



Appeal Decision

Site visit made on 10 November 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH December 2020

Appeal Ref: APP/T5150/C/20/3245612

Flats 1 - 7, 249 Neasden Lane, London NW10 1QG

- 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 Shlomo Grosskopf against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 18 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from two to seven flats.
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as more than TWO flats, and its occupation by NO MORE than TWO households.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use.
 - 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 single flat on the first floor comprising of a kitchen/lounge, bathroom and two bedrooms, and a single flat on the second and third floors comprising a living room, dining room, kitchen and bathroom on the second floor, and bedrooms and a bathroom on the third floor.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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 appeal 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.

Summary of Decision: The appeal succeeds in part but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the formal decision.

Applications for costs

1. Applications for costs were made by the Council of the London Borough of Brent against Mr Shlomo Grosskopf (Application A) and by Mr Shlomo Grosskopf against the Council of the London Borough of Brent (Application B). These applications will be the subject of separate Decisions.

Preliminary matters

2. The notice identifies the address of the premises as Flats 1 – 7, 249 Neasden Lane, whereas the appeal form identifies the premises as Flats A and B, 249 Neasden Lane. The appellant's statement of case refers to 249A and 249B Neasden Lane. Given these disparities, it is enough for the premises to be identified as 249 Neasden Lane and the notice will be corrected accordingly. The issue of flats is considered in more detail below.

3. I was not provided with access to the accommodation located behind the first-floor door labelled '1' during my site visit. Both the appellant and the Council had representatives present, all of whom confirmed that the accommodation provided in '1' is similar to that which I saw provided behind the first floor doors labelled '2' and '3'. I have been provided with no evidence to suggest that this is not the case and I will proceed on that basis.
4. A lawful development certificate (LDC) was granted for an existing use as 2 self-contained flats in April 2015 (Council reference: 15/0470). The plans approved under the LDC show a self-contained flat on the first floor, which I will refer to as '249A', and a self-contained flat occupying the second and third floors, which I will refer to as '249B'. While the floor layout has been altered since the LDC was issued, the premises retain a distinct separation between the first floor accommodation and the accommodations provided on the second and third floors.

Ground (b)

5. This ground is that the matters alleged have not occurred. The appellant claims that the property consists of 2 flats, each in use as a house in multiple occupation (HMO). The appellant goes on to advise that, at the time the notice was issued, 249A was occupied by 3 tenants and 249B was occupied by 4 tenants, with the occupation of both flats falling within Use Class C4¹.
6. The Council claim that, despite having applied for 2 separate HMO licences, the property was registered as 7 flats with the valuation office, energy performance certificates ("EPC") were secured for 6 of the flats, housing benefit has been paid on the basis of self-contained flats and, during a visit on 3 December 2019, the premises appeared to be laid out as 7 flats, with the accommodation in some of the units comprising of bathroom, toilet, sleeping and kitchen facilities. Much of this evidence, such as the valuation office correspondence, EPCs and payment of housing benefit, does not of itself show that each of the units numbered 1 – 7 were occupied as self-contained dwellinghouses.
7. This ground turns on whether the 2 flats have been converted into 7 flats. There is no dispute that the premises were 2 flats, but the Council claim that the 7 flats are located behind one external door. It was evident at my site visit that the premises can only be accessed from a single external staircase and pedestrian access door, a situation that has not changed since the LDC was granted for the 2 flats. Upon entering the premises, a corridor provides access to two further locked doors labelled '249A' and '249B'. Locked rooms behind these 2 respective access doors are numbered 1 to 3 on the first floor and 4 to 7 on the second and third floors. There is also a communal kitchen on the second floor.
8. The Council claim that there has been a history of interconnection between the accommodation spread over the 3 floors. The HMO application form submitted to evidence this however pre-dates the LDC. The Council go on to state that "all 3 floors were interconnected at the Council's site visit of 3 December 2019", however the form of that interconnection is not clarified. Any physical interconnectivity between the accommodations found on the first floor with those found on the second and third floors is prevented by the 2 locked doors located off the entrance corridor. The room numbers might run consecutively

¹ Town and Country Planning (Use Classes) Order 1987 as amended

from 1 to 7 but I do not consider that this, of itself, is enough to confirm interconnection between the premises. Based on what I saw, I find that the premises remain split into 2 distinct parts, 249A on the first floor and 249B on the second and third floors.

9. The lawful use of 249A and 249B was established by the LDC as 2 self-contained flats, furthermore flats are recognised as being dwellinghouses. A change from a use within Class C3 (dwellinghouses) to Class C4 (HMO) of the Town and Country Planning (Use Classes) Order 1987 would have been lawful by virtue of Class L, Part 3, Schedule 2 of the GPDO². The change of use from 2 flats to 2 HMOs, claimed by the appellant to have occurred, would have benefitted from deemed planning permission under Class L. The HMO licences provided by the Council in Appendices 5 and 6 of their Statement of Case, go some way to confirm the appellant's version of events.
10. The dispute between the appellant and the Council in this instance can be distilled down to whether the rooms numbered 1 – 7 are dwellinghouses in their own right or remain rooms in a HMO. When considering flat/HMO cases the problem arises when the concept of 'basic amenities', set out in s254 of the Housing Act 2004, is confused with the Gravesham test of 'facilities required for day-to-day private domestic existence'. The two are not necessarily the same and the appellant and the Council have cited numerous appeal decisions where this issue has been considered. It is clear from all these previous appeal decisions that their outcome was dependent on the specific circumstances of each case.
11. I saw a clear difference in form between the accommodations provided within 249A and those provided within 249B. Behind the door of 249A, a corridor provides access to 3 further locked doors, numbered 1, 2 and 3. Behind each locked door is a multi-functional living space with en-suite shower rooms. The multi-functional area contains sleeping, sitting and kitchen facilities including a sink, a fridge and a microwave oven. While the cooking facilities are rudimentary, and may have been provided by the occupants, the lack of access to any other cooking facilities within the wider premises would demonstrate that the residents occupy each accommodation on a self-contained basis. Units 1, 2 and 3 each contain the facilities required for day-to-day private domestic existence and they are therefore 3 separate dwellinghouses. Such use is prohibited from benefitting from the deemed planning permission set out in Class L. On this basis, I find that the flat which formed 249A has been divided into 3 flats, which s55(3)(a) of the 1990 Act confirms is a material change of use.
12. Behind the door of 249B, staircases lead up to 2 bed-sitting rooms with en-suites on the second floor and 2 bed-sitting rooms with en-suites on the third floor. There is also a well-equipped communal kitchen and dining area located on the second floor. The rooms are provided with kitchen units which includes a sink and a separate fridge. Other than items such as kettles and toasters, there were no cooking facilities in the rooms numbered 4 - 7. The occupiers of these rooms would therefore have to make use of the cooking facilities in the communal kitchen located on the second floor. Rooms 4 to 7 therefore lack one of the basic amenities identified in s254 and do not contain facilities required for day-to-day private domestic existence. On this basis, I find that the flat that

² Town and Country Planning (General Permitted Development) Order 2015 (as amended)

forms 249B is in use as a HMO and, as a matter of fact, it has not been changed into 4 flats.

13. While the allegation refers to the material change of use from 2 flats to 7 flats, I find that a material change of use has only occurred in respect of one flat being changed into 3 flats. In accordance with s176(1)(b), I will vary the notice accordingly. This variation would reduce the scope of the notice and therefore cause no injustice.
14. For the reasons set out above, the ground (b) appeal succeeds in so far as it relates to 249B.

Ground (f)

15. For the appeal to succeed on this ground, it is necessary to consider whether the steps required to comply with the requirements of the notice are excessive. It is clear from the requirements that the purpose of the notice is to remedy the breach of control, by restoring the premises to its condition before the material change of use took place. The partial success of the ground (b) appeal also requires the steps to be varied.
16. In this case, the requirements need to secure the cessation of the use as more than one flat and the restoration of the premises to its condition before the breach occurred. The appellant argues that restricting the number of households, requiring the removal of partitions and other works, and requiring the floor layout to be laid out as specified in Step 3, goes beyond what is necessary to remedy the breach.
17. Step 1 needs to refer to one flat to be consistent with the partial success on ground (b). Furthermore, the Council concedes the appellant's point in respect of restricting the number of households. Step 1 will be varied accordingly.
18. As mentioned above, floor layout plans accompanied the LDC and these showed the accommodation in 249A to include a kitchen/lounge, 2 bedrooms and a bathroom. The kitchen/lounge and 2 bedrooms now form the 3 flats, with the bathroom floor space having been divided between 2 of the 3 flats. The appellant's evidence refers to 2 tenants originally occupying 249A and that the communal kitchen/lounge was rented out to a third tenant in 2016. It is the loss of the communal kitchen/lounge that facilitated the material change of use to 3 flats. It is reasonable to assume therefore that some works to restore the communal kitchen/lounge will be required to comply with the notice. The appellant is best placed to know what works this will involve and as such I find Step 2 to be necessary to remedy the breach.
19. Similarly, in respect of Step 3, requiring the restoration of the internal configuration to the original layout before the unauthorised change of use took place complies with s173(4)(a) of the 1990 Act. However, I find the second sentence of Step 3 to be overly prescriptive. I am satisfied that no injustice would result from the deletion of the second sentence of this requirement from the notice.
20. The appeal on ground (f) succeeds to this limited extent.

Ground (g)

21. The issue is whether the time for compliance is reasonable.

22. The appellant is seeking a period of 12 months to allow for the termination of tenancies, secure vacant possession and to carry out the works to comply with the requirements of the notice, having regard to the potential impacts of the Coronavirus Act 2020. In the absence of any evidence to show tenancy terms, the Council considers 6 months to be reasonable. Furthermore, they advise that if there is a genuine need for the period to be extended, they would exercise their powers under s173A(1)(b) of the 1990 Act to ensure no hardship is caused to tenants.
23. Compliance with the notice will result in residents having to vacate the premises and time will be required to comply with the requirements. However, I have not been provided with any substantive evidence for extending the compliance period, such as tenancy agreements or details of the necessary internal works.
24. Furthermore, I acknowledge that, under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding the enforcement notice will engage that right, as residents of the flats are at risk of losing their homes. However, this fact has been weighed against the wider public interest of protecting the environment from unacceptable forms of development. The objections to the development are serious and would be unreasonably prolonged by an extension to the compliance period. On balance I conclude that dismissal of the appeal would not have a disproportionate effect on the residents of the flats.
25. The appeal on ground (g) does not succeed.

Overall conclusion

26. From the evidence before me, the alleged breach of planning control set out in the enforcement notice is incorrect. While there has been a material change of use of the land, this is from "one to three flats" and not "two to seven flats". The appeal succeeds on grounds (b) and (f) to that limited extent.
27. The enforcement notice will be upheld with corrections and variations.

Formal Decision

28. It is directed that the enforcement notice is corrected by:

The deletion of the words "Flats 1 – 7" in schedule 1: the land or premises affected.

The deletion of the words "the premises from two to seven flats" and the substitution of the words "249A Neasden Lane from one flat to three flats" in schedule 2: the alleged breach of planning control.

The deletion of STEP 1 and the substitution of "STEP 1 Cease the use of 249A Neasden Lane as more than one flat" in schedule 4: What you are required to do to remedy the breach of planning control.

29. It is directed that the enforcement notice be varied by:

The deletion of the words "For the avoidance of doubt, this should include a single flat on the first floor comprising of a kitchen/lounge, bathroom and two bedrooms, and a single flat on the second and third floors comprising a living room, dining room, kitchen and bathroom on the second floor, and

bedrooms and a bathroom on the third floor.” in STEP 3, schedule 4: What you are required to do to remedy the breach of planning control.

30. Otherwise the appeal is dismissed, and the enforcement notice is upheld as corrected and varied.

M Madge

INSPECTOR