



Appeal Decision

Site visit made on 2 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/Y5420/C/20/3256081

110 Mattison Road, London N4 1BE

- 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 George Pyrkos against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 23 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the upper 2 floors of the property from a House in Multiple Occupation (HMO) (Use Class C4) to 4 self-contained flats.
 - The requirements of the notice are to:
 1. Cease the use of the upper 2 floors of the property as self-contained flats.
 2. Remove from the upper 2 floors of the property the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the upper floors of the property as self-contained flats.
 3. Remove from the land any debris resulting from compliance with requirements 1 and 2 above.
 - The period for compliance with the requirements is 5 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 (the Act).
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Decision

1. It is directed that Paragraph 5.2 of the enforcement notice be corrected by replacing "upper floors" with "upper 2 floors", and varied by replacing "kitchens" with "unshared cooking facilities" due to the appeal succeeding to this extent under ground (f).
2. Subject to this correction and variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

Ground (f)

3. The appellant argues under this ground that the 2nd floor of the property has been given planning permission by the Council as 2 self-contained flats¹. This is in effect an argument pursuant to ground (c) of section 174(2) of the Act, that a matter stated in the notice does not constitute a breach of planning control. Nevertheless, as both parties have made their arguments on this issue and have had an opportunity to respond to each other's points, I shall address it.
4. The corresponding decision notice makes clear that permission was given in accordance with the application dated 17 February 2017. The application described the proposed development including any change of use as "Loft conversion for additional habitable space, plus fenestration at front and rear of

¹ HGY/2017/0523, 13 March 2017

the roof” (section 3) and described the current use of the site as “Certified HMO, as per Certificate of Lawfulness issued by the Borough Council on 17 October, 2016” (section 14). Consequently, the Council reasonably inferred that no material change of use was being sought and dealt with the application on that basis, giving planning permission for “Loft conversion with rear dormer to form additional room within **existing HMO**” (my emphasis). For these reasons, and notwithstanding that approved drawing 4764_03 shows an internal layout for the 2nd floor in the form of self-contained units, I am clear that the planning permission is not to be interpreted as approval for a material change of use to self-contained flats.

5. The Council has said that the purpose of the notice is to remedy the injury to amenity caused by the breach of planning control, caused by undersized self-contained accommodation and its effect on current and future occupiers. It is apparent that the notice seeks to achieve that purpose, quite properly under well-established law, by requiring the cessation of the unauthorised use and the removal of works integral to and solely for the purpose of facilitating that use.
6. Notwithstanding the above, step 2 of the notice requirements could be interpreted to read that the upper 2 floors of the appeal property should contain no kitchens whatsoever (including shared ones within an HMO, the immediately preceding lawful use to which the property could revert under section 57(4) of the Act, and I note that there appears to have been 3 under that previous use). As it is important for clarity of the requirements, since non-compliance could result in prosecution, I am accordingly varying the notice so as to require the removal of unshared cooking facilities. I am using this term deliberately and in preference to “kitchens” used by the Council since section 254 of the Housing Act 2004 specifically refers to cooking facilities as one of the shared basic amenities under the standard test definition of HMO. Therefore, as technically the removal of all kitchens would be excessive in the circumstances, the appeal under ground (f) succeeds to the above extent.
7. I am also correcting the notice to deal with a typographical error in step 2 of the requirements (“uppers floors”), with no injustice to the parties.

Ground (g)

8. For an appeal to succeed under this ground, I must be satisfied that the period specified in the notice falls short of what reasonably should be allowed.
9. The appellant seeks 12 months to “decant the tenants, and destroy the existing studio flats” and has also said that the 5 months allowed by the notice is inadequate in the present pandemic. However, he has not made a substantive case supported as necessary by evidence. Further, some of the units appeared vacant on my site visit and very limited evidence has been provided of current occupation, which causes me to place limited weight on the appellant’s above comments and I am otherwise unpersuaded that 5 months falls short of what is reasonable and proportionate in the circumstances.
10. The appeal under ground (g) does not succeed for these reasons.

Conclusion

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

Andrew Walker

INSPECTOR