



Appeal Decision

Site visit made on 12 January 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/N5090/C/20/3251007 41 Woodland Way, LONDON NW7 2JP

- 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 Mrs Hana Rabee against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0305/20, was issued on 16 March 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the sub-division of the property into five self-contained flats*.
- The requirements of the notice are:
 - (1) Cease the use of the property as self-contained flats
 - (2) Restore the property to the state in which it was prior to the breach as per the "Pre-existing ground floor plan", "Pre-existing first floor plan" and "Pre-existing roof plan", drawing number 1710-SV-3, included as part of planning application reference 18/0247/FUL, decision date 15.03.2018 the works to include the removal of:
 - (a) All kitchen units, sinks, cookers and food preparation areas from rooms other than that shown in the room labelled "Kitchen" in drawing number 1710-SV-3
 - (b) All bathroom and shower rooms including baths, sinks, WCs and showers other than those labelled "WC" or "Shower" in drawing number 1710-SV-3.
- The period for compliance with the requirements is five 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.

Summary Decision: The appeal partly succeeds, on the limited grounds on which it is brought, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Main Issue

1. The main issue raised by the appeal on ground (f) is whether the steps required by the notice exceed what is necessary to remedy any breach of planning control. The main issue raised on ground (g) is whether the period specified in the notice for compliance with its requirements falls short of what should reasonably be allowed.

Reasons

The appeal on ground (f)

2. An enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control, and the steps required to achieve, wholly or partly, the purposes of the notice. The purpose may be to remedy the breach of planning control or to remedy any injury to amenity caused by the breach. Here, the Council states that the purpose of the

notice is to remedy the breach of planning control. Section 173(4) of the Act sets out that steps to remedy the breach may be taken by making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing any use of the land, or by restoring the land to its condition before the breach took place.

3. Here the Council allege a breach of planning control amounting to a material change of use of the property into five self-contained flats. In these circumstances a notice would not usually seek to remedy the breach by 'restoring the land to its condition before the breach' because such steps would be more apposite to an allegation of unauthorised operational development. Instead it is appropriate for the steps to require the unauthorised use of the land to be discontinued, and in so doing the notice may reasonably require the undoing of any works, including internal works, that have taken place to facilitate the breach.
4. It appears that a planning application has recently been made to the Council, for which 'existing' (described in the notice as pre-existing) plans of the internal arrangements were supplied in the form of drawing no. 1710-SV-3. The Council's notice refers to these plans in its requirement 5(2) which requires the property to be restored to its state prior to the breach. As I have alluded to above, the purpose of the notice is to remedy the breach by discontinuing the use, rather than directly by reference to the property's prior condition. Plans of the pre-existing layout of the property are a useful guide to what has taken place to facilitate the change of use and what is required to remedy the breach. However I do not consider their omission from the notice's enclosures to be fatal to the overarching requirement to discontinue the use. I shall therefore uphold the notice but vary requirement 5(2) so that it simply requires the removal of all alterations, installations and fixtures that have enabled the conversion to the self-contained flats including the kitchen units, sinks, cookers, food preparation areas, baths, WCs and showers that have been installed as part of those conversion works. In practice this is likely to return the internal layout of the property to that shown on drawing 1710-SV-3 but I shall not expressly require that, given the omission of the drawing from the notice.
5. The appellant correctly points out that the lawful use of the property as a house could have an array of different forms, and suggests that it is unreasonable for the owner not to be able to change the layout without the consent of the Council. Whether any of the alterations that have been made could have been made to the property in its continued use as a single dwelling house is not however the point. Here, it is not disputed that the works of alteration were carried out in order to facilitate the unauthorised change of use, and so it is not excessive for the Council to seek their removal as part of requiring the discontinuance of the use.
6. Additionally, here the appellant draws my attention to a planning permission which has been granted in respect of the land which would allow the use of the property as two flats. Section 173(4) of the Act sets out, as referred to above, that a breach of planning control may be remedied by taking steps to make the development comply with the terms of any planning permission which has been granted in respect of the land. Ordinarily, compliance with the permission might be an acceptable alternative requirement in these circumstances. However, neither party has provided me with a copy of the planning permission

and so I do not know whether it remains extant or if its terms and conditions remain capable of being complied with. Consequently I shall not vary the requirements of the notice to allow this permission to be complied with as an alternative, although no doubt the Council will be mindful of its own powers in this regard.

The appeal on ground (g)

7. The appellant refers to Coronavirus legislation affecting the ability of landlords to bring possession proceedings against tenants and requests the period of compliance be extended to nine months. The legislation does not permit of imposing a 'conditional' compliance period as suggested by the appellant (nine months from the date there is a change in legislation) but there is presently no bar to serving possession notices and again the Council will be mindful of its own powers in this regard. The Council raises no objection to a limited extension and in the circumstances I agree that the period specified in the notice is too short and should be extended to nine months. I shall vary the requirements of the notice accordingly.

Conclusion

8. For the reasons given above I conclude that the requirements of the notice are excessive and that a reasonable period for compliance would be nine months and I am varying the notice accordingly, prior to upholding it. The appeal under grounds (f) and (g) succeeds to that extent.

Decision

9. The appeal is allowed on grounds (f) and (g) and it is directed that the enforcement notice be varied by:
 - (i) Substituting 'Remove all alterations, installations and fixtures that have enabled the conversion to self-contained flats including the kitchen units, sinks, cookers, food preparation areas, baths, WCs and showers that have been installed as part of the conversion works' for paragraph 5(2); and
 - (ii) Substituting 'Nine' for '5' in paragraph 6.
10. Subject to these variations the enforcement notice is upheld.

Laura Renaudon

INSPECTOR