bearing in mind the potential disruption to any occupants, I conclude that it is reasonable and proportionate to extend the period from three to six months. I consider this period to provide an appropriate balance between the needs of the current tenants to seek alternative accommodation and the need to bring the stated harm caused by the unauthorised use to an end.
21. The appeal on ground (g) succeeds to that extent.

Conclusion

22. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it.

Felicity Thompson

INSPECTOR