



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/A5840/C/20/3256265

Unit 3, St James Industrial Mews, 276 St James Road, London SE1 5JX

- 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 Aharon Dodi against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice is dated 24 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the extension of the roof and the use of the Land as four self contained flats within use class C3 ('the Unauthorised Development').
 - The requirements of the notice are: 1. Cease the use of the Land as four self contained dwellings within use class C3; 2. Restore the Land to its condition before the breach occurred, including the removal of all fixtures, fittings, partitions, doors and windows connected to the use of the Property as self contained flats; 3. Remove all kitchen fixtures, fittings, services and partitions facilitating the use of the Land as four self contained dwellings within use class C3 (including, for the avoidance of doubt any hob(s), kitchen sink(s), microwave/combination ovens and supporting shelves, kitchen work tops and kitchen cupboards and drawers, kitchen wall tiling or splashbacks, sockets and switches at work top level, and plumbing and electricity connections); 4. Remove all bathroom fixtures, fittings, services and partitions facilitating the use of the Land as four self contained dwellings within use class C3 (including, for the avoidance of doubt any shower, hand basin, toilet, plumbing and electricity connections, partition walls and doors); 5. Remove the front (east) roof extension from the Land; 6. Reinstate the front (east) roof slope of the Land; 7. Remove the rear (west) roof extension from the Land; 8. Reinstate the rear (west) roof slope of the Land; 9. Remove from the Land any material and debris arising from compliance with the requirements of steps 1 to 8 above.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of all the text in the allegation and the substitution of it by the following text: *'without planning permission, the extension of the roof and the material change of use of the Land as four self contained flats within use class C3 ('the Unauthorised Development')*.
2. Subject to this amendment, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary matters

3. The determination of this appeal relates only to ground (f), which is a matter of mitigation. As I was able to assess the case from the written evidence alone, it was not necessary for me to carry out a site inspection.

The enforcement notice

4. With regard to the wording of the notice, it alleges 'the use of the Land as four self contained flats'. This part of the allegation is imprecise, whereas to reflect the definition of the term 'development' in s55(1) of the Act, it should state a 'material change of use of the land'. I am satisfied that this correction does not cause any injustice or make the notice more onerous.

The appeal on ground (f)

5. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
6. The appellant's case is that the steps required by the notice should include an option to implement planning permission ref: 20/AP/1312, which was granted on 19 June 2020. He contends that permission 20/AP/1312 has been partially implemented and so remains extant. The permission was for the 'variation of condition 2 (plans) to planning permission 17/AP/2275 granted permission on the 11th September 2017 for (Construction of a mansard roof extension to provide two self contained studio flats) in order to allow changes to the roof slope and rear window configuration, and insertion of two new windows in the front roof.'
7. However, the purpose of the enforcement notice is to remedy the breach, and it should go no further than is necessary to achieve this purpose. In this case, the requirements of the notice are sufficient to remedy the breach by ceasing the unauthorised change of use to four flats and removing the physical works that have facilitated it.
8. To include the implementation of the 2020 permission as an option would go beyond the purpose of the notice. It seems likely that such an option would result in a change to the previous condition of the land, and there is no statutory power to require an appellant to undertake anything other than a reversion to the condition the building was in before the breach took place.
9. In any case, little information about the 2020 permission has been provided. I am not aware of any conditions that have been attached, and whether or not these could be discharged and the work completed within the twelve month time frame. This matter alone indicates that it would be inappropriate to incorporate the suggested alternative requirement. Ultimately, the appellant may implement an extant permission if he wishes, but that process is separate to the enforcement process.
10. In view of the above considerations, I find that including the appellant's suggested requirement would amount to a positive requirement that would possibly alter the previous condition of the building. This would be excessive and thus inappropriate, and so the appeal on ground (f) fails.

Conclusion

11. For the reasons above, the appeal is dismissed, and the enforcement notice, as varied, is upheld.

Elaine Gray

INSPECTOR