



Appeal Decisions

Site visit made on 11 March 2021

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 25 March 2021

Appeal A: APP/N5090/C/19/3243742

Land at First Floor Flat, 2 Alyth Gardens, London NW11 7EN

- 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 A Nejabet against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 21 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission: the Sub-Division of the Property into Three Self Contained Flats.
 - The requirements of the notice are:
 - 1 Cease the use of the property as multiple self-contained flats.
 - 2 Revert the property back to that of the existing plans 3880_01 from the Lawful Development Certificate no. 15/05444/191 which includes the removal of the kitchen and bathroom facilities from rooms other than those as provided on the existing plans.
 - The period for compliance with the requirements is 4 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/N5090/C/19/3243729

Land at Ground Floor Flat, 2 Alyth Gardens, London NW11 7EN

- 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 A Nejabet against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 21 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission: the Sub-Division of the Property into Three Self Contained Flats.
 - The requirements of the notice are:
 - 1 Cease the use of the property as multiple self-contained flats.
 - 2 Revert the property back to that of the existing plans 3880_01 from the Lawful Development Certificate no. 15/05444/191 which includes the removal of the kitchen and bathroom facilities from rooms other than those as provided on the existing plans.
 - The period for compliance with the requirements is 4 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

Appeals A and B:

1. The appeals are allowed on grounds (f) and (g), and it is directed that both enforcement notices be corrected and varied by, firstly, the deletion of their Requirement 2 and, secondly, the substitution of 4 months with 9 months as the period for compliance. Subject to these corrections and variations the enforcement notices are upheld.

Background

2. On 20 August 2015 a s191 application was made to the Council claiming that the property's then use as three self-contained flats was lawful in planning terms. The Council subsequently issued a lawful development certificate (LDC) ref 15/05444/191 to this effect.
3. In October 2019, following a site visit, Council officials found that the ground and first floors were, instead, in use as six separate self-contained flats. In the circumstances the Council considered it expedient to serve an enforcement notice against the apparent material change of use.
4. Two separate enforcement notices were issued. One alleges that the ground floor unit had been sub-divided to create three self-contained flats, and the other notice relates to the sub-division of the first floor unit to also create three self-contained flats. As I understand it all the flats are under common ownership and the appellant says in his initial appeal grounds that the roof space provides an additional self-contained flat. The second floor unit, which is shown on the LDC floorplans, is though excluded from the Council's enforcement action in this instance.

Preliminary Matters

5. The property's various grounds of appeal were originally set out on both the on-line forms at the time the appeals were lodged. However, the appellants initial Statement which outlined the grounds claimed also mentioned the inclusion of grounds b and e. This suggested the appellant considered that the alleged breach had not occurred as a matter of fact, and also that the enforcement notices had been incorrectly served, contrary to that required by way of s172 of the 1990 Act, as amended. However, no clear evidence was subsequently put forward to support either of these claims.
6. During the appeal process, as confirmed in writing by an e-mail dated 27 January 2021, the appellant decided to withdraw the appeals under Ground D on both notices. Accordingly, the appellant, although continuing with the challenge to the notices, confirmed that this would now be limited to just the grounds (f) and (g).
7. In the circumstances, in the absence of any obvious or substantive ground (b) or ground (c) appeals the appellant is accepting that the alleged breach has taken place, for which planning permission is required to allow for the use's lawful continuation. With the recent withdrawal of the claim under Ground (d) the appellant has also conceded that the unauthorised use does not enjoy immunity from planning control due to the passage of time and the Council is thereby entitled to use its remedial powers as appropriate, and should it see fit.

8. The remaining appeals are therefore limited to whether or not the enforcement notices' requirements go beyond what is necessary to remedy the identified breach and whether the specified compliance period is unreasonably short.

The appeals on ground (f)

9. Appeals on ground (f) are that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity.
10. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by seeking the cessation of the use of the property as flats over and above the three self-contained flats confirmed as lawful in planning terms by way of the lawful development certificate (LDC) ref 15/05444/191 issued by the Council in 2015.
11. The appellant suggests that the lawful use of the property involves a flat on each floor of the property. However, with reference to the issues raised by the court judgement in *M & M (Land) Ltd v SSCLG* [2007] All ER(D), it would seem appropriate that the appellant and the Council should best liaise as to the property's future use and floor layout in this respect. The appellant may wish to change the 'approved' layout or might even decide to apply for planning permission for the property's future use. With this in mind I find that Requirement 1, which involves only the cessation of use, is sufficient in itself to achieve the Council's primary objective.
12. In the circumstances I consider that Requirement 2 which, in both enforcement notices, stipulates that the property revert back to that shown as the existing floor layout in the LDC application, goes beyond that which would reasonably remedy the breach of planning control.
13. Accordingly, the appeals on this ground succeed.

The appeals on ground (g)

14. Appeals on ground (g) are that the stated time period for compliance falls short of what is reasonable in the circumstances. The Council's stated compliance period of four months is limited considering that existing occupants within the flats will need time to make alternative arrangements before vacating the property.
15. As such, I am satisfied that the appellant's suggestion that the compliance period be increased to nine months is more reasonable in the circumstances.
16. Accordingly, the appeals here succeed.

Conclusion

17. The appeals succeed insofar as both enforcement notices are corrected and the periods for compliance are varied. Subject to these changes both enforcement notices are upheld.

Timothy C King

INSPECTOR