



Appeal Decision

Site visit made on 10 November 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal Ref: APP/T5150/C/20/3244883

Flats 1-6, 776 North Circular Road, Neasden, London NW2 7TD

- 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 Joel Stern (SAM Planning Services) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/17/0327, was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as flats and/or a House in Multiple Occupation (HMO), and its occupation by more than ONE household.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.
 - STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
 - The period for compliance with the requirements is 6 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 (the Act) as amended.
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Decision

1. It is directed that the enforcement notice:
 - be corrected by deleting “/or” from Schedule 4 STEP 1;
 - be corrected by replacing “removal of all kitchens, en-suite bathrooms/shower rooms and toilets” with “removal of all but ONE kitchen and ONE bathroom” in Schedule 4 STEP 2; and
 - varied due to the appeal succeeding to an extent under ground (f) by replacing “bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor” with “and bedrooms and a bathroom on the first floor” in Schedule 4 STEP 3.
2. Subject to these corrections and variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by the Council of the London Borough of Brent against Mr Joel Stern (SAM Planning Services). This application is the subject of a separate Decision.

Procedural matters

4. It was established during the course of this appeal that the appellant has an interest in the land, as the tenant, and therefore is entitled to make the appeal.
5. The appellant, or a representative acting on his behalf, did not attend the accompanied site visit that had been arranged for 8 September 2020. Consequently, access was not possible and the site visit was aborted. A letter sent to the appellant the same day explained that a new site visit would be arranged and that if it once more proved impossible for the Inspector to gain access to the site, the Inspector may proceed to a decision based on the information available. A new accompanied site visit was arranged for 10 November 2020. However, on that site visit the appellant did not provide me with access to two of the units of accommodation, and as previously indicated I am proceeding to make the Decision on the information available.

Ground (b)

6. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred.
7. The appellant's case is that the property has been used as an HMO since its conversion from a single dwelling in 2016 and has at no time contained flats. He says that the occupants of all 6 units of accommodation, while using toilets and personal washing facilities provided within the units, share the communal kitchen facilities on the ground floor for cooking and that consequently none of the units constitute self-contained dwellings.
8. Statements produced by those associated with the management of the property highlight that, where it has been found on occasion through frequent checks that occupants have themselves provided cooking facilities in units, such facilities have been removed. Mr Nove says that this was on no more than a "handful" of occasions and Mr Marmorstein says that it was on "maybe 5 or 6" occasions. Both agree that it was usually due to a new tenant, and that the problem was resolved after talking with them.
9. The Council conducted a site visit on 26 November 2019. Photographs taken within some of the units show what would ordinarily be described as a kitchen worktop in each, with tiled wall area above set with dual sockets and cupboard unit, and a fridge and cupboard unit underneath. The worktop and cupboard units are of similar design to those provided in the communal kitchen, and taking all into account including the cooking appliances found as detailed in the paragraph below I am satisfied that the overall effect of these features is to provide a small kitchenette for private day to day domestic existence in those units notwithstanding the absence of a kitchen sink and draining board.
10. The existence of dual electrical sockets set in the wall close above the worktop readily facilitates the use of cooking equipment and it is a matter of fact that the photographs show a toaster (unit 2), a deep-fat fryer (unit 6) and a toaster, microwave and what appears to be a mini-oven (unit 5) either plugged into the sockets or else located close to them. The statements from Mr Nove and Mr Marmorstein each state that there are no sockets in this area, which seriously undermines their credibility as witnesses and consequently I place very limited weight on their evidence.

11. I place very limited weight on the statement from Mr Lew since he states he only started doing fire safety management checks of the units from an unspecified date in December 2019, with the enforcement notice having been issued on 11 December 2019.
12. Further, none of the 6 tenancy agreements submitted by the appellant indicate that any of the residents were new at the time of the Council's visit. Accordingly, the officer evidence significantly undermines the appellant's assertions, supported by the submitted statements, that management inspections of the flats said to occur at least every 2 weeks had found only a small number of incidences of residents using cooking facilities in their rooms and that these tended to be associated with new tenants.
13. I also place significant weight on Housing Benefit records submitted by the Council showing that applicants resident at the appeal property have, when taken together, indicated a mix of self-contained accommodation (with no sharing of facilities) and non-self-contained HMO accommodation (with sharing of facilities). Indeed, I note in relation to one unit the resident has written "*The place where I live is a self-contained flat with my own shower, toilet and cooking facilities*".
14. For all of the above reasons, the appellant has not provided sufficiently precise and unambiguous evidence and I am not persuaded to find on the balance of probabilities that there has not been a change of use to an HMO and flats. Therefore, the appeal under ground (b) fails.

Ground (c)

15. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matter stated in the notice does not constitute a breach of planning control.
16. Section 55(3) of the Act clarifies that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The appeal property was previously used as a single dwellinghouse before changing as I have found under ground (b) to an HMO and flats, forming two or more separate dwellinghouses. Development has therefore occurred, without planning permission, and there are no permitted development rights which apply to the material change of use from a single dwellinghouse to an HMO and flats.
17. For these reasons, I am not satisfied on the balance of probabilities that the breach of planning control has not occurred. The ground (c) appeal therefore fails.

Ground (f)

18. For an appeal to be successful under this ground, I must be satisfied that the steps required by the notice are excessive.
19. It is clear from the way the requirements of the notice have been drafted that its purpose is to remedy the breach of planning control rather than any injury to amenity caused. It is equally clear that the notice seeks properly to achieve that purpose by requiring the discontinuance of the unlawful use of the land

and for it to be restored to its condition before the breach took place, with the layout of the single dwelling that existed in 2016.

20. However, as acknowledged by the Council in its statement, STEP 3 of the notice requires a WC on the ground floor (in addition to a bathroom on the first floor) which was not part of the configuration of the property before the breach. Therefore, the notice is excessive in respect to that particular step and the appeal under ground (f) succeeds to that extent. I am accordingly varying the notice to remove the requirement for a WC on the ground floor.
21. The Council's statement also suggests corrections to the notice requirements, in order to clarify them. The appellant has made no comment on the suggested corrections, and I agree that they would give the requirements greater clarity in achieving its purpose. Accordingly, as I have a duty to put the notice in order and as I am satisfied that the nature of such corrections would cause no injustice to any party, I am using my powers to make them.
22. Notwithstanding the above, the alternative steps put forward by the appellant, resulting in an HMO of up to 6 persons, would not remedy the breach of planning control and would not restore the land to its condition before the breach took place. The appellant has directed me to Appeal Decisions relating to a property at 40B Heber Road within the same council area. However, those appeals were made under Section 78 of the Act where the Inspector's role was to consider the merits of the planning applications before him, and not to determine whether an enforcement notice requirements were excessive in meeting its purpose.

Ground (g)

23. For an appeal to succeed under this ground, I must be satisfied that the 6 months specified in the notice falls short of what should be reasonably allowed.
24. The appellant says that 12 months is necessary for all current tenancies to be "extinguished", for alternative accommodation to be sought and for the works to be completed. However, the only tenancy agreements put forward by the appellant indicate that the terms for all tenancies have ended. While I accept that there would still be a need to give notice to the tenants, it appears from the submissions that the appellant is involved in the management of residential properties and is therefore well-placed to relocate the residents as may be necessary in a timely manner. I also note from Mr Marmorstein's statement that it was possible to undertake extensive works to the property within 2 months upon purchase in early 2016, including building of an extension and making internal re-arrangements to obtain the current configuration, and for all these reasons I do not consider that 6 months falls short of reasonable.
25. Accordingly, the appeal under ground (g) does not succeed.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed except to the limited extent on ground (f). I shall uphold the enforcement notice with corrections and a variation.

Andrew Walker

INSPECTOR